

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

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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
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SUBJECT: Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722) (Action Required)

Issue Statement

Effective January 1, 2009, Assembly Bill 2070 amended numerous sections of the Welfare and Institutions Code. Effective August 5, 2009, Assembly Bill 706 made further statutory amendments to some of these provisions for clarification purposes. The proposed new and amended rules implement statutory changes relevant to review and permanency hearings in juvenile dependency proceedings, as mandated by both bills. Further restructuring and language changes are necessary to facilitate rule usage for judicial officers and practitioners.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, amend or adopt the following California Rules of Court:

1. Amend rule 5.695(f), Orders of the court. The amendments to this rule would address new requirements regarding the timing and provision of reunification services, as outlined in Welfare and Institutions Code section 361.5(a);¹
2. Adopt rule 5.706, Family maintenance review hearings. This new rule would apply to review hearings under section 364 in which the dependent child remains in the custody of the parent or legal guardian. Previously, these requirements were

¹ Unless otherwise stated, all section references are to the Welfare and Institutions Code.

combined with the 6-month review hearing requirements in rule 5.710, but the committee proposes separating them because the legal mandates for the two hearing types are quite different;

3. Adopt rule 5.708, General review hearing requirements. This rule would describe the legal requirements regarding notice, reports, case plans, court findings and orders, and other procedures generally applicable to 6-, 12-, 18-, and 24-month review hearings when the dependent child has been removed from the custody of the parent or legal guardian. Previously, these requirements were repeated three times in the 6-, 12-, and 18-month rules; this new rule reduces redundancy by bringing all the common requirements into one rule;
4. Amend rule 5.710, Six-month review hearing. This rule would be revised and condensed to reflect the court procedures and determinations specifically applicable at the 6-month review hearing for children in out-of-home care. Minor wording changes in subdivisions (b)(4) and (c)(1)(D) are also proposed to comply with case law. (See *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, fn. 3 & 8);
5. Amend rule 5.715, Twelve-month permanency hearing. This rule would be revised and condensed to reflect court procedures and determinations specifically applicable at the 12-month permanency hearing;
6. Amend rule 5.720, Eighteen-month permanency review hearing. This rule would be revised and condensed to reflect court procedures and determinations specifically applicable at the 18-month permanency review hearing; and
7. Adopt rule 5.722, Twenty-four-month subsequent permanency review hearing. This new rule would reflect the court procedures and determinations specifically applicable at the 24-month subsequent permanency review hearing, as outlined in Assembly Bill 2070 and Welfare and Institutions Code sections 366.22 and 366.25.

The proposed rule text is attached at pages 9–47.

Rationale for Recommendation

Assembly Bill 2070 (Bass; Stats. 2008, ch. 482) amended sections 361.5, 366.21, 366.22, 366.26, 366.27, 366.3, 366.35, and 16508.1 of, and added section 366.25 to, the Welfare and Institutions Code, resulting in important changes in juvenile dependency law. Specifically, this legislation allows for a subsequent permanency review hearing 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian in certain circumstances. It describes new requirements for the court to consider the circumstances of parents or legal guardians who are incarcerated, institutionalized, or in residential substance abuse treatment when determining whether to enter a detriment finding or to extend the time period for reunification services. The amendments to section 361.5 change how the time periods

allotted for reunification services for parents or legal guardians of dependent children are calculated, establishing both minimum and maximum times for reunification.

Further changes to Welfare and Institutions Code sections 361.5, 366.21, 388, and 11404.1 were recently enacted by Assembly Bill 706 (Committee on Human Services; Stats. 2009, ch. 120), which was “clean-up” legislation intended to clarify confusing statutory language.² AB 706 also enacted one new statute, Welfare and Institutions Code section 361.49, which defines the date that the child is “deemed to have entered foster care.” As urgency legislation, AB 706 went into effect on August 5, 2009, immediately upon enactment. Specifically, it amends section 361.5 regarding the timing and provision of reunification services for parents or legal guardians of dependent children and outlines circumstances in which the court can terminate reunification services at the 6-month review hearing without the filing of a motion to terminate reunification services.

The new and amended statutory language from AB 706 has been incorporated into this proposal in rule 5.695(f)(1), (2), and (4), as described below. References to new section 361.49, defining the date the child entered foster care, have also been added to rules 5.695, 5.710, and 5.715. Given the timing of AB 706, the resulting rule changes have not been circulated for public comment. However, these changes merely track the revised statutory language in section 361.5 and are not controversial. Because these changes are minor and unlikely to create controversy, they may be recommended for adoption without circulation for public comment. (See Cal. Rules of Court, rule 10.22(d)(2).) It would be legally inaccurate to amend these rules without incorporating the revised statutory language resulting from AB 706.

The statutory changes from AB 2070 became effective January 1, 2009, and must be incorporated into the affected California Rules of Court.³ The existing review and permanency rules that require updates are rule 5.710, Six-month review hearing; rule 5.715, Twelve-month review hearing; and rule 5.720, Eighteen-month review hearing. In reviewing these rules, it became apparent that there is significant redundancy among them and that it would increase redundancy to propose another review hearing rule applicable to 24-month review hearings incorporating many of the same legal provisions.

To address this issue, the Family and Juvenile Law Advisory Committee proposes revising the current rule structure. For children who have been removed from the physical custody of the parent or legal guardian, a new, general rule (rule 5.708, General review

² Assem. Bill 706 provided clean-up legislation for Assem. Bill 2341, which went into effect on January 1, 2009. Assem. Bill 2341 amended sections 361.5 and 388 of the Welfare and Institutions Code. Identical changes to section 361.5 were also enacted by Assem. Bill 2070. The changes to section 361.5 are covered in this proposal because they are more consistent with the purpose of this proposal. The changes to section 388 are covered by the rule proposal enacting that legislation (see SPR 09-37).

³ The Welfare and Institutions Code amendments will also require a number of changes to existing Judicial Council forms and the development of a new findings and orders form relevant to 24-month subsequent permanency review hearings. Given the magnitude of the project and limited staff resources, necessary form changes will be included in a future rules and forms cycle.

hearing requirements) applicable to 6-, 12-, 18-, and 24-month review hearings would be adopted;⁴ the 6-, 12-, and 18-month rules would be significantly shortened to reduce redundancy; and a new 24-month rule (rule 5.722, Twenty-four month subsequent permanency review hearing) would be enacted. A new rule is also proposed (rule 5.706, Family maintenance review hearings (§ 364)) for family maintenance review hearings to clarify the legal requirements when a dependent child has not been removed from the parent's or guardian's custody. Updated titles for the review hearing rules (rules 5.710, 5.715, 5.720, and 5.722) are also proposed to promote consistency with statutory language.

The statutory changes upon which this proposal is based included several small inconsistencies. In reconciling inconsistencies for the review hearing rules, the committee relied on the language in the review hearing statutes (sections 366.21, 366.22, and 366.25). In one instance, when section 366.22 was silent, the new statutory language from section 361.5 was used, resulting in proposed subdivision (b)(4)(A)(ii) of rule 5.715.

The committee further proposes amending rule 5.695(f), Orders of the court, to address new requirements regarding the timing and provision of reunification services, as outlined in section 361.5(a)(1) and (2).⁵ Section 361.5(a)(1) now states that, for a child who was three years of age or older at the time of removal, family reunification services must be provided “beginning with the dispositional hearing and ending 12 months after the date the child entered foster care as defined in Section 361.49, unless the child is returned to the home of the parent or guardian.” For a child who was under three years of age at the time of removal, family reunification services must be provided “for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care as defined in Section 361.49 unless the child is returned to the home of the parent or guardian.” The committee proposes updating the language in rule 5.695(f)(1) and (2) to conform the rule to the requirements in section 361.5 as well as to the federal title IV-E requirement that a permanency hearing occur within 12 months of the date the child entered foster care.

The committee proposes adding a sentence to rule 5.695(f)(1) stating that the time period for family reunification services must be calculated consistent with Welfare and Institutions Code section 361.5(a). The committee also proposes adding new paragraph (4) to rule 5.695(f), to reference the new procedures in section 361.5(a)(2) for filing a motion to terminate reunification services.

⁴ The review hearing rules previously included requirements pertaining to writs and appeals. New rule 5.708 removes the specific requirements and replaces them with references to the writ and appeal rules. It currently references rule 5.585, which, effective July 1, 2010, will be renumbered to rule 5.590. This reference will change at that time.

⁵ Both Assem. Bill 2070 and Assem. Bill 706 amended the requirements regarding the timing and provision of reunification services in section 361.5(a). The statutory language quoted here is the more recent version from Assem. Bill 706.

The proposed new and revised rules are necessary to comply with legal mandates. The proposed reorganization of review and permanency rules is aimed at facilitating judicial officer and practitioner use of the rules.

Alternative Actions Considered

The proposed amendments are necessary to bring the rules into compliance with governing law and to promote clarity and ease of use.

The committee considered amending the rules to conform to the new statutory requirements without simultaneously reorganizing the rules but rejected this course of action. The committee decided that it made more sense to restructure the rules for increased clarity at the same time the rules were being rewritten to conform to new law, rather than going back to reorganize the rules at another time.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 17, 2009, through June 17, 2009, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. This distribution list includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. A total of 12 comments were received. No commentators disagreed with the proposal; 5 commentators agreed with the proposed changes; 3 commentators agreed with the proposal if modified; 4 commentators did not indicate agreement or disagreement.

Many commentators suggested technical and clarifying changes, such as correcting typographical errors, using more consistent terminology, improving grammar, and adding language to the rule text to be more consistent with statutory requirements. These comments are explained in detail in the comment chart.

The following sections describe the substantive comments that were received for each proposed rule.

Rule 5.695, Orders of the court

One commentator requested modification of the proposed language in rule 5.695(f)(1) to ensure consistency with section 361.5(a) and to clarify that family reunification services must commence immediately following the dispositional hearing. The wording in the proposed rule has been changed to be consistent with the most recent version of section 361.5(a).

Rule 5.706, Family maintenance review hearings (§ 364)

Three commentators made substantive suggestions regarding rule 5.706. One commentator suggested revising the language of rule 5.706(a) to be consistent with statute. This commentator stated that section 364 requires the hearing be held “within”

six months, not “every” six months. Section 364(a) mandates that every hearing in which the child is placed under the supervision of the juvenile court under section 300 but not removed from the custody of his or her parent or guardian “shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing.” To ensure consistency with the statute, the committee recommends revising subdivision (a) to state that, “If the child remains in the custody of the parent or legal guardian, a review hearing must be held within 6 months after the date of the original dispositional hearing and *no less frequently than once every six months* thereafter as long as the child remains a dependent.” (Emphasis added.)

Two commentators made similar suggestions to clarify the language in rule 5.706(f). That subdivision describes the procedure that a social worker must follow when new allegations of abuse or neglect arise for a dependent child who has not been removed from the home. Section 364 and the earlier version of rule 5.706(f) require the social worker to “commence juvenile dependency proceedings.” The commentators both correctly noted that this language is confusing because in an ongoing matter, the social worker must actually file a petition within the existing case rather than commencing a new case. The committee agrees to change the “commence proceedings” language so the section instead requires that, under these circumstances, “the social worker must file a subsequent petition under section 342 or a supplemental petition under section 387.”

Rule 5.708, General review hearing requirements

One commentator made several suggestions and comments. First, the commentator questioned the legal authority for the required court findings identified in rule 5.708(g)(3) and (g)(4). Subdivisions (g)(3) and (g)(4) state that the court must find that each parent was either actively involved or not actively involved in the development of the case plan and plan for permanent placement. These provisions are currently included in the review and permanency rules (rules 5.710, 5.715, and 5.720). They are not new provisions; they merely have been moved to new rules. The authority for them comes from Welfare and Institutions Code section 16501.1(d)(1) which explains that the Legislature extended the case planning time period from 30 to 60 days in order to “afford caseworkers time to actively engage families, and to solicit and integrate into the case plan the input of the child and the child’s family, as well as the input of relatives and other interested parties.”

This commentator also suggested adding to rule 5.708(g) new court findings related to the case plan, including court findings that (1) the case plan included the services necessary to assist the child in transitioning from foster care to independent living, (2) the case plan was developed with individuals identified as important to the child, and (3) the case plan identifies individuals who are important to the child and actions necessary to maintain the child’s relationship with these individuals. The committee declines to make these changes. Although these are all important case planning requirements for the social worker to adhere to, rule 5.708(g) is not meant to be an exhaustive list of all of the case plan requirements in section 16501.1. Subdivision (g) of rule 5.708 more narrowly describes court findings regarding parent and child participation in case planning.

Rule 5.710, Six-month review hearing

Two commentators suggested changes with respect to rule 5.710(c)(1)(D), which identifies three factors in making a court finding that a substantial probability exists that the child may be returned within 6 months. One commentator asserted that it is inconsistent with section 366.21 to state that the court “should consider” the three factors in making the substantial probability finding; section 366.21 requires that the court “must find” the factors. Another commentator stated that, under *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, the trial court is not limited to inquiring into the three factors set forth in section 366.21(g)(1) and that language should be added to rule 5.710(c)(1)(D) to clarify that the court may take into account other relevant evidence.

In *M.V.*, the Court of Appeal, Fourth Appellate District, held that the court is not required to make the section 366.21(g)(1) findings at the 6-month review. (*Id.* at pp. 179–180.) The court stated that “We reject the proposition that determination of the “substantial probability” question presented by subdivision (e) requires the court to make the findings set forth in section 366.21, subdivision (g)(1).” (*Id.* at p. 179.) The court held that the substantial probability test outlined in section 366.21(g)(1) must be applied at the 12-month review, but that the 6-month review and the 12-month review present distinct inquiries, because of their differing ‘substantial probability’ tests (366.21(e) requires the court to determine whether or not there is a substantial probability that the child “may be returned,” while 366.21(f) directs the court to find whether the child “will be returned”). The court further held that, in applying the “substantial probability” test, the court may take all relevant evidence into consideration; the court is not limited into inquiring into the three factors set forth in section 366.21(g) at the 6-month review hearings. (*Id.* at p. 181.)

The committee agrees with the second commentator that at the 6-month hearing, the court, under *M.V.*, is not limited to inquiring into the three “substantial probability” factors set forth in Welfare and Institutions Code section 366.21(g). The committee recommends adding to 5.710(c)(1)(D) that the court may consider “any other relevant evidence” in addition to the three statutory factors. The committee does not agree with the first commentator's perspective that the proposed rule language—that the court “should consider” the three factors in making the substantial probability finding at the 6-month review hearing—is inconsistent with section 366.21. This language is consistent with relevant statutory and case law, as noted above.

One commentator was also concerned that rule 5.710 did not include the new language from Assembly Bill 2070 about the unique circumstances faced by incarcerated or institutionalized parents when the court is determining whether to extend services. The unique circumstances faced by incarcerated or institutionalized parents are addressed or referenced in rules 5.708(d)(3)(C) (General review hearing requirements), 5.710(b)(1) (Six-month review hearing), 5.715(b)(4)(A)(ii) (Twelve-month permanency hearing), and 5.720(b)(3)(A) (Eighteen-month permanency review hearing). These rules incorporate

the new provisions regarding these parents in Welfare and Institutions Code sections 361.5(a)(2), 366.21, 366.22, and 366.25.

The committee recommends revising rule 5.708(d)(3)(C) slightly to more closely track the statutory language when deciding whether the child can return home. Instead of stating “In assessing detriment, the court must consider . . .”, the revised version states, “In making its determination about whether returning the child would be detrimental, the court must consider: . . . (C) The extent to which the parent or legal guardian availed himself or herself of the services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian’s access to court-mandated services and the ability to maintain contact with his or her child.” However, at the six-month point, the determination about whether to extend services for a child under age three is controlled by the third paragraph of 366.21(e), and by 361.5(a)(1)(B), neither of which includes the new statutory language regarding incarcerated or institutionalized parents. The committee therefore disagrees with the commentator about requiring the court to consider the circumstances of these parents when making the decision about extending services at the six-month point.

Rule 5.715, Twelve-month permanency hearing, Rule 5.720, Eighteen-month permanency review hearing, Rule 5.722, Twenty-four-month subsequent permanency review hearing
One commentator requested that language be added to rules 5.715(b)(2)(C), 5.720(b)(2)(B), and 5.722(b)(2)(A) to clarify that at a 12-, 18- or 24-month hearing, the court may make a finding that the child is not adoptable and order long-term foster care only if it has before it a recommendation from “State Adoptions or from the county adoption agency” that adoption is not in the best interest of the child. The committee agrees to add this statutory language about the adoption agencies. It will be added to rules 5.715(b)(4)(C), 5.720(b)(3)(B), and 5.722(b)(2)(A).

The full text of the comments and the committee’s responses are attached at pages 48–69.

Implementation Requirements and Costs

Implementation of the revised rules will incur standard reproduction costs.

Attachments

Rules 5.695, 5.710, 5.715, and 5.720 of the California Rules of Court are amended and rules 5.706, 5.708, and 5.722 are adopted, effective January 1, 2010, to read:

1 **Rule 5.695. Orders of the court**

2
3 (a)–(e) ***

4
5 **(f) Provision of reunification services (§ 361.5)**

6
7 (1) Except as provided in ~~(5)~~(6), if a child is removed from the custody of a
8 parent or legal guardian, the court must order the county welfare
9 department to provide ~~child welfare~~ reunification services to the child
10 and the child’s mother and statutorily presumed father, or the child’s
11 legal guardian, to facilitate reunification of the family. For a child who
12 was three years of age or older on the date of initial removal, services
13 must be provided during the time period beginning with the
14 dispositional hearing and ending within 12 months after of the date the
15 child entered foster care, as defined by section 361.49. if the child was
16 three years or older at the time of the initial removal, or within For a
17 child who was under three years of age on the date of initial removal,
18 services must be provided for a period of 6 months of the date the child
19 entered foster care if the child was under three at the time of initial
20 removal from the dispositional hearing, but no longer than 12 months
21 from the date the child entered foster care, as defined by section
22 361.49. The time period for the provision of family reunification
23 services must be calculated consistent with section 361.5(a). The court
24 must inform the parent or legal guardian of a child who was under three
25 when initially removed that failure to participate regularly and make
26 substantive progress in court-ordered treatment programs may result in
27 the termination of reunification efforts after 6 months from the date ~~the~~
28 ~~child entered foster care~~ of the dispositional hearing.

29
30 (2) If a child is a member of a sibling group removed from parental
31 custody at the same time, and one member of the sibling group was
32 under three at the time of the initial removal, reunification services for
33 ~~someone~~ or all members of the sibling group may be limited to 6
34 months from the dispositional hearing, and no later than 12 months
35 from the date the children entered foster care. The court must inform
36 the parent or legal guardian of a child who is a member of such a
37 sibling group that failure to participate regularly and make substantive
38 progress in court-ordered treatment programs may result in termination

1 of reunification efforts after 6 months for one or more members of the
2 sibling group.

3
4 (3) ***

5
6 (4) Any motion to terminate reunification services before the permanency
7 hearing set under section 366.21(f) for a child age three or older, or
8 before the 6-month review hearing set under section 366.21(e) for a
9 child under age three, must follow the requirements in section 388(c)
10 and rule 5.570. A motion to terminate reunification services at the 6-
11 month review hearing is not required if the court finds by clear and
12 convincing evidence that one or more of the circumstances described in
13 section 361.5(a)(2) and rule 5.710(c)(1)(A) is true.

14
15 ~~(4)~~(5) ***

16
17 ~~(5)~~(6) ***

18
19 ~~(6)~~(7) ***

20
21 ~~(7)~~(8) ***

22
23 ~~(8)~~(9) If the court finds under ~~(5)~~(6)(A) that the whereabouts of the parent or
24 guardian are unknown and that a diligent search has failed to locate the
25 parent or guardian, the court may not order reunification services and must
26 set the matter for a 6-month review hearing. If the parent or guardian is
27 located prior to the 6-month review and requests reunification services, the
28 welfare department must seek a modification of the disposition orders. The
29 time limits for reunification services must be calculated from the date of the
30 initial removal, and not from the date the parent is located or services are
31 ordered.

32
33 ~~(9)~~(10) If the court finds that allegations under ~~(5)~~(6)(B) are proved, the
34 court must nevertheless order reunification services unless evidence by
35 mental health professionals establishes by clear and convincing evidence that
36 the parent is unlikely to be able to care for the child within the next 12
37 months.

38
39 ~~(10)~~(11) If the court finds that the allegations under ~~(5)~~(6)(C), (D), (F), (G),
40 (H), (I), (J), (K), (L), (M), (N), or (O) have been proved, the court may not
41 order reunification services unless the party seeking the order for services
42 proves by clear and convincing evidence that reunification is in the best
43 interest of the child. If ~~(5)~~(6)(F) is found to apply, the court must consider

1 the factors in section 361.5(h) in determining whether the child will benefit
2 from services and must specify on the record the factual findings on which it
3 based its determination that the child will not benefit.

4
5 ~~(11)~~(12) If the court finds that the allegations under ~~(5)~~(6)(E) have been
6 proved, the court may not order reunification services unless it finds, based
7 on consideration of factors in section 361.5(b) and (c), that services are likely
8 to prevent reabuse or continued neglect or that failure to attempt
9 reunification will be detrimental to the child.

10
11 ~~(12)~~(13) ***

12
13 ~~(13)~~(14) If, with the exception of ~~(5)~~(6)(A), the court orders no reunification
14 services for every parent otherwise eligible for such services under (f)(1) and
15 (2), the court must conduct a hearing under section 366.26 within 120 days.

16
17 ~~(14)~~(15) ***

18
19 ~~(15)~~(16) ***

20
21 ~~(16)~~(17) ***

22
23 ~~(17)~~(18) ***

24
25 ~~(18)~~(19) ***

26
27 (g)–(j) ***

28
29
30 Title 5, Division 3, Chapter 12, Article 4

31
32
33 **Rule 5.706. Family maintenance review hearings (§ 364)**

34
35 **(a) Setting of hearing (§ 364)**

36
37 If the child remains in the custody of the parent or legal guardian, a review
38 hearing must be held within six months after the date of the original
39 dispositional hearing and no less frequently than once every six months
40 thereafter as long as the child remains a dependent.

41
42 **(b) Notice (§ 292)**

1 The petitioner or the court clerk must give notice of review hearings on
2 Notice of Review Hearing (form JV-280), in the manner provided in section
3 292, to all persons required to receive notice under section 292 and to any
4 CASA volunteer that has been appointed on the case.

5
6 **(c) Reports (§ 364)**

7
8 At least 10 calendar days before the hearing, the petitioner must file a
9 supplemental report with the court describing the services offered to the
10 family, the progress made by the family in eliminating the conditions or
11 factors requiring court supervision, and the petitioner’s recommendation
12 regarding the necessity of continued supervision. A copy of the report must
13 be provided to all parties at least 10 calendar days before the hearing.

14
15 **(d) Court considerations and findings**

16
17 (1) The court must consider the report prepared by the petitioner, the report
18 of any CASA volunteer, and the case plan submitted for this hearing.

19
20 (2) In considering the case plan submitted for the hearing, the court must
21 find as follows:

22
23 (A) The child was actively involved in the development of his or her
24 own case plan as age and developmentally appropriate; or

25
26 (B) The child was not actively involved in the development of his or
27 her own case plan. If the court makes such a finding, the court
28 must order the agency to actively involve the child in the
29 development of his or her own case plan, unless the court finds
30 that the child is unable, unavailable, or unwilling to participate;
31 and

32
33 (C) Each parent was actively involved in the development of the case
34 plan; or

35
36 (D) Each parent was not actively involved in the development of the
37 case plan. If the court makes such a finding, the court must order
38 the agency to actively involve each parent in the development of
39 the case plan, unless the court finds that each parent is unable,
40 unavailable, or unwilling to participate.

41
42 **(e) Conduct of hearing (§ 364)**

1 (1) The court must determine whether continued supervision is necessary.
2 The court must terminate its dependency jurisdiction unless the court
3 finds that the petitioner has established by a preponderance of the
4 evidence that existing conditions would justify initial assumption of
5 jurisdiction under section 300 or that such conditions are likely to exist
6 if supervision is withdrawn. Failure of the parent or legal guardian to
7 participate regularly in any court-ordered treatment program constitutes
8 prima facie evidence that the conditions that justified initial assumption
9 of jurisdiction still exist and that continued supervision is necessary.

10
11 (2) If the court retains jurisdiction, the court must order continued services
12 and set a review hearing within six months under this rule.

13
14 **(f) Reasonable cause (§ 364)**

15
16 In any case in which the court has ordered that a parent or legal guardian
17 retain physical custody of a child subject to supervision by a social worker,
18 and the social worker subsequently receives a report of acts or circumstances
19 that indicate there is reasonable cause to believe that the child is a person
20 described under section 300(a), (d), or (e), the social worker must file a
21 subsequent petition under section 342 or a supplemental petition under
22 section 387. If, as a result of the proceedings under the section 342 or 387
23 petition, the court finds that the child is a person described in section 300(a),
24 (d), or (e), the court must remove the child from the care, custody, and
25 control of the child's parent or legal guardian and must commit the child to
26 the care, custody, and control of the social worker under section 361.

27
28 **(g) Child's education (§§ 361, 366, 366.1)**

29
30 The court must consider the child's education, including whether it is
31 necessary to limit the right of the parent or legal guardian to make
32 educational decisions for the child, following the requirements and
33 procedures in rules 5.650 and 5.651 and in section 361(a).

34
35
36 **Rule 5.708. General review hearing requirements**

37
38 **(a) Setting of review hearings (§ 366)**

39
40 The status of every dependent child who has been removed from the custody
41 of the parent or legal guardian must be reviewed periodically but no less
42 frequently than once every 6 months until the section 366.26 hearing is
43 completed. Review hearings must be set as described in rule 5.710 (for 6-

1 month review hearings), rule 5.715 (for 12-month permanency hearings),
2 rule 5.720 (for 18-month permanency review hearings), or rule 5.722 (for 24-
3 month subsequent permanency review hearings).

4
5 **(b) Notice of hearing (§ 293)**

6
7 The petitioner or the court clerk must serve written notice of review hearings
8 on *Notice of Review Hearing* (form JV-280), in the manner provided in
9 section 293, to all persons required to receive notice under section 293 and to
10 any CASA volunteer who has been appointed on a given case.

11
12 **(c) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25)**

13
14 Before the hearing, the social worker must investigate and file a report
15 describing the services offered to the family, progress made, and, if relevant,
16 the prognosis for return of the child to the parent or legal guardian.

17
18 **(1) The report must include:**

19
20 **(A) Recommendations for court orders and the reasons for those**
21 **recommendations;**

22
23 **(B) A description of the efforts made to achieve legal permanence for**
24 **the child if reunification efforts fail; and**

25
26 **(C) A factual discussion of each item listed in sections 366.1 and**
27 **366.21(c).**

28
29 **(2) At least 10 calendar days before the hearing, the social worker must file**
30 **the report and provide copies to the parent or legal guardian and his or**
31 **her counsel, to counsel for the child, and to any CASA volunteer. The**
32 **social worker must provide a summary of the recommendations to any**
33 **foster parents, relative caregivers, or certified foster parents who have**
34 **been approved for adoption.**

35
36 **(3) The court must read and consider, and state on the record that it has**
37 **read and considered, the report of the social worker, the report of any**
38 **CASA volunteer, the case plan submitted for the hearing, any report**
39 **submitted by the child's caregiver under section 366.21(d), and any**
40 **other evidence.**

41
42 **(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)**

- 1 (1) If the child was removed from the custody of the parent or legal
2 guardian, the court must order the child returned unless the court finds
3 by a preponderance of the evidence that return of the child to the parent
4 or legal guardian would create a substantial risk of detriment to the
5 safety, protection, or physical or emotional well-being of the child. The
6 social worker has the burden of establishing that detriment.
7
8 (2) Failure of the parent or legal guardian to regularly participate and make
9 substantive progress in any court-ordered treatment program is prima
10 facie evidence that continued supervision is necessary or that return
11 would be detrimental.
12
13 (3) In making its determination about whether returning the child would be
14 detrimental, the court must consider the following:
15
16 (A) The social worker’s report and recommendations and the report
17 and recommendations of any CASA volunteer who has been
18 appointed on the case;
19
20 (B) The efforts or progress demonstrated by the parent or legal
21 guardian; and
22
23 (C) The extent to which the parent or legal guardian availed himself
24 or herself of the services provided, taking into account the
25 particular barriers to an incarcerated or institutionalized parent or
26 legal guardian’s access to court-mandated services and the ability
27 to maintain contact with his or her child.
28
29 (4) If the parent or legal guardian agreed to submit fingerprints to obtain
30 criminal history information as part of the case plan, the court must
31 consider the criminal history of the parent or legal guardian after the
32 child’s removal to the extent that the criminal record is substantially
33 related to the welfare of the child or the parent’s or legal guardian’s
34 ability to exercise custody and control regarding his or her child.
35
36 (5) Regardless of whether the child is returned home, the court must
37 specify the factual basis for its conclusion that the return would or
38 would not be detrimental.
39
40 (e) **Reasonable services (§§ 366, 366.21, 366.22, 366.25)**
41

1 (1) If the child is not returned to the custody of the parent or legal
2 guardian, the court must consider whether reasonable services have
3 been offered or provided. The court must find that:

4
5 (A) Reasonable services have been offered or provided; or

6
7 (B) Reasonable services have not been offered or provided.

8
9 (2) The following factors are not sufficient, in and of themselves, to
10 support a finding that reasonable services have not been offered or
11 provided:

12
13 (A) The child has been placed in a preadoptive home or with a family
14 that is eligible to adopt the child;

15
16 (B) The case plan includes services to achieve legal permanence for
17 the child if reunification cannot be accomplished; or

18
19 (C) Services to achieve legal permanence for the child if reunification
20 efforts fail are being provided concurrently with reunification
21 services.

22
23 **(f) Child's education (§§ 361, 366, 366.1)**

24
25 The court must consider the child's education, including whether it is
26 necessary to limit the right of the parent or legal guardian to make
27 educational decisions for the child, following the requirements and
28 procedures in rules 5.650 and 5.651 and in section 361(a).

29
30 **(g) Case plan (§§ 16001.9, 16501.1)**

31
32 The court must consider the case plan submitted for the hearing and must
33 find as follows:

34
35 (1) The child was actively involved in the development of his or her own
36 case plan and plan for permanent placement as age and
37 developmentally appropriate; or

38
39 (2) The child was not actively involved in the development of his or her
40 own case plan and plan for permanent placement. If the court makes
41 such a finding, the court must order the agency to actively involve the
42 child in the development of his or her own case plan and plan for

1 permanent placement, unless the court finds that the child is unable,
2 unavailable, or unwilling to participate; and

3
4 (3) Each parent was actively involved in the development of the case plan
5 and plan for permanent placement; or

6
7 (4) Each parent was not actively involved in the development of the case
8 plan and plan for permanent placement. If the court makes such a
9 finding, the court must order the agency to actively involve each parent
10 in the development of the case plan and plan for permanent placement,
11 unless the court finds that each parent is unable, unavailable, or
12 unwilling to participate; and

13
14 (5) For a child 12 years of age or older and in a permanent placement, the
15 court must make a finding whether or not the child was given the
16 opportunity to review the case plan, sign it, and receive a copy. If the
17 court finds that the child was not given this opportunity, the court must
18 order the agency to give the child the opportunity to review the case
19 plan, sign it, and receive a copy.

20
21 **(h) Out-of-state placement (§§ 361.21, 366)**

22
23 If the child has been placed out of the state, the court must consider whether
24 the placement continues to be the most appropriate placement for the child
25 and in the child's best interest. If the child is in an out-of-state group home,
26 the court must follow the requirements in section 361.21.

27
28 **(i) Title IV-E findings (§ 366)**

29
30 Regardless of whether or not the child is returned home, the court must
31 consider the safety of the child and must determine all of the following:

32
33 (1) The continuing necessity for and appropriateness of the placement;

34
35 (2) The extent of the agency's compliance with the case plan in making
36 reasonable efforts or, in the case of an Indian child, active efforts as
37 described in section 361.7, to return the child to a safe home and to
38 complete any steps necessary to finalize the permanent placement of
39 the child. These steps include efforts to maintain relationships between
40 a child who is 10 years or older who has been in an out-of-home
41 placement for 6 months or longer and individuals other than the child's
42 siblings who are important to the child, consistent with the child's best
43 interest;

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(3) The extent of progress that has been made by the parents or legal guardians toward alleviating or mitigating the causes necessitating placement in foster care; and

(4) The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(j) Sibling findings; additional findings (§ 366)

(1) The court must determine whether the child has other siblings under the court’s jurisdiction. If so, the court must make the additional determinations required by section 366(a)(1)(D); and

(2) The court must enter any additional findings as required by section 366.

(k) Placement with noncustodial parent (§ 361.2)

If at any review hearing the court places the child with a noncustodial parent, or if the court has previously made such a placement, the court may, after stating on the record or in writing the factual basis for the order:

(1) Continue supervision and reunification services;

(2) Order custody to the noncustodial parent, continue supervision, and order family maintenance services; or

(3) Order custody to the noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700.

(l) Setting a hearing under section 366.26 for one parent

The court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:

(1) That parent is the only surviving parent;

(2) The rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or

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(3) The other parent has relinquished custody of the child to the county welfare department.

(m) Setting a hearing under section 366.26; reasonable services requirement (§§ 366.21, 366.22)

At any 6-month, 12-month, or 18-month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(n) Requirements upon setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

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

- (1) The court must terminate reunification services to the parent or legal guardian;
- (2) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child;
- (3) If the child is 10 years of age or older and is placed in an out-of-home placement for 6 months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:
 - (A) Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;
 - (B) Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and
 - (C) May make any appropriate order to ensure that those relationships are maintained.

1 (4) The court must direct the county child welfare agency and the
2 appropriate county or state adoption agency to prepare an assessment
3 under section 366.21(i), 366.22(c), or 366.25(b);
4

5 (5) The court must ensure that notice is provided as follows:
6

7 (A) Within 24 hours of the review hearing, the clerk of the court must
8 provide notice by first-class mail to the last known address of any
9 party who is not present at the review hearing. The notice must
10 include the advisements required by rule 5.585(e).
11

12 (B) The court must order that notice of the hearing under section
13 366.26 not be provided to any of the following:
14

15 (i) A parent, presumed parent, or alleged parent who has
16 relinquished the child for adoption and whose
17 relinquishment has been accepted and filed with notice
18 under Family Code section 8700; or
19

20 (ii) An alleged parent who has denied parentage and has
21 completed item 2 of *Statement Regarding Parentage*
22 (*Juvenile*) (form JV-505).
23

24 (6) The court must follow all procedures in rule 5.585 regarding writ
25 petition rights, advisements, and forms.
26

27 **(o) Appeal of order setting section 366.26 hearing**
28

29 An appeal of any order setting a hearing under section 366.26 must follow
30 the procedures in rules 8.400–8.416.
31
32

33 **Rule 5.710. Six-month review hearing**
34

35 **(a) ~~Requirement for 6-month review~~ Setting 6-month review; notice (§§ 364,**
36 **366, 366.21)**
37

38 The case of any dependent child of whom the court has removed from the
39 custody of the parent or legal guardian under section 361 or 361.5 must be
40 set for a review hearing as follows: within 6 months of the date of the
41 dispositional hearing, but no later than 12 months from the date the child
42 entered foster care, as defined by section 361.49, whichever occurs earlier.
43 Notice must be provided as described in section 293 and rule 5.708

1
2 (1) ~~If the child was removed from the custody of the parent or guardian~~
3 ~~under section 361 or 361.5, the review hearing must be held within 6~~
4 ~~months after the date the child entered foster care, as defined in rule~~
5 ~~5.502; or~~

6
7 (2) ~~If the child remains in the custody of the parent or guardian, the review~~
8 ~~hearing must be held within 6 months after the date of the declaration~~
9 ~~of dependency and every 6 months thereafter as long as the child~~
10 ~~remains a dependent.~~

11
12 ~~(b) — Notice of hearing; service; contents (§§ 293, 366.21)~~

13
14 ~~Not earlier than 30 nor less than 15 calendar days before the hearing date, the~~
15 ~~petitioner or the clerk must serve written notice, on *Notice of Review*~~
16 ~~*Hearing* (form JV 280), on all persons required to receive notice under~~
17 ~~section 293 and to any CASA volunteer. The notice must contain the~~
18 ~~information stated in section 293. The notice of hearing must be served by~~
19 ~~personal service or by first class mail or certified mail addressed to the last~~
20 ~~known address of the person to be notified.~~

21
22 ~~(c) — Report (§§ 366.1, 366.21)~~

23
24 ~~Before the hearing, petitioner must investigate and file a report describing~~
25 ~~the services offered the family and progress made and, if relevant, the~~
26 ~~prognosis for return of the child to the parent or legal guardian.~~

27
28 (1) ~~The report must contain:~~

29
30 (A) ~~Recommendations for court orders and the reasons for those~~
31 ~~recommendations;~~

32
33 (B) ~~A description of the efforts made to achieve legal permanence for~~
34 ~~the child if reunification efforts fail; and~~

35
36 (C) ~~A factual discussion of each item listed in sections 366.1 and~~
37 ~~366.21(c).~~

38
39 (2) ~~At least 10 calendar days before the hearing, the petitioner must file the~~
40 ~~report and provide copies to the parent or guardian and his or her~~
41 ~~counsel, to counsel for the child, and to any CASA volunteer. The~~
42 ~~petitioner must provide a summary of the recommendations to any~~

1 foster parents, relative caregivers, or certified foster parents who have
2 been approved for adoption.

3
4 **(d) Reports**

5
6 The court must consider the report prepared by petitioner, the report of any
7 CASA volunteer, the case plan submitted for this hearing, and any report
8 submitted by the child's caregiver under section 366.21(d).

9
10 **(e)(b) Determinations-burden of proof and conduct of hearing (§§ 364,
11 366, 366.1, 366.21, 364)**

12
13 At the hearing, the court and all parties must comply with all relevant
14 requirements and procedures in rule 5.708, General review hearing
15 requirements. The court must make all appropriate findings and orders
16 specified in rule 5.708 and proceed as follows:

17
18 (1) ~~If the child has remained in the custody of the parent or guardian, the~~
19 ~~court must terminate its dependency jurisdiction unless the court finds~~
20 ~~that petitioner has established by a preponderance of the evidence that~~
21 ~~existing conditions would justify initial assumption of jurisdiction~~
22 ~~under section 300 or that such conditions are likely to exist if~~
23 ~~supervision is withdrawn. If dependency jurisdiction is continued, the~~
24 ~~court must order continued services and set a review hearing within 6~~
25 ~~months.~~

26
27 ~~(2)(1) Order return of the child or find that return would be detrimental~~
28 ~~If the child has been removed from the custody of the parent or~~
29 ~~guardian,~~

30
31 The court must order the child returned to the custody of the parent or
32 legal guardian unless the court finds that the petitioner has established
33 by a preponderance of the evidence that return would create a
34 substantial risk of detriment to the safety, protection, or physical or
35 emotional well-being of the child. The requirements in rule 5.708(d)
36 must be followed in establishing detriment. The requirements in rule
37 5.708(e) must be followed in entering a reasonable services finding. If
38 the child has been removed from the custody of the parent or guardian,
39 the court must consider whether reasonable services have been
40 provided or offered. If the child is returned, the court may order the
41 termination of dependency jurisdiction or order continued dependency
42 services and set a review hearing within 6 months.

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~~(A) The court must find that:~~

~~(i) Reasonable services have been offered or provided; or~~

~~(ii) Reasonable services have not been offered or provided~~

~~(B) The following factors are not sufficient to support a finding that reasonable services have not been offered or provided:~~

~~(i) The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;~~

~~(ii) The case plan includes services to achieve legal permanency for the child if reunification cannot be accomplished; or~~

~~(iii) Services to achieve legal permanency for the child if reunification efforts fail are being provided concurrently with reunification services.~~

~~(C) The court must enter additional findings as required by section 366(a)(1) and (2).~~

~~(3) Failure of the parent or legal guardian to regularly participate and make substantive progress in any court ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental.~~

~~(4) If the child has been placed out of state, the court must consider whether the placement continues to be the most appropriate placement for the child and in the child's best interest.~~

~~(5) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 5.650 to make educational decisions for the child.~~

~~(6) The court must consider the case plan submitted for this hearing and must find as follows:~~

1 ~~(A) The child was actively involved in the development of his or her~~
2 ~~own case plan and plan for permanent placement as age and~~
3 ~~developmentally appropriate; or~~
4

5 ~~(B) The child was not actively involved in the development of his or~~
6 ~~her own case plan and plan for permanent placement. If the court~~
7 ~~makes such a finding, the court must order the agency to actively~~
8 ~~involve the child in the development of his or her own case plan~~
9 ~~and plan for permanent placement, unless the court finds that the~~
10 ~~child is unable, unavailable, or unwilling to participate; and~~
11

12 ~~(C) Each parent was actively involved in the development of the case~~
13 ~~plan and plan for permanent placement; or~~
14

15 ~~(D) Each parent was not actively involved in the development of the~~
16 ~~case plan and plan for permanent placement. If the court makes~~
17 ~~such a finding, the court must order the agency to actively involve~~
18 ~~each parent in the development of the case plan and plan for~~
19 ~~permanent placement, unless the court finds that each parent is~~
20 ~~unable, unavailable, or unwilling to participate.~~
21

22 ~~(7) For a child 12 years of age or older and in a permanent placement, the~~
23 ~~court must consider the case plan submitted for this hearing and must~~
24 ~~find as follows:~~
25

26 ~~(A) The child was given the opportunity to review the case plan, sign~~
27 ~~it, and receive a copy; or~~
28

29 ~~(B) The child was not given the opportunity to review the case plan,~~
30 ~~sign it, and receive a copy. If the court makes such a finding, the~~
31 ~~court must order the agency to give the child the opportunity to~~
32 ~~review the case plan, sign it, and receive a copy.~~
33

34 ~~(2) Place with noncustodial parent~~
35

36 ~~If the court has previously placed or at this hearing places the child~~
37 ~~with a noncustodial parent, the court must follow the procedures in rule~~
38 ~~5.708(k) and section 361.2.~~
39

40 ~~(3) Set a section 366.26 hearing~~
41

42 ~~If the court does not return custody of the child, the court may set a~~
43 ~~hearing under section 366.26 within 120 days, as provided in (c).~~

1
2 (4) Continue the case for a 12-month permanency hearing

3
4 If the child is not returned and the court does not set a section 366.26
5 hearing, the court must order that any reunification services previously
6 ordered will continue to be offered to the parent or legal guardian, if
7 appropriate. The court may modify those services as appropriate or
8 order additional services reasonably believed to facilitate the return of
9 the child to the parent or legal guardian. The court must set a date for
10 the next hearing no later than 12 months from the date the child entered
11 foster care.

12
13 ~~(f)~~(c) **Conduct of hearing Setting a section 366.26 hearing (§ 366.21)**

14
15 ~~If the court does not return custody of the child:~~

16
17 (1) The court may set a hearing under section 366.26 within 120 days if:

18
19 (A) The child was removed under section 300(g) and the court finds
20 by clear and convincing evidence that the parent's whereabouts
21 are still unknown, or the parent has failed to contact and visit the
22 child, or the parent has been convicted of a felony indicating
23 parental unfitness. The court must take into account any particular
24 barriers to a parent's ability to maintain contact with his or her
25 child due to the parent's incarceration or institutionalization;

26
27 ~~(B) The court finds by clear and convincing evidence that the parent~~
28 ~~has not had contact with the child for 6 months;~~

29
30 ~~(C)~~(B) * * *

31
32 ~~(D)~~(C) * * *

33
34 ~~(E)~~(D) The child was under the age of three when initially removed,
35 or a member of a sibling group described in section
36 361.5(a)(1)(C), and the court finds by clear and convincing
37 evidence that the parent has failed to participate regularly and
38 make substantive progress in any court-ordered treatment plan,
39 unless the court finds a substantial probability that the child may
40 be returned within 6 months or within 12 months of the date the
41 child entered foster care, whichever is sooner, or that reasonable
42 services have not been offered or provided.
43

1 In order to find a substantial probability of ~~return~~ that the child
2 may be returned within the applicable time period, the court ~~must~~
3 ~~find~~ should consider all of the following factors along with any
4 other relevant evidence:
5

- 6 (i) Whether tThe parent or legal guardian has consistently and
7 regularly contacted and visited the child;
8
9 (ii) Whether tThe parent or legal guardian has made significant
10 progress in resolving the problems that led to the removal of
11 the child; and
12
13 (iii) Whether tThe parent or legal guardian has demonstrated the
14 capacity and ability to complete the objectives of the
15 treatment plan and to provide for the child's safety,
16 protection, physical and emotional health, and special needs.
17

18 ~~(2) — If the court orders a hearing under section 366.26:~~
19

- 20 ~~(A) — The court must direct that an assessment under section 366.21(i)~~
21 ~~be prepared;~~
22
23 ~~(B) — The court must order the termination of reunification services to~~
24 ~~the parent or legal guardian;~~
25
26 ~~(C) — The court must continue to permit the parent or legal guardian to~~
27 ~~visit the child, unless it finds that visitation would be detrimental~~
28 ~~to the child; and~~
29
30 ~~(D) — If the child is 10 years of age or older and is placed in out-of-~~
31 ~~home placement for six months or longer, the court:~~
32
33 ~~(i) — Must determine whether the agency has identified~~
34 ~~individuals, in addition to the child's siblings, who are~~
35 ~~important to the child and will maintain caring, permanent~~
36 ~~relationships with the child, consistent with the child's best~~
37 ~~interest;~~
38 ~~(ii) — Must determine whether the agency has made reasonable~~
39 ~~efforts to nurture and maintain the child's relationships with~~
40 ~~those individuals, consistent with he child's best interest;~~
41 ~~and~~
42 ~~(iii) — May make any appropriate order to ensure that those~~
43 ~~relationships are maintained.~~

1
2 ~~(3) A judgment or an order setting a hearing under section 366.26 is not~~
3 ~~immediately appealable. Review may be sought only by filing *Petition*~~
4 ~~*for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)*~~
5 ~~(form JV-825) or other petition for extraordinary writ. If a party wishes to~~
6 ~~preserve any right to review on appeal of the findings and orders made~~
7 ~~under this rule, the party must seek an extraordinary writ under rules~~
8 ~~8.450, 8.452, and 5.600.~~

9
10 ~~(4) A judgment, order, or decree setting a hearing under section 366.26~~
11 ~~may be reviewed on appeal following the order of the 366.26 hearing~~
12 ~~only if the following have occurred:~~

13
14 ~~(A) An extraordinary writ was sought by the timely filing of *Petition*~~
15 ~~*for Extraordinary Writ (California Rules of Court, Rules 8.452,*~~
16 ~~*8.456) (form JV-825) or other petition for extraordinary writ; and*~~

17
18 ~~(B) The petition for extraordinary writ was summarily denied or~~
19 ~~otherwise not decided on the merits.~~

20
21 ~~(5) Review on appeal of the order setting a hearing under section 366.26 is~~
22 ~~limited to issues raised in a previous petition for extraordinary writ that~~
23 ~~were supported by an adequate record.~~

24
25 ~~(6) Failure to file a petition for extraordinary writ review within the period~~
26 ~~specified by rules 8.450, 8.452, and 5.600, to substantively address the~~
27 ~~issues challenged, or to support the challenge by an adequate record,~~
28 ~~precludes subsequent review on appeal of the findings and orders made~~
29 ~~under this rule.~~

30
31 ~~(7) When the court orders a hearing under section 366.26, the court must~~
32 ~~advise all parties that, to preserve any right to review on appeal of the~~
33 ~~order setting the hearing, the party must seek an extraordinary writ by~~
34 ~~filing:~~

35
36 ~~(A) A notice of the party's intent to file a writ petition and a request~~
37 ~~for the record, which may be submitted on *Notice of Intent to File*~~
38 ~~*Writ Petition and Request for Record (California Rules of Court,*~~
39 ~~*Rule 8.450) (form JV-820); and*~~

40
41 ~~(B) A petition for an extraordinary writ, which may be submitted on~~
42 ~~*Petition for Extraordinary Writ (California Rules of Court, Rules*~~
43 ~~*8.452, 8.456) (form JV-825).*~~

1
2 ~~(8) Within 24 hours of the review hearing, the clerk of the court must~~
3 ~~provide notice by first class mail to the last known address of any party~~
4 ~~who is not present when the court orders the hearing under section~~
5 ~~366.26. This notice must include the advisement required by (f)(7).~~
6

7 ~~(9) Copies of *Petition for Extraordinary Writ (California Rules of Court,*~~
8 ~~*Rules 8.452, 8.456) (form JV 825) and *Notice of Intent to File Writ**~~
9 ~~*Petition and Request for Record (California Rules of Court, Rule*~~
10 ~~*8.450) (form JV 820) must be available in the courtroom and must*~~
11 ~~accompany all mailed notices informing the parties of their rights.~~
12

13 ~~(10) If the court orders a hearing under section 366.26, the court must order~~
14 ~~that notice of the hearing under section 366.26 must not be provided to~~
15 ~~any of the following:~~
16

17 ~~(A) A parent, presumed parent, or alleged parent who has relinquished~~
18 ~~the child for adoption and whose relinquishment has been~~
19 ~~accepted and filed with notice under Family Code section 8700;~~
20 ~~or~~

21 ~~(B) An alleged parent who has denied parentage and has completed~~
22 ~~section 1 of *Statement Regarding Parentage (Juvenile)* (form JV-~~
23 ~~505).~~
24

25 ~~(11) If the child is not returned and the court does not set a section 366.26~~
26 ~~hearing, then the court must order that any reunification services~~
27 ~~previously ordered will continue to be offered to the parent or guardian,~~
28 ~~and the court may modify those services as appropriate. The court must~~
29 ~~set a date for the next review hearing no later than 12 months from the~~
30 ~~date the child entered foster care.~~
31

32 ~~(2) At the hearing, the court and all parties must comply with all relevant~~
33 ~~requirements and procedures related to section 366.26 hearings in rule~~
34 ~~5.708, General review hearing requirements. The court must make all~~
35 ~~appropriate findings and orders specified in rule 5.708.~~
36

37 ~~(g)~~ **(d) Siblings groups (§ 366.21)**
38

39 In determining whether to set a hearing under section 366.26 for one or
40 more members of a sibling group when one member of that group was under
41 the age of three at the time of the initial removal, the court may terminate or
42 continue services for any or all members of the group, based on the
43 following considerations and for reasons specified on the record:

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(1)-(9) * * *

(h) Noncustodial parents

If the court has previously placed or at this hearing places the child with a noncustodial parent, the court may:

- (1) Continue supervision and reunification services;
- (2) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, continue supervision, and order family maintenance services; or
- (3) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, terminate jurisdiction, and direct that *Custody Order Juvenile Final Judgment* (form JV 200) be prepared and filed under rule 5.700.

(i) Setting a hearing under section 366.26

At the 6 month review hearing, the court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:

- (1) That parent is the only surviving parent;
- (2) The rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or
- (3) The other parent has relinquished custody of the child to the county welfare department.

Rule 5.715. Twelve-month review permanency hearing

(a) Requirement for 12-month review; setting of hearing; notice (§§ 293, 366.21)

The case of any dependent child whom the court has removed from the custody of the parent or legal guardian must be set for ~~review~~ a permanency hearing within 12 months of the date the child entered foster care, as defined in section 361.49 ~~rule 5.502~~, and no later than 18 months from the date of the

1 initial removal. Notice of the hearing must be ~~given as provided as described~~
2 in section 293 and rule 5.708.

3
4 ~~(b) Reports (§§ 366.1, 366.21)~~

5
6 ~~Before the hearing the petitioner must prepare a report describing services~~
7 ~~offered to the family and progress made.~~

8
9 ~~(1) The report must include:~~

10
11 ~~(A) Recommendations for court orders and the reasons for those~~
12 ~~recommendations;~~

13
14 ~~(B) A description of the efforts made to achieve legal permanence for~~
15 ~~the child if reunification efforts fail; and~~

16
17 ~~(C) A factual discussion of each item listed in sections 366.1 and~~
18 ~~366.21(e).~~

19
20 ~~(2) At least 10 calendar days before the hearing, the petitioner must file the~~
21 ~~report, provide copies to the parent or guardian and his or her counsel,~~
22 ~~to counsel for the child, and to any CASA volunteer. The petitioner~~
23 ~~must provide a summary of the recommendations to any foster parents,~~
24 ~~relative caregivers, or certified foster parents who have been approved~~
25 ~~for adoption.~~

26
27 ~~(e)(b) Determinations and conduct of hearing (§§ 361.5, 366, 366.1,~~
28 ~~366.21)~~

29
30 ~~At the hearing, the court must state on the record that the court has read and~~
31 ~~considered the report of petitioner, the report of any CASA volunteer, the~~
32 ~~case plan submitted for this hearing, any report submitted by the child's~~
33 ~~caregiver under section 366.21(d), and any other evidence, and must proceed~~
34 ~~as follows: and all parties must comply with all relevant requirements and~~
35 ~~procedures in rule 5.708, General review hearing requirements. The court~~
36 ~~must make all appropriate findings and orders specified in rule 5.708 and~~
37 ~~proceed as follows:~~

38
39 (1) The court must order the child returned to the custody of the parent or
40 legal guardian unless the court finds the petitioner has established, by a
41 preponderance of the evidence, that return would create a substantial
42 risk of detriment to the safety, protection, or physical or emotional
43 well-being of the child. Failure of the parent or legal guardian to

1 regularly participate and make substantive progress in a court-ordered
2 treatment program is prima facie evidence that return would be
3 detrimental. The requirements in rule 5.708(d) must be followed in
4 establishing detriment.

5
6 (2) The requirements in rule 5.708(e) must be followed in entering a
7 reasonable services finding.

8
9 (2)(3) If the court has previously placed or at this hearing places the child
10 with a noncustodial parent, the court ~~may~~: must follow the
11 procedures in rule 5.708(k) and section 361.2.

12
13 (A) ~~Continue supervision and reunification services;~~

14
15 (B) ~~After stating on the record or in writing the factual basis for the~~
16 ~~order, order custody to that parent, continue supervision, and~~
17 ~~order family maintenance services; or~~

18
19 (C) ~~After stating on the record or in writing the factual basis for the~~
20 ~~order, order custody to the noncustodial parent, terminate~~
21 ~~jurisdiction, and direct that *Custody Order—Juvenile—Final*~~
22 ~~*Judgment* (form JV-200) be prepared and filed under rule 5.700.~~

23
24 (3) ~~If the court does not order return of the child, the court must specify the~~
25 ~~factual basis for its finding of risk of detriment to the child. The court~~
26 ~~must order a permanent plan unless the court determines that there is a~~
27 ~~substantial probability of return within 18 months of the removal of the~~
28 ~~child. In order to find a substantial probability of return within the 18-~~
29 ~~month period, the court must find all of the following:~~

30
31 (A) ~~The parent or legal guardian has consistently and regularly~~
32 ~~contacted and visited the child;~~

33
34 (B) ~~The parent or legal guardian has made significant progress in~~
35 ~~resolving the problems that led to the removal of the child; and~~

36
37 (C) ~~The parent or guardian has demonstrated the capacity and ability to~~
38 ~~complete the objectives of the treatment plan and to provide for~~
39 ~~the child's safety, protection, physical and emotional health, and~~
40 ~~special needs.~~

1 ~~(4) If the child is not returned to the custody of the parent or guardian, the~~
2 ~~court must consider whether reasonable services have been provided or~~
3 ~~offered. The court must find that:~~

4
5 ~~(A) Reasonable services have been offered or provided; or~~

6
7 ~~(B) Reasonable services have not been offered or provided.~~

8
9 ~~(5) The following factors are not sufficient to support a finding that~~
10 ~~reasonable services have not been offered or provided:~~

11
12 ~~(A) The child has been placed in a preadoptive home or with a family~~
13 ~~that is eligible to adopt the child;~~

14
15 ~~(B) The case plan includes services to achieve legal permanence for~~
16 ~~the child if reunification cannot be accomplished; or~~

17
18 ~~(C) Services to achieve legal permanence for the child if reunification~~
19 ~~efforts fail are being provided concurrently with reunification~~
20 ~~services.~~

21
22 ~~(6) The court must consider whether it is necessary to limit the right of the~~
23 ~~parent or guardian to make educational decisions for the child. If the~~
24 ~~court limits this right, it must appoint a responsible adult as the~~
25 ~~educational representative under rule 5.650 to make educational~~
26 ~~decisions for the child.~~

27
28 ~~(7) The court must consider the case plan and must find as follows:~~

29
30 ~~(A) The child was actively involved in the development of his or her~~
31 ~~own case plan and plan for permanent placement as age and~~
32 ~~developmentally appropriate; or~~

33
34 ~~(B) The child was not actively involved in the development of his or~~
35 ~~her own case plan and plan for permanent placement as age and~~
36 ~~developmentally appropriate. If the court makes such a finding,~~
37 ~~the court must order the agency to involve the child in the~~
38 ~~development of his or her own case plan and plan for permanent~~
39 ~~placement, unless the court finds that the child is unable,~~
40 ~~unavailable, or unwilling to participate; and~~

41
42 ~~(C) Each parent was actively involved in the development of the case~~
43 ~~plan and plan for permanent placement; or~~

1
2 (D) ~~Each parent was not actively involved in the development of the~~
3 ~~case plan and plan for permanent placement. If the court makes~~
4 ~~such a finding, the court must order the agency to actively involve~~
5 ~~each parent in the development of the case plan and plan for~~
6 ~~permanent placement, unless the court finds that each parent is~~
7 ~~unable, unavailable, or unwilling to participate.~~
8

9 (8) ~~For a child 12 years of age or older and in a permanent placement, the~~
10 ~~court must consider the case plan submitted for this hearing and must~~
11 ~~find as follows:~~
12

13 (A) ~~The child was given the opportunity to review the case plan, sign~~
14 ~~it, and receive a copy; or~~
15

16 (B) ~~The child was not given the opportunity to review the case plan,~~
17 ~~sign it, and receive a copy. If the court makes such a finding, the~~
18 ~~court must order the agency to give the child the opportunity to~~
19 ~~review the case plan, sign it, and receive a copy.~~
20

21 ~~(d) Determinations and orders~~
22

23 ~~The court must proceed as follows:~~
24

25 (4) If the court does not order return of the child to the parent or legal
26 guardian and the time period for providing court-ordered services has
27 been met or exceeded, as provided in section 361.5(a)(1), the court
28 must specify the factual basis for its finding of risk of detriment to the
29 child and proceed as follows in selecting a permanent plan:
30

31 ~~(A)~~ If the court finds that there is a substantial probability that
32 the child will be returned within 18 months or that reasonable
33 services have not been offered or provided, the court must
34 continue the case for a permanency review hearing to a date not
35 later than 18 months from the date of the initial removal if the
36 court finds that there is a substantial probability of return within
37 that time or that reasonable services have not been offered or
38 provided. If the court continues the case for an 18-month
39 permanency review hearing, the court must inform the parent or
40 legal guardian that if the child cannot be returned home by the
41 next hearing, a proceeding under section 366.26 may be
42 instituted; or,
43

1 (i) In order to find a substantial probability that the child will
2 be returned within the 18-month period, the court must find
3 all of the following:

4
5 a. The parent or legal guardian has consistently and
6 regularly contacted and visited the child;

7
8 b. The parent or legal guardian has made significant
9 progress in resolving the problems that led to the
10 removal of the child; and

11
12 c. The parent or legal guardian has demonstrated the
13 capacity and ability to complete the objectives of the
14 treatment plan and to provide for the child's safety,
15 protection, physical and emotional health, and special
16 needs.

17
18 (ii) In determining whether court-ordered services may be
19 extended to the 18-month point, the court must consider the
20 special circumstances of a parent or legal guardian who is
21 incarcerated or institutionalized or court-ordered to a
22 residential substance abuse treatment program, including,
23 but not limited to, barriers to the parent's or legal guardian's
24 access to services and ability to maintain contact with his or
25 her child. The court must also consider, among other factors,
26 good faith efforts that the parent or legal guardian has made
27 to maintain contact with the child.

28
29 (B) If (1), (4)(A), or (4)(C) do not apply, the court must terminate
30 reunification services and order a hearing under section 366.26
31 within 120 days. The court and all parties must comply with all
32 relevant requirements, procedures, findings, and orders related to
33 section 366.26 hearings in rule 5.708.

34
35 (C) If the court finds by clear and convincing evidence, including a
36 recommendation by the appropriate state or county adoption
37 agency, that there is a compelling reason for determining that a
38 section 366.26 hearing is not in the best interest of the child
39 because the child is not a proper subject for adoption and has no
40 one willing to accept legal guardianship:
41

- 1 (i) The court must terminate reunification services and order
2 that the child remain in a planned permanent living
3 arrangement.
4
5 (ii) If the court orders that the child remain in a planned
6 permanent living arrangement, it must identify the foster
7 care setting by name and identify a specific permanency
8 goal for the child.
9
10 (iii) The court may order that the name and address of the foster
11 home remain confidential.
12
13 (iv) The court must continue to permit the parent or legal
14 guardian to visit the child, unless it finds that visitation
15 would be detrimental to the child;
16
17 (v) If the child is 10 years of age or older and is placed in out-
18 of-home placement for six months or longer, the court must
19 enter any other appropriate orders to enable the child to
20 maintain relationships with other individuals who are
21 important to the child, consistent with the child's best
22 interest. Specifically, the court:
23

24 ~~(2) Order that the child remain in foster care if it finds by clear and~~
25 ~~convincing evidence already presented that a section 366.26 hearing is~~
26 ~~not in the best interest of the child because the child is not a proper~~
27 ~~subject for adoption and has no one willing to accept legal~~
28 ~~guardianship.~~
29

30 ~~(A) If the court orders that the child remain in foster care, it must~~
31 ~~identify the foster care setting by name and identify a specific~~
32 ~~permanency goal for the child. The court may order that the name~~
33 ~~and address of the foster home remain confidential.~~
34

35 ~~(B) If the child is 10 years of age or older and is placed in out-of-~~
36 ~~home placement for six months or longer, the court:~~
37

38 ~~(i)a. Must determine whether the agency has identified~~
39 ~~individuals, in addition to the child's siblings, who are~~
40 ~~important to the child and will maintain caring,~~
41 ~~permanent relationships with the child, consistent with~~
42 ~~the child's best interest;~~
43

1 (ii)b. Must determine whether the agency has made
2 reasonable efforts to nurture and maintain the child's
3 relationships with those individuals, consistent with the
4 child's best interest; and

5
6 (iii)c. May make any appropriate order to ensure that those
7 relationships are maintained; or,
8

9 (5) If the child is not returned to his or her parent or legal guardian, the
10 court must consider and state, for the record, in-state and out-of-state
11 options for permanent placement.
12

13 ~~(3) If the court does not find that there is a substantial probability of return~~
14 ~~within 18 months of the initial removal, and finds that reasonable~~
15 ~~services have been offered or provided to the parent or guardian, the~~
16 ~~court must order a hearing under section 366.26 within 120 days.~~
17

18 ~~(A) If the court orders a hearing under section 366.26, the court must~~
19 ~~also order termination of reunification services. Visitation must~~
20 ~~continue unless the court finds it would be detrimental to the~~
21 ~~child. The court must enter any other appropriate orders to enable~~
22 ~~the child to maintain relationships with other individuals who are~~
23 ~~important to the child, consistent with the child's best interest.~~
24

25 ~~(B) If the court orders a hearing under section 366.26, the court must~~
26 ~~direct that an assessment be prepared as stated in section~~
27 ~~366.21(i).~~
28

29 ~~(C) A judgment or an order setting a hearing under section 366.26 is~~
30 ~~not immediately appealable. Review may be sought only by filing~~
31 ~~*Petition for Extraordinary Writ (California Rules of Court, Rules*~~
32 ~~*8.452, 8.456) (form JV 825) or other petition for extraordinary*~~
33 ~~writ. If a party wishes to preserve any right to review on appeal of~~
34 ~~the findings and orders made under this rule, the party must seek~~
35 ~~an extraordinary writ under rules 8.450, 8.452, and 5.600.~~
36

37 ~~(D) A judgment, order, or decree setting a hearing under section~~
38 ~~366.26 may be reviewed on appeal following the order of the~~
39 ~~section 366.26 hearing only if the following have occurred:~~
40

41 ~~(i) An extraordinary writ was sought by the timely filing of~~
42 ~~*Petition for Extraordinary Writ (California Rules of Court,*~~

1 ~~Rules 8.452, 8.456) (form JV 825) or other petition for~~
2 ~~extraordinary writ; and~~

3
4 ~~(ii) The petition for extraordinary writ was summarily denied or~~
5 ~~otherwise not decided on the merits.~~

6
7 ~~(E) Review on appeal of the order setting a hearing under section~~
8 ~~366.26 is limited to issues raised in a previous petition for~~
9 ~~extraordinary writ that were supported by an adequate record.~~

10
11 ~~(F) Failure to file a petition for extraordinary writ review within the~~
12 ~~period specified by rules 8.450, 8.452, and 5.600, to substantively~~
13 ~~address the issues challenged, or to support the challenge by an~~
14 ~~adequate record, precludes subsequent review on appeal of the~~
15 ~~findings and orders made under this rule.~~

16
17 ~~(G) When the court orders a hearing under section 366.26, the court~~
18 ~~must advise all parties that, to preserve any right to review on~~
19 ~~appeal of the order setting the hearing, the party must seek an~~
20 ~~extraordinary writ by filing:~~

21
22 ~~(i) A notice of intent to file a writ petition and a request for the~~
23 ~~record, which may be submitted on *Notice of Intent to File*~~
24 ~~*Writ Petition and Request for Record (California Rules of*~~
25 ~~*Court, Rule 8.450) (form JV 820); and*~~

26
27 ~~(ii) A petition for an extraordinary writ, which may be~~
28 ~~submitted on *Petition for Extraordinary Writ (California*~~
29 ~~*Rules of Court, Rules 8.452, 8.456) (form JV 825).*~~

30
31 ~~(H) Within 24 hours of the review hearing, the clerk of the court must~~
32 ~~provide notice by first class mail to the last known address of any~~
33 ~~party who is not present when the court orders the hearing under~~
34 ~~section 366.26. This notice must include the advisement required~~
35 ~~by (d)(3)(G).~~

36
37 ~~(I) Copies of *Petition for Extraordinary Writ (California Rules of*~~
38 ~~*Court, Rules 8.452, 8.456) (form JV 825) and *Notice of Intent to**~~
39 ~~*File Writ Petition and Request for Record (California Rules of*~~
40 ~~*Court, Rule 8.450) (form JV 820) must be available in the*~~
41 ~~courtroom and must accompany all mailed notices informing the~~
42 ~~parties of their trial rights~~
43

1 ~~(J) If the court orders a hearing under section 366.26, the court must~~
2 ~~order that notice of the hearing under section 366.26 must not be~~
3 ~~provided to any of the following:~~

4
5 ~~(i) A parent, presumed parent, or alleged parent who has~~
6 ~~relinquished the child for adoption and the relinquishment~~
7 ~~has been accepted and filed with notice under Family Code~~
8 ~~section 8700; or~~

9
10 ~~(ii) An alleged parent who has denied parentage and has~~
11 ~~completed section 1 of *Statement Regarding Parentage*~~
12 ~~(*Juvenile*) (form JV-505).~~

13
14 ~~(e) **Setting a hearing under section 366.26**~~

15
16 ~~At the 12-month review hearing, the court may not set a hearing under~~
17 ~~section 366.26 to consider termination of the rights of only one parent~~
18 ~~unless:~~

19
20 ~~(1) That parent is the only surviving parent;~~

21
22 ~~(2) The rights of the other parent have been terminated by a California~~
23 ~~court of competent jurisdiction or by a court of competent jurisdiction~~
24 ~~of another state under the statutes of that state; or~~

25
26 ~~(3) The other parent has relinquished custody of the child to the county~~
27 ~~welfare department.~~

28
29
30 **Rule 5.720. Eighteen-month permanency review hearing**

31
32 **(a) Requirement for 18-month permanency review hearing; setting for of**
33 **hearing; notice (§§ 293, 366.22)**

34
35 For any dependent child whom the court has removed from the custody of
36 the parent or legal guardian, and who ~~If a child~~ was not returned at the 6- or
37 12-month review hearing, a permanency review hearing must be held no
38 later than 18 months from the date of the initial removal. Notice of the
39 hearing must be given as provided in section 293 and rule 5.708(b).

40
41 ~~(b) **Reports (§§ 366.1, 366.21)**~~

1 ~~Before the hearing the petitioner must prepare a report describing services~~
2 ~~offered to the family and progress made.~~

3
4 (1) ~~The report must include:~~

5
6 (A) ~~Recommendations for court orders and the reasons for those~~
7 ~~recommendations;~~

8
9 (B) ~~A description of the efforts made to achieve legal permanence for~~
10 ~~the child if reunification efforts fail; and~~

11
12 (C) ~~A factual discussion of each item listed in sections 366.1 and~~
13 ~~366.21(e).~~

14
15 (2) ~~At least 10 calendar days before the hearing, the petitioner must file the~~
16 ~~report and provide copies to the parent or guardian and his or her~~
17 ~~counsel, to counsel for the child, and to any CASA volunteer. The~~
18 ~~petitioner must provide a summary of the recommendations to any~~
19 ~~foster parents, relative caregivers, or certified foster parents who have~~
20 ~~been approved for adoption.~~

21
22 **(e)(b) Determinations and conduct of hearing (§§ 361.5, 366.22)**

23
24 ~~At the hearing the court must state on the record that the court has read and~~
25 ~~considered the report of petitioner, the report of any CASA volunteer, the~~
26 ~~case plan submitted for this hearing, any report submitted by the child's~~
27 ~~caregiver under section 366.21(d), and any other evidence, and must proceed~~
28 ~~as follows: and all parties must comply with all relevant requirements and~~
29 ~~procedures in rule 5.708, General review hearing requirements. The court~~
30 ~~must make all appropriate findings and orders specified in rule 5.708 and~~
31 ~~proceed as follows:~~

32
33 (1) ~~The court must order the child returned to the custody of the parent or~~
34 ~~legal guardian unless the court finds the petitioner has established, by a~~
35 ~~preponderance of the evidence, that return would create a substantial~~
36 ~~risk of detriment to the safety, protection, or physical or emotional~~
37 ~~well-being of the child. Failure of the parent or legal guardian to~~
38 ~~regularly participate and make substantive progress in a court-ordered~~
39 ~~treatment program is prima facie evidence that continued supervision is~~
40 ~~necessary or that return would be detrimental. The requirements in rule~~
41 ~~5.708(d) must be followed in establishing detriment. The requirements~~
42 ~~in rule 5.708(e) must be followed in entering a reasonable services~~
43 ~~finding.~~

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(2) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court ~~may:~~ must follow the procedures in rule 5.708(k) and section 361.2.

~~(A) Continue supervision;~~

~~(B) After stating on the record or in writing the factual basis for the order, order custody to that parent, continue supervision, and order family maintenance services; or~~

~~(C) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, terminate jurisdiction, and direct that *Custody Order – Juvenile – Final Judgment* (form JV 200) be prepared and filed under rule 5.700.~~

(3) If the court does not order return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment, ~~terminate reunification services,~~ and do one of the following:

(A) Continue the case for a subsequent permanency review hearing not later than 24 months from the date of the initial removal if the court finds that there is a substantial probability that the child will be returned within that time or that reasonable services have not been offered or provided. To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making significant and consistent progress in a substance abuse treatment program, or a parent is recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child’s return. The court must also inform the parent or legal guardian that, if the child cannot be returned home by the subsequent permanency review hearing, a hearing under section 366.26 may be instituted.

In order to find a substantial probability that the child will be returned within the 24-month period, the court must find all of the following:

(i) The parent or legal guardian has consistently and regularly contacted and visited the child;

1
2 (ii) The parent or legal guardian has made significant and
3 consistent progress in the prior 18 months in resolving the
4 problems that led to the removal of the child; and

5
6 (iii) The parent or legal guardian has demonstrated the capacity
7 and ability both to complete the objectives of his or her
8 substance abuse treatment plan as evidenced by reports
9 from a substance abuse provider as applicable or to
10 complete a treatment plan postdischarge from incarceration
11 or institutionalization and to provide for the child's safety,
12 protection, physical and emotional health, and special
13 needs.

14
15 (A)(B) Terminate reunification services and order that the child
16 remain in foster care a planned permanent living arrangement, if it
17 finds by clear and convincing evidence already presented,
18 including a recommendation by the appropriate state or county
19 adoption agency, that there is a compelling reason for determining
20 that a section 366.26 hearing is not in the best interest of the child
21 because the child is not a proper subject for adoption and has no
22 one willing to accept legal guardianship.

23
24 (i) If the court orders that the child remain in foster care a
25 planned permanent living arrangement, it must identify the
26 foster care setting by name and identify a specific
27 permanency goal for the child.

28
29 (ii) The court may order that the name and address of the foster
30 home remain confidential. If the child is 10 years of age or
31 older and is placed in out-of-home placement for six months
32 or longer, the court:

33
34 (iii) The court must continue to permit the parent or legal
35 guardian to visit the child, unless it finds that visitation
36 would be detrimental to the child;

37
38 (iv) If the child is 10 years of age or older and is placed in out-
39 of-home placement for six months or longer, the court must
40 enter any other appropriate orders to enable the child to
41 maintain relationships with other individuals who are
42 important to the child, consistent with the child's best
43 interest. Specifically, the court:

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(i)a. Must determine whether the agency has identified individuals, in addition to the child’s siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child’s best interest;

(ii)b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child’s relationships with those individuals, consistent with the child’s best interest; and

(iii)c. May make any appropriate order to ensure that those relationships are maintained; or

~~(B) Order a hearing under section 366.26 within 120 days.~~

(C) If (1), (3)(A), or (3)(B) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. The court and all parties must comply with all relevant requirements, procedures, and findings and orders related to section 366.26 hearings in rule 5.708.

(4) If the child is not returned to his or her parent or legal guardian, the court must consider and state, for the record, in-state and out-of-state options for permanent placement.

~~(4) Visitation must continue unless the court finds it would be detrimental to the child. The court may enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest.~~

~~(5) The court must consider whether reasonable services have been provided. Evidence that the child has been placed with a relative or foster family who is eligible to adopt or that the child has been placed in a preadoptive home is insufficient alone to support a finding that reasonable services have not been offered or provided. The court must find that:~~

~~(A) Reasonable services were offered or provided; or~~

~~(B) Reasonable services were not offered or provided.~~

- 1 ~~(6) The court must consider the case plan submitted for this hearing and~~
2 ~~must find as follows:~~
- 3
- 4 ~~(A) The child was actively involved in the development of his or her~~
5 ~~own case plan and plan for permanent placement as age and~~
6 ~~developmentally appropriate; or~~
- 7
- 8 ~~(B) The child was not actively involved in the development of his or~~
9 ~~her own case plan and plan for permanent placement as age and~~
10 ~~developmentally appropriate. If the court makes such a finding,~~
11 ~~the court must order the agency to involve the child in the~~
12 ~~development of his or her own case plan and plan for permanent~~
13 ~~placement, unless the court finds that the child is unable,~~
14 ~~unavailable, or unwilling to participate; and~~
- 15
- 16 ~~(C) Each parent was actively involved in the development of the case~~
17 ~~plan and plan for permanent placement; or~~
- 18
- 19 ~~(D) Each parent was not actively involved in the development of the~~
20 ~~case plan and plan for permanent placement. If the court makes~~
21 ~~such a finding, the court must order the agency to actively involve~~
22 ~~each parent in the development of the case plan and plan for~~
23 ~~permanent placement, unless the court finds that each parent is~~
24 ~~unable, unavailable, or unwilling to participate.~~
- 25
- 26 ~~(7) For a child 12 years of age or older and in a permanent placement, the~~
27 ~~court must consider the case plan and must find as follows:~~
- 28
- 29 ~~(A) The child was given the opportunity to review the case plan, sign~~
30 ~~it, and receive a copy; or~~
- 31
- 32 ~~(B) The child was not given the opportunity to review the case plan,~~
33 ~~sign it, and receive a copy. If the court makes such a finding, the~~
34 ~~court must order the agency to give the child the opportunity to~~
35 ~~review the case plan, sign it, and receive a copy, unless the court~~
36 ~~finds that the child is unable, unavailable, or unwilling to~~
37 ~~participate.~~
- 38
- 39 ~~(8) If the court orders a hearing under section 366.26, the court must~~
40 ~~terminate reunification services and direct that an assessment be~~
41 ~~prepared as stated in section 366.22(b). Visitation must continue unless~~
42 ~~the court finds it would be detrimental to the child. The court must~~
43 ~~enter any other appropriate orders to enable the child to maintain~~

1 relationships with other individuals who are important to the child,
2 consistent with the child's best interest.

3
4 ~~(9) A judgment or an order setting a hearing under section 366.26 is not~~
5 ~~immediately appealable. Review may be sought only by filing *Petition*~~
6 ~~*for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)*~~
7 ~~(form JV 825) or other petition for extraordinary writ. If a party wishes~~
8 ~~to preserve any right to review on appeal of the findings and orders~~
9 ~~made under this rule, the party is required to seek an extraordinary writ~~
10 ~~under rules 8.450, 8.452, and 5.600.~~

11
12 ~~(10) A judgment, order, or decree setting a hearing under section 366.26~~
13 ~~may be reviewed on appeal following the order of the section 366.26~~
14 ~~hearing only if the following have occurred:~~

15
16 ~~(A) An extraordinary writ was sought by the timely filing of *Petition*~~
17 ~~*for Extraordinary Writ (California Rules of Court, Rules 8.452,*~~
18 ~~*8.456)* (form JV 825) or other petition for extraordinary writ; and~~

19
20 ~~(B) The petition for extraordinary writ was summarily denied or~~
21 ~~otherwise not decided on the merits.~~

22
23 ~~(11) Review on appeal of the order setting a hearing under section 366.26 is~~
24 ~~limited to issues raised in a previous petition for extraordinary writ that~~
25 ~~were supported by an adequate record.~~

26
27 ~~(12) Failure to file a petition for extraordinary writ review within the period~~
28 ~~specified by rules 8.450, 8.452, and 5.600, to substantively address the~~
29 ~~issues challenged, or to support the challenge by an adequate record~~
30 ~~precludes subsequent review on appeal of the findings and orders made~~
31 ~~under this rule.~~

32
33 ~~(13) When the court orders a hearing under section 366.26, the court must~~
34 ~~advise orally all parties that to preserve any right to review on appeal of~~
35 ~~the order setting the hearing, the party is required to seek an~~
36 ~~extraordinary writ by filing:~~

37
38 ~~(A) A notice of the party's intent to file writ petition and request for~~
39 ~~the record, which may be submitted on *Notice of Intent to File*~~
40 ~~*Writ Petition and Request for Record (California Rules of Court,*~~
41 ~~*Rule 8.450)* (form JV 820); and~~

1 ~~(B) A petition for an extraordinary writ, which may be submitted on~~
2 ~~*Petition for Extraordinary Writ (California Rules of Court, Rules*~~
3 ~~*8.452, 8.456) (form JV 825).*~~
4

5 ~~(14) Within 24 hours of the review hearing, the clerk of the court must~~
6 ~~provide notice by first class mail to the last known address of any party~~
7 ~~who is not present when the court orders the hearing under section~~
8 ~~366.26. The notice must include the advisement required by (c)(13).~~
9

10 ~~(15) Copies of *Petition for Extraordinary Writ (California Rules of Court,*~~
11 ~~*Rules 8.452, 8.456) (form JV 825) and *Notice of Intent to File Writ**~~
12 ~~*Petition and Request for Record (California Rules of Court, Rule*~~
13 ~~*8.450) (form JV 820) must be available in the courtroom and must*~~
14 ~~accompany all mailed notices informing the parties of their rights.~~
15

16 ~~(16) If the court orders a hearing under section 366.26, the court must order~~
17 ~~that notice of the hearing under section 366.26 must not be provided to~~
18 ~~any of the following:~~
19

20 ~~(A) A parent, presumed parent, or alleged parent who has relinquished~~
21 ~~the child for adoption and whose relinquishment has been~~
22 ~~accepted and filed with notice under Family Code section 8700;~~
23 ~~or~~
24

25 ~~(B) An alleged parent who has denied parentage and has completed~~
26 ~~section 1 of *Statement Regarding Parentage (Juvenile)* (form JV~~
27 ~~505).~~
28

29 ~~**(d) Setting a hearing under section 366.26**~~
30

31 ~~At the 18 month review hearing, the court must not set a hearing under~~
32 ~~section 366.26 to consider termination of the rights of only one parent~~
33 ~~unless:~~
34

35 ~~(1) That parent is the only surviving parent;~~
36

37 ~~(2) The rights of the other parent have been terminated by a California~~
38 ~~court of competent jurisdiction or by a court of competent jurisdiction~~
39 ~~of another state under the statutes of that state; or~~
40

41 ~~(2) The other parent has relinquished custody of the child to the county~~
42 ~~welfare department.~~
43

1
2 **Rule 5.722. Twenty-four-month subsequent permanency review hearing**

3
4 **(a) Requirement for 24-month subsequent permanency review hearing;**
5 **setting of hearing; notice (§ 366.25)**

6
7 For any dependent child whom the court has removed from the custody of
8 the parent or legal guardian, and whose case has been continued under
9 section 366.22(b), the subsequent permanency review hearing must be held
10 no later than 24 months from the date of initial removal. Notice must be
11 provided as described in rule 5.708.

12
13 **(b) Determinations and conduct of hearing (§ 366, 366.1, 366.25)**

14
15 At the hearing, the court and all parties must comply with all relevant
16 requirements and procedures in rule 5.708, General review hearing
17 requirements. The court must make all appropriate findings and orders
18 specified in rule 5.708 and proceed as follows:

19
20 (1) The court must order the child returned to the custody of the parent or
21 legal guardian unless the court finds that petitioner has established by a
22 preponderance of the evidence that return would create a substantial
23 risk of detriment to the safety, protection, or physical or emotional
24 well-being of the child. Failure of the parent or legal guardian to
25 regularly participate and make substantive progress in a court-ordered
26 treatment program is prima facie evidence that return would be
27 detrimental. The requirements in rule 5.708(d) must be followed in
28 establishing detriment. The requirements in rule 5.708(e) must be
29 followed in entering a reasonable services finding.

30
31 (2) If the court does not order the return of the child to the custody of the
32 parent or legal guardian, the court must specify the factual basis for its
33 finding of risk of detriment and do one of the following:

34
35 (A) If the court finds by clear and convincing evidence, including a
36 recommendation by the appropriate state or county adoption
37 agency, that there is a compelling reason for determining that a
38 section 366.26 hearing is not in the best interest of the child
39 because the child is not a proper subject for adoption and has no
40 one willing to accept legal guardianship, the court must terminate
41 reunification services and order that the child remain in a planned
42 permanent living arrangement.

- 1 (i) If the court orders that the child remain in a planned
2 permanent living arrangement, it must identify the foster
3 care setting by name and identify a specific permanency
4 goal for the child.
5
6 (ii) The court may order that the name and address of the foster
7 home remain confidential.
8
9 (iii) The court must continue to permit the parent or legal
10 guardian to visit the child, unless it finds that visitation
11 would be detrimental to the child.
12
13 (iv) If the child is 10 years of age or older and is placed in out-
14 of-home placement for six months or longer, the court
15 must enter any other appropriate orders to enable the child
16 to maintain relationships with other individuals who are
17 important to the child, consistent with the child's best
18 interest. Specifically, the court:
19
20 a. Must determine whether the agency has identified
21 individuals, in addition to the child's siblings, who are
22 important to the child and will maintain caring,
23 permanent relationships with the child, consistent with
24 the child's best interest;
25
26 b. Must determine whether the agency has made
27 reasonable efforts to nurture and maintain the child's
28 relationships with those individuals, consistent with the
29 child's best interest; and
30
31 c. May make any appropriate order to ensure that those
32 relationships are maintained.
33
34 (B) If (1) or (2)(A) do not apply, the court must terminate
35 reunification services and order that a hearing be held under
36 section 366.26 within 120 days. The court and all parties must
37 comply with all relevant requirements, procedures, findings, and
38 orders related to section 366.26 hearings in rule 5.708(l)-(o).
39
40 (3) If the child is not returned to his or her parent or legal guardian, the
41 court must consider and state, for the record, in-state and out-of-state
42 options for permanent placement.
43

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Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|---|-----------------|--|--|
| | Commentator | Position | Comment | Committee Response |
| 1. | Beverly Joan McCoy Volunteer, Court Appointed Special Advocate CASA of Fresno and Madera Counties | A | No narrative comments submitted. | No response required. |
| 2. | Bonnie L. Miller Attorney at Law, CWLS San Carlos | NI | <ol style="list-style-type: none"> 1. I believe that the suggested changes will simplify use of the rules. 2. May I suggest that at a future time, the rules be further amended to require reports for all hearings to be provided at least 10 days in advance. Currently in our county, jurisdictional and interim review reports as well as amended 6 month review reports (for all kinds of reviews) are not provided to counsel until at most 2 days before the hearing. | <ol style="list-style-type: none"> 1. No response required. 2. Welfare and Institutions Code sections 364, 366.05, and 366.21(c) require reports for all review hearings to be filed and provided to parties at least 10 days in advance. These requirements can be found in proposed rules 5.706(c) and rule 5.708(c)(2). The committee agrees to add a line to 5.706(c) clarifying that the report must be provided to parties 10 days in advance. |
| 3. | Janet G. Sherwood Attorney at Law Corte Madera | NI | See comments on specific provisions below. | |
| 4. | Kern County Department of Social Services Monique Hawkins | A | No narrative comments submitted. | No response required. |

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| | | | | |
|----|--|----|--|---|
| | Program Director | | | |
| 5. | Michael Markel Supervising Deputy County Counsel San Bernardino County Counsel | NI | Regarding the proposed changes to the California Rules of Court that address review and permanency hearings, I believe the proposed changes are consistent with the relevant statutes and more importantly, make the statutory framework much easier to understand and follow. See comments on specific provisions below. | No response required. |
| 6. | Los Angeles Office of the County Counsel—Dependency Division James M. Owens Assistant County Counsel | AM | 1. Throughout the rules, the term “guardian” is used rather than “legal guardian.” “Legal guardian” is used in the Welfare and Institutions Code. The rule should be consistent with statutory language and use the words “legal guardian.” 2. See comments on specific provisions below. | 1. The committee agrees that it is consistent with the Welfare and Institutions Code to use the term “legal guardian” rather than “guardian.” This change will be made throughout the applicable rules to ensure consistency. |
| 7. | Orange County Bar Association Michael G. Yoder President | A | No narrative comments submitted. | No response required. |
| 8. | Orange County Public Defender Deborah A. Kwast Public Defender | AM | See comments on specific provisions below. | |
| 9. | San Diego County Probation | NI | No narrative comments submitted. | No response required. |

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

| | | | | |
|-----|--|----|---|--|
| | Department Pamela Martinez, Drug Court Program Office | | | |
| 10. | Superior Court of Los Angeles County | A | No narrative comments submitted. | No response required. |
| 11. | Superior Court of Riverside County Staff | A | Reference is made to the need to change existing Judicial Council forms and develop a new “findings and order” relevant to a 24-month plan. The number of additional findings needed by the court may have a significant impact on the amount of time needed by courtroom staff to complete the minute orders. | The findings contained in proposed rule 5.722, applicable to 24-month review hearings, are consistent with new legal requirements in Welfare and Institutions Code section 366.25 and elsewhere, resulting from Assembly Bill 2070. These requirements became effective January 1, 2009. |
| 12. | Superior Court of San Diego County Michael M. Roddy Executive Officer | AM | <ol style="list-style-type: none"> 1. Our court would like to thank the FJLAC and CFCC staff for the superb work done on reorganizing these rules. 2. Non-substantive suggestion: Throughout the rules in this proposal, the terminology used for the WIC § 366.26 hearing is inconsistent. It is suggested that “366.26 hearing” be used consistently throughout because it is the most concise. An argument can be made, however, in favor of “section 366.26 hearing” because it is technically more correct. For instance, if someone | <ol style="list-style-type: none"> 1. No response required. 2. The committee agrees that it is technically correct to use “section 366.26 hearing.” This change will be made throughout the rules so that the terminology is consistent. |

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Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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| | | | | |
|--|--|--|--|--|
| | | | <p>who is not familiar with juvenile dependency proceedings is consulting these rules, “section 366.26 hearing” might make it easier to understand what “366.26” means.</p> <p>3. See comments on specific provisions below.</p> | |
|--|--|--|--|--|

SPR09-34

Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

| Rules: 5.695—Orders of the court | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| Janet G. Sherwood Attorney at Law Corte Madera | Rule 5.695(f). The term “child welfare services” should be changed to “reunification services” in the body of the rule. The Legislature amended section 361.5 to specify that “reunification services” must be provided. “Child welfare services” has a broader meaning. This change was a deliberate legislative choice that should be reflected in the rule. | The committee agrees to make this change. |
| Los Angeles Office of the County Counsel—Dependency Division James M. Owens Assistant County Counsel | Rule 5.695(f)(1). The proposed amendments are consistent with federal title IV-E funding requirements and with proposed statutory language that is currently pending (AB 706). It states that for children under the age of three at the time of initial removal, the section 366.21(e) hearing should be set six months from the disposition hearing but cannot occur more than 12 months from the date the child entered foster care. This is helpful. | No response required. |
| Michael Markel Supervising Deputy County Counsel San Bernardino County Counsel | Rule 5.695(f)(1). Regarding the proposed changes to rule 5.695(f)(1), the proposed wording should be further modified. The proposed language is as follows: “... provide child welfare services within 6 months of the date of the dispositional hearing, but no later than 12 months from the date the child entered foster care if the child was under three at the time of initial removal.” This language | The committee agrees to change the language in rule 5.695(f)(1) to track the new statutory language in Welfare and Institutions Code section 361.5(a). |

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Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

| Rules: 5.695—Orders of the court | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| | <p>suggests that services do not have to commence immediately following the dispositional hearing.</p> <p>Recommendation: To be consistent with section 361.5(a), I think the language should be: “provide child welfare services during the 6 month period following the date of the dispositional hearing, but no later than 12 months from the date the child entered foster care if the child was under three at the time of the initial removal.”</p> | |
| <p>Superior Court of San Diego County Michael M. Roddy Executive Officer</p> | <p>Rule 5.695(f)(2). Suggestion: Insert “after 6 months” in the last sentence, as done in subdivision (f)(1): “The court must inform the parent or guardian of a child who is a member of such a sibling group that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in termination of reunification efforts <u>after 6 months</u> for one or more members of the sibling group.”</p> <p>Reason for suggestion: Because the time for services is so short, it is crucial for the parent or guardian to receive this information.</p> | <p>The committee agrees to make this change.</p> |

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Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

Rules: 5.706—Family maintenance review hearings

| Commentator | Comment | Committee Response |
|--|--|---|
| <p>Janet G. Sherwood Attorney at Law Corte Madera</p> | <p>Rule 5.706(f). This rule, which essentially parrots the statute, is confusing. It requires the social worker to “commence juvenile dependency proceedings.” Many will interpret this as requiring a new section 300 petition. However, the child is already a dependent so the proper procedure would be for the social worker to file a subsequent petition under section 342 rather than a new petition under section 300. The rule would be more helpful if this were made clear.</p> | <p>The committee agrees to change the “commence proceedings” language so the section instead reads: “...the social worker must file a subsequent petition under section 342 or a supplemental petition under section 387.”</p> |
| <p>Los Angeles Office of the County Counsel— Dependency Division James M. Owens Assistant County Counsel</p> | <p>1. Rule 5.706(a). This section states that the 364 hearing must be held within 6 months of the disposition hearing but then improperly states that review hearings must then be held every six months as long as the child remains a dependent. Section 364 mandates that the hearing be held “within” 6 months, not every 6 months. Hearings can be held earlier than the six month date since there is issue regarding reunification services.</p> <p>I recommend amending the rule to read: If the child remains in the custody of the parent or guardian, a review hearing must be held within 6 months after the date of the original dispositional hearing and, thereafter, “within” 6 months “of the date of the most</p> | <p>1. The committee agrees that using the word “every” is inconsistent with Welfare and Institutions Code section 364(a), which mandates that every hearing in which the child is placed under the supervision of the juvenile court under section 300 but not removed from the custody of his or her parent or guardian “shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing.” The committee recommends changing the language to “no less frequently than once every six months thereafter as long as the child remains a dependent.”</p> |

SPR09-34

Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

Rules: 5.706—Family maintenance review hearings

| Commentator | Comment | Committee Response |
|-------------|--|---|
| | <p>recent review hearing” as long as the child remains a dependent.</p> <p>2. Rule 5.706(b). This section reads that notice should be given to any CASA volunteer. I recommend amending the rule to clarify that notice should be provided to any CASA volunteer that has been appointed by the court on a given case. A CASA volunteer is not entitled to notice if they have not been appointed on the case.</p> <p>3. Rule 5.706(e)(1). This section of the proposed rule provides that the court must terminate jurisdiction unless the court finds that “such conditions would exist if supervision is withdrawn.” The statutory language in section 364 does not indicate that the court must find that “such conditions would exist” but rather that “such conditions are likely to exist.” This is a very different standard, and it is very difficult to prove that conditions would exist.</p> <p>I recommend amending the rule to properly reflect the language in the statute. The rule should read that the court must terminate jurisdiction unless the court finds that “such conditions are likely to exist if</p> | <p>2. The committee agrees to add language clarifying that notice should be provided to any CASA volunteer who has been appointed on the case.</p> <p>3. The committee agrees that it is more consistent with Welfare and Institutions Code section 364 to state that “such conditions are likely to exist” and will make the change.</p> |

SPR09-34

Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

Rules: 5.706—Family maintenance review hearings

| Commentator | | Comment | Committee Response |
|-------------|---|---|---|
| | | supervision is withdrawn.” | |
| | Superior Court of San Diego County Michael M. Roddy Executive Officer | <ol style="list-style-type: none">Rule 5.706. Would this new rule be placed in Article 3 (Disposition) or Article 4 (Reviews, Permanent Planning)?Rule 5.706(f). Add “under section 342 or section 387” at the end of the first sentence: “ ... the social worker must commence juvenile dependency proceedings under section 342 or section 387.” | <ol style="list-style-type: none">New rule 5.706 will be placed in Title 5, Division 3, Chapter 12, Article 4 (Reviews, Permanent Planning).The committee agrees to change the “commence proceedings” language, so the section instead reads: “...the social worker must file a subsequent petition under section 342 or a supplemental petition under section 387.” |

SPR09-34

Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

Rules: 5.708—General review hearing requirements

| Commentator | Comment | Committee Response |
|--|---|---|
| <p>Los Angeles Office of the County Counsel— Dependency Division James M. Owens Assistant County Counsel</p> | <ol style="list-style-type: none"> <li data-bbox="533 354 1310 602">1. Rule 5.708(b) and (d)(3)(A). These sections should clarify that a CASA volunteer receives notice if the CASA volunteer is appointed by the court on the case. However, I would note that Welfare and Institutions Code section 293 does not list CASA as someone entitled to notice. <li data-bbox="533 776 1310 980">2. Rule 5.708(o)(1)(b)(i). This section cites rule 5.590(b) but there is no 5.590(b). It appears that the rule that is being referred to is 5.600(b). Thus, it should read 5.600(b). Similarly, subdivision (o)(1)(c) should read 5.600 rather than 5.590. | <ol style="list-style-type: none"> <li data-bbox="1310 354 2003 732">1. The committee agrees to add language clarifying that notice should be provided to any CASA volunteer who has been appointed on the case. The right to notice for CASAs comes from Welfare and Institutions Code section 106, which provides that a CASA volunteer “shall be notified of hearings and other proceedings concerning the case to which he or she has been appointed.” <li data-bbox="1310 776 2003 1406">2. Subdivision (o)(1)(b)(i) is now subdivision (n)(5)(A), and subdivision (o)(1)(c) is now subdivision (n)(6). The reference to rule 5.590 and 5.590(b) is correct. There is currently a proposal in the Spring 2009 Rules and Projects cycle that involves revising and renumbering some of the appellate rules (SPR09-43: “Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases”). Proposed rule 5.590, <i>Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases</i>, is where the requirements regarding advisement of the right to appeal or to file a writ petition will be found. |

SPR09-34

Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

Rules: 5.708—General review hearing requirements

| Commentator | Comment | Committee Response |
|--|--|---|
| <p>Orange County Public Defender Deborah A. Kwast Public Defender</p> | <p>Rule 5.708(e)(2). This section is not consistent with the applicable statutes, which provide that none of the listed factors is sufficient in and of itself to support a finding that reasonable services have not been offered or provided. (Welfare and Institutions Code, sections 366.21(l) and 322(a). Thus, the first sentence of rule 5.708(e)(2) should read: “Evidence of any of the following factors may not, in and of itself, be deemed a failure to provide or offer reasonable services.”</p> | <p>The committee agrees to add the language “in and of themselves” to make the rule language more closely track the relevant statutory language.</p> |
| <p>Superior Court of San Diego County Michael M. Roddy Executive Officer</p> | <p>*Some of the following comments have been condensed due to their length.</p> <ol style="list-style-type: none"> 1. Rule 5.708(c). Change “petitioner” to “social worker.” (See §§ 366.21(e), (f), 366.22(a), 366.25(a).) If “petitioner” is kept in the language, insert “the” before it: “the petitioner.” 2. Rule 5.708(d)(3)(C). Insert “or legal guardian.” This follows the language of § 366.21(e) more closely. 3. Rule 5.708(d)(4). Change the beginning of the sentence to: “<u>If the parent or legal guardian agreed to submit fingerprints to obtain criminal history</u> | <ol style="list-style-type: none"> 1. The committee agrees to change “petitioner” to “social worker” as it is consistent with Welfare and Institutions Code sections 366.21, 366.22, and 366.25. 2. The committee agrees to insert “or legal guardian” in rule 5.708(d)(3)(C) as it is consistent with Welfare and Institutions Code section 366.21(e). 3. The committee agrees to make this change as it is consistent with statutory requirements in Welfare and Institutions Code section |

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

Rules: 5.708—General review hearing requirements

| Commentator | Comment | Committee Response |
|-------------|---|---|
| | <p><u>information as part of the case plan, the court must also consider ...”</u></p> <p>4. Rule 5.708(g). Add citations to heading: “(g) Case plan (§§ 16001.9, 16501.1)”</p> <p>5. Rule 5.708(g)(3) & (4). What is the authority for requiring these findings and the order to the agency in (g)(4)? Although there is indirect authority for the findings in (g)(1) and (g)(2) in (see WIC § 16501.1(f)(1) & (12) [requiring child’s involvement but not requiring court to make findings and/or order], the same is not true for (g)(3) and (g)(4). Under WIC § 16501.1(f)(11)(A), “ ... Whenever possible, parents and legal guardians shall participate in the development of the case plan.” Because the words “Whenever possible” make participation conditional, any rule ordering the agency to “actively involve each parent in the development of the case plan” is not supported by the language of the statute.</p> <p>6. Rule 5.708(g). Should the court also be required to make the following findings: (a) for a child who is 16</p> | <p>366.21(e).</p> <p>4. The committee agrees to add these citations to the heading in rule 5.708(d) as they provide applicable authority for the provisions outlined within.</p> <p>5. These provisions are currently included in the review and permanency rules (rules 5.710, 5.715, and 5.720). They are not new provisions substantively. The authority for them comes from Welfare and Institutions Code section 16501.1(d)(1) which explains that the Legislature extended the case planning time period from 30 to 60 days in order to “ afford caseworkers time to actively engage families, and to solicit and integrate into the case plan the input of the child and the child’s family, as well as the input of relatives and other interested parties.”</p> <p>6. The committee does not agree to make this change. Rule 5.708(g) describes court findings</p> |

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

Rules: 5.708—General review hearing requirements

| Commentator | Comment | Committee Response |
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| | <p>years of age or older, that the case plan includes services needed to assist the child in making the transition from foster care to independent living? (See WIC § 16501.1(f)(15); 42 U.S.C. § 675(5)(C).) Alternatively, this finding could be added to subdivision (i), Title IV-E findings.</p> <p>(b) that the case plan was “developed with ... individuals identified as important to the child”? (See WIC § 16501.1(f)(15) [“the case plan shall be developed with the child and individuals identified as important to the child”].) (c) for a child who is 10 years of age or older and who has been in out-of-home placement for six months or longer, that the case plan identifies individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided those relationships are in the best interest of the child? (See WIC § 16501.1(i).) Although this finding seems to duplicate subd. (i)(2), it focuses on the content of the case plan, as opposed to subd. (i)(2), which focuses on the agency’s compliance with the case plan.</p> <p>7. Rule 5.708(j). Change citation to “section 366(a)(1)(C) & (D)” to make clear which findings are</p> | <p>regarding parent and child participation in case planning, overall. Subdivision (g) is not meant to be an exhaustive list of all of the case plan requirements in section 16501.1.</p> <p>7. The committee does not agree to make this change. In order to keep the rule inclusive of</p> |

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

Rules: 5.708—General review hearing requirements

| Commentator | Comment | Committee Response |
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| | <p>not already required by other provisions in rule 5.708.</p> <p>8. Rule 5.708(k). Under § 361.2(c), “The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).” As currently drafted, it is not clear whether the rule requires the court to state the factual basis for the orders in 361.2(a) and 361.2(b)(2) in writing or on the record. That is, only the orders in rule 5.708(k)(2) and (k)(3) are preceded by “After stating on the record or in writing the factual basis for the order.” Perhaps this subdivision can be clarified by deleting the quoted language from (k)(2) and (k)(3) and adding, after par. (3), as an unnumbered paragraph, “The court must state on the record or in writing the factual basis for all orders made under section 361.2(a) and (b).”</p> <p>9. Rule 5.708(o)(1). Add colon as ending punctuation.</p> <p>10. Rule 5.708(o)(1)(A). Revise to specify who is to be directed to prepare an assessment, e.g., “The court must direct the county child welfare agency and the</p> | <p>any future changes to the statute, the citation will remain “section 366.”</p> <p>8. The committee agrees to add language to the introductory sentence in rule 5.708(k) that the court must state on the record or in writing the factual basis for all orders made under Welfare and Institutions Code section 361.2(a) and (b).</p> <p>9. Subdivision (o)(l) has been deleted. This comment is no longer relevant to the proposal.</p> <p>10. Subdivision (o)(l)(A) is now subdivision (n)(4). The committee agrees to revise subdivision (n)(4) to specify that the court</p> |

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

| Rules: 5.708—General review hearing requirements | | |
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| Commentator | Comment | Committee Response |
| | <p>county adoption agency to prepare an assessment”</p> <p>11. Rule 5.708(o)(1)(C). Insert comma after “advisements” for consistency of punctuation style.</p> <p>12. Rule 5.708(o)(2). Change “Appeal” to “An appeal.”</p> | <p>must direct the county child welfare agency and the appropriate county or state adoption agency to prepare an assessment.</p> <p>11. Subdivision (o)(1)(C) is now subdivision (n)(6). The committee agrees to make this technical change.</p> <p>12. Subdivision (o)(2) is now subdivision (o). The committee agrees to make this technical change.</p> |

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

| Rules: 5.710—Six-month review hearing | | |
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| Commentator | Comment | Committee Response |
| <p>Los Angeles Office of the County Counsel— Dependency Division James M. Owens Assistant County Counsel</p> | <p>Rule 5.710(c)(1)(D). This section specifies that “In order to find a substantial probability that the child may be returned . . . the court should consider all of the following . . .” However, section 366.21 reads that the court “must find” all of the following, not that the court “should consider” all of the following.</p> <p>I recommend amending the rule so that it is consistent with the statute. The rule should read that “In order to find a substantial probability that the child may be returned . . . the court “must find” all of the following . . .”</p> | <p>Rule 5.710(c)(1)(D) is consistent with statutory and case law. In <i>M.V. v. Superior Court</i> (2008) 167 Cal.App.4th 166, the Court of Appeal, Fourth Appellate District, held that the court is not required to make the section 366.21(g)(1) findings at the 6-month review. (<i>Id.</i> at pp. 179–180.) The court stated that “We reject the proposition that determination of the ‘substantial probability’ question presented by subdivision (e) requires the court to make the findings set forth in section 366.21, subdivision (g)(1).” (<i>Id.</i> at p. 179.) The court held that the substantial probability test outlined in section 366.21(g)(1) must be applied at the 12-month review, but that the 6-month review and the 12-month review present distinct inquiries, because of their differing “substantial probability” tests (366.21(e) requires the court to determine whether or not there is a substantial probability that the child “may be returned,” while 366.21(f) directs the court to find whether the child “will be returned”).</p> |
| <p>Orange County Public Defender Deborah A. Kwast Public Defender</p> | <p>1. Rule 5.710(c)(1)(D) (Preamble). The preamble paragraph in (c)(1)(D) improperly suggests that factors (i)–(iii) are the exclusive factors the court should consider in determining substantial probability of</p> | <p>1. The committee agrees that at the 6-month hearing, the court, under <i>M.V. v. Superior Court</i> (2008) 167 Cal.App.4th 166, is not limited to inquiring into the three “substantial</p> |

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

| Rules: 5.710—Six-month review hearing | | |
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| Commentator | Comment | Committee Response |
| | <p>return and that the court cannot consider other factors. This suggestion would be contrary to the recent decision in <i>M.V. v. Superior Court</i> (2008) 167 Cal.App. 4th 166 (“ . . . the court may take all of the evidence into consideration in making its findings. The court is not limited to inquiring into the three factors set forth in section 366.21, subdivision (g)(1), and California Rules of Court, rule 5.710(f)(1)(E). The court should weigh evidence pertaining to the factors identified in California Rules of Court, rule 5.710(f)(1)(E), along with any other relevant evidence (such as extenuating circumstances excusing noncompliance with the three factors) in considering whether there is substantial evidence of a possible return to the mother by the 12-month hearing.” [Emphasis added.]</p> <p>2. Rule 5.710. Proposed rule 5.710 also omits any language about the unique circumstances faced by incarcerated or institutionalized parents when the court is determining whether to extend services. (See Legislative Counsel’s Digest and Assembly Committee Bill Analysis for Assembly Bill No. 2070, Chapter 482, approved by Governor September 28, 2008, filed with Secretary of State September 28,</p> | <p>probability” factors set forth in Welfare and Institutions Code section 366.21(g). The committee recommends adding to 5.710(c)(1)(D) that the court may consider “any other relevant evidence” in addition to the three statutory factors.</p> <p>2. The unique circumstances faced by incarcerated or institutionalized parents are addressed or referenced in rules 5.708(d)(3)(C) (General review hearing requirements), 5.710(b)(1) (Six-month review hearing), 5.715(b)(4)(A)(ii) (Twelve-month permanency hearing) and 5.720(b)(3)(A) (Eighteen-month permanency review hearing). These rules</p> |

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

| Rules: 5.710—Six-month review hearing | | |
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| Commentator | Comment | Committee Response |
| | <p>2008.) Indeed, as drafted, the proposed rule can be read to illogically omit language about the court taking into consideration the incarcerated parent’s situation in determining whether to extend services. On the other hand, the proposed rule does require the court to take those circumstances, incarceration, into consideration for purposes of determining whether the parent failed to participate and make progress.</p> <p>The rule should thus be redrafted to incorporate language from, and be consistent with, the following statutory provision of Welfare and Institutions Code, sections 361.5(a)(2) and 366.21(e).</p> | <p>incorporate the new provisions regarding these parents in Welfare and Institutions Code sections 361.5(a)(2), 366.21, 366.22 and 366.25.</p> <p>The committee agrees to change rule 5.708 (d)(3)(C) slightly to more closely track the statutory language. Instead of stating “In assessing detriment, the court must consider . . .”, it now states, “In making its determination about whether returning the child would be detrimental, the court must consider: . . . (c) The extent to which the parent or legal guardian availed himself or herself of the services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian’s access to court-mandated services and the ability to maintain contact with his or her child.” At the 6-month point, the determination about whether to extend services for a child under age three is controlled by the third paragraph of 366.21(e), and by 361.5(a)(1)(B), neither of which includes the new statutory language regarding incarcerated or institutionalized parents.</p> |

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

| Rules: 5.710—Six-month review hearing | | |
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| Commentator | Comment | Committee Response |
| | | Section 361.5(a)(2) applies at the 12-month permanency hearing. It states requirements relevant to extending court-ordered services to the 18-month permanency review hearing, based on court findings made at the section 366.21(f) hearing. This language is reflected in rule 5.715(b)(4)(A)(ii). |
| Superior Court of San Diego County Michael M. Roddy Executive Officer | <p>1. Rule 5.710(b). Par. 1, Delete “6-month review.” It is unnecessary because the entire rule governs 6-month reviews. See, e.g., Rule 5.715(b): “At the hearing”</p> <p>2. Rule 5.710(b). Par. 1, Change the remainder of the sentence as follows: “. . . the court and all parties must comply with all relevant requirements, and procedures, <u>and make all findings, and orders specified</u> in rule 5.708, General review hearings requirements.”</p> <p>The court does not <i>comply</i> with findings and orders; it makes them. Therefore, “findings and orders” should be in a separate clause with a different verb.</p> <p>3. Rule 5.710(b). The heading of rule 5.708 states</p> | <p>1. The committee agrees to make this change.</p> <p>2. The committee agrees to change this language to “At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed as follows:”</p> <p>3. The committee agrees to make this change.</p> |

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Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

| Rules: 5.710—Six-month review hearing | | |
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| Commentator | Comment | Committee Response |
| | <p>“hearing,” not “hearings.”</p> <p>4. Rule 5.710(c). Heading: Add “– no siblings” after “hearing” [“Setting a 366.26 hearing – no siblings (§ 366.21)”] to distinguish this heading from the heading of subd. (d).</p> <p>5. Rule 5.710(c)(2). Change sentence as follows: “The court and all parties must comply with all relevant requirements, and procedures, <u>and make all findings,</u> and orders related to 366.26 hearings specified <u>d</u> in rule 5.708(l)-(o).”</p> | <p>4. The committee recommends changing the heading of rule 5.710(d) to “Sibling groups.”</p> <p>5. The committee agrees to change this language to “At the hearing, the court and all parties must comply with all relevant requirements and procedures related to section 366.26 hearings in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708.”</p> |

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Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

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

Rules: 5.715—Twelve-month permanency hearing

| Commentator | Comment | Committee Response |
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| <p>Janet G. Sherwood Attorney at Law Corte Madera</p> | <p>Rule 5.715, subd. (b)(2)(C), rule 5.720(b)(2)(B), and rule 5.722(b)(2)(A). Sections 366.21(g)(3), 366.22(a) 3, and 355.25(a)(3) specify that the court may make an unadoptability finding and order LTFC at the review hearing <i>only if</i> it has before it a recommendation from State Adoptions or from the county adoption agency that adoption is not in the best interests of the child. This should be specified in the rule. Too many counties ask the judge to make this finding based solely on the opinion of the reunification social worker who in most cases is not the adoptions social worker and who does not necessarily have any training, experience, or expertise that qualifies him or her to determine that the child is not likely to be adopted.</p> | <p>The committee agrees that this statutory language needs to be added to the rules. It will be added to rules 5.715(b)(4)(C) (formerly 5.715(b)(2)(c)), 5.720(b)(3)(B) (formerly 5.720(b)(2)(B), and 5.722(b)(2)(A).</p> |
| <p>Los Angeles Office of the County Counsel— Dependency Division James M. Owens Assistant County Counsel</p> | <p>Rule 5.715(a). This section deletes a reference to Welfare and Institutions Code section 293. This should not be deleted as the reference to Rule 5.502 is inadequate as it merely refers the reader to section 293.</p> | <p>The committee agrees to reference Welfare and Institutions Code section 293 in rule 5.715(a).</p> |
| <p>Superior Court of San Diego County Michael M. Roddy Executive Officer</p> | <p>1. Rule 5.715(b), Par. 1. Change as follows: “...must comply with all relevant requirements, and procedures, <u>and make all findings,</u> and orders specified in rule 5.708, ...”</p> | <p>1. The committee agrees to change this language, in rules 5.715(b), 5.720 (b), and 5.722(b) to “At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review</p> |

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

Rules: 5.715—Twelve-month permanency hearing

| | Commentator | Comment | Committee Response |
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| | | 2. Rule 5.715(b)(2)(B). Change second sentence as follows: "...must comply with all relevant requirements, and procedures, <u>and make all findings</u> , and orders <u>specified</u> in rule 5.708 . . ." | hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed as follows:" 2. This comment is no longer relevant. Rule 5.715(b)(2)(B) has been deleted from the proposal. |