

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

455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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DATE: October 2, 2009

SUBJECT: Juvenile Law: Nondiscrimination in the Appointment of Court Appointed
Special Advocates (CASAs) (amend Cal. Rules of Court, rule 5.655)
(Action Required)

Issue Statement

Effective January 1, 2009, the Legislature revised Welfare and Institutions Code section 103. The proposed language in rule 5.655 of the California Rules of Court promotes compliance with Welfare and Institutions Code section 103, which was revised to expand the list of categories protected from discrimination for an adult qualified to act as a CASA volunteer.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, amend rule 5.655 of the California Rules of Court to comply with current statutory mandates and to facilitate consistency.

The proposed rule text is attached at page 3.

The text of Welfare and Institutions Code section 103 is attached at page 5.

The text of Government Code section 11135 is attached at pages 6–7.

Rationale for Recommendation

Welfare and Institutions Code section 103(d) previously prohibited discrimination based on any of six factors against an adult qualified to act as a CASA volunteer. That section has been amended, effective January 1, 2009, to expand the list of protected categories so it now includes marital status, socioeconomic factors, and all characteristics listed in Government Code section 11135. (Assem. Bill 2654 [Laird]; Stats. 2008, ch. 682)

The Family and Juvenile Law Advisory Committee recommends amending rule 5.655(c) (*Program requirements for Court Appointed Special Advocate programs*) to add a new paragraph (5) that adds the statutory antidiscrimination language.

Alternative Actions Considered

The proposed amendment is necessary to bring this rule into compliance with governing law and to promote clarity and ease of use. No alternative actions were considered.

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. Staff received a total of seven comments. No commentators disagreed with the proposal; six commentators agreed with the proposed changes; one commentator did not indicate agreement or disagreement.

No narrative comments were submitted. Therefore, the committee recommends that the Judicial Council adopt the proposal as it was distributed for comment.

The full text of the comments and the committee's responses are attached at page 4.

Implementation Requirements and Costs

Implementation of the revised rule will incur standard reproduction costs.

Attachments

Rule 5.655 of the California Rules of Court is amended, effective January 1, 2010, to read:

1 **Rule 5.655. Program requirements for Court Appointed Special Advocate**
2 **programs**

3
4 **(a)–(b) *****

5
6 **(c) Recruiting, screening, and selecting CASA volunteers**

7
8 (1)–(4) ***

9
10 (5) An adult otherwise qualified to act as a CASA must not be
11 discriminated against based on marital status, socioeconomic factors,
12 race, national origin, ethnic group identification, religion, age, sex,
13 sexual orientation, color, or disability or because of any other
14 characteristic listed or defined in Government Code section 11135 or
15 Welfare and Institutions Code section 103.

16
17 **(d)–(m) *****

SPR09-39**Juvenile Law: Nondiscrimination in the Appointment of Court Appointed Special Advocates (CASAs)** (amend Cal. Rules of Court, rule 5.655)

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

	Commentator	Position	Comment	Committee Response
1.	Kern County Department of Social Services Monique Hawkings Program Director	A	No narrative comments submitted.	No response required.
2.	Beverly Joan McCoy Volunteer, Court Appointed Special Advocate CASA of Fresno and Madera Counties	A	No narrative comments submitted.	No response required.
3.	Orange County Bar Association Michael G. Yoder President	A	No narrative comments submitted.	No response required.
4.	San Diego County Probation Department Pamela Martinez, Drug Court Program Office	NI	This law is related to nondiscrimination when selecting CASAs.	No response required.
5.	Superior Court of Los Angeles County	A	No narrative comments submitted.	No response required.
6.	Superior Court of Riverside County Staff	A	No narrative comments submitted.	No response required.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No narrative comments submitted.	No response required.

Welfare and Institutions Code section 103

(a) Persons acting as a CASA shall be individuals who have demonstrated an interest in children and their welfare. Each CASA shall participate in a training course conducted under the rules and regulations adopted by the Judicial Council and in ongoing training and supervision throughout his or her involvement in the program. Each CASA shall be evaluated before and after initial training to determine his or her fitness for these responsibilities. Ongoing training shall be provided at least monthly.

(b) Each CASA shall commit a minimum of one year of service to a child until a permanent placement is achieved for the child or until relieved by the court, whichever is first. At the end of each year of service, the CASA, with the approval of the court, may recommit for an additional year.

(c) A CASA shall have no associations that create a conflict of interest with his or her duties as a CASA.

(d) An adult otherwise qualified to act as a CASA shall not be discriminated against based upon marital status, socioeconomic factors, or because of any characteristic listed or defined in Section 11135 of the Government Code.

(e) Each CASA is an officer of the court, with the relevant rights and responsibilities that pertain to that role and shall act consistently with the local rules of court pertaining to CASAs.

(f) Each CASA shall be sworn in by a superior court judge or commissioner before beginning his or her duties.

(g) A judge may appoint a CASA when, in the opinion of the judge, a child requires services which can be provided by the CASA, consistent with the local rules of court.

(h) To accomplish the appointment of a CASA, the judge making the appointment shall sign an order, which may grant the CASA the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer of the court appointed to investigate proceedings on behalf of the court.

Government Code section 11135

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c)(1) As used in this section, “disability” means any mental or physical disability, as defined in Section 12926.

(2) The Legislature finds and declares that the amendments made to this act are declarative of existing law. The Legislature further finds and declares that in enacting Senate Bill 105 of the 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002), it was the intention of the Legislature to apply subdivision (d) to the California State University in the same manner that subdivisions (a), (b), and (c) of this section already applied to the California State University, notwithstanding Section 11000. In clarifying that the California State University is subject to paragraph (2) of subdivision (d), it is not the intention of the Legislature to increase the cost of developing or procuring electronic and information technology. The California State University shall, however, in determining the cost of developing or procuring electronic or information technology, consider whether technology that meets the standards applicable pursuant to paragraph (2) of subdivision (d) will reduce the long-term cost incurred by the California State University in providing access or accommodations to future users of this technology who are persons with disabilities, as required by existing law, including this section, Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

(e) As used in this section, “sex” and “sexual orientation” have the same meanings as those terms are defined in subdivisions (p) and (q) of Section 12926.

(f) As used in this section, “race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability” includes a perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.