



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Agenda Item Type
Juvenile Law: Family Finding	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.637; amend Cal. Rules of Court, rules 5.502, 5.534, 5.690, and 5.695; approve Judicial Council forms JV-285 and JV-287	January 1, 2011
	Date of Report
	October 13, 2010
Recommended by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, 415-865-4507
Hon. Jerilyn L. Borack, Cochair	corby.sturges-t@jud.ca.gov
Hon. Susan D. Huguenor, Cochair	

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting a new rule of court, approving two new forms, and amending existing rules to implement statutory requirements and establish procedures for judicial oversight of efforts by child welfare agencies and probation departments to identify, locate, and notify a child's relatives within 30 days of the child's removal from the home. The proposal ensures compliance with federal law¹ and recently enacted state law, particularly Assembly Bill 938 (Com. on Judiciary; Stats. 2009, ch. 261), which the Judicial Council sponsored to improve outcomes for children in foster care by enabling them to maintain connections with and be cared for and supported by loving relatives after they have been removed from their parents. The proposal also promotes the long-standing Judicial Council

¹ 42 U.S.C. § 671(a)(29); *see* Fostering Connections to Success and Increasing Adoptions Act, Pub. L. No. 110-351, § 103 (Oct. 7, 2008) 122 Stat. 3949, 3956.

and statutory objectives of improving safety, permanency, and well-being for children in foster care.²

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2011, adopt rule 5.637 and amend rules 5.502, 5.534, 5.690, and 5.695 of the California Rules of Court; and approve two Judicial Council forms, *Relative Information* (form JV-285) and *Confidential Information* (form JV-287), to:

1. Incorporate the requirement in Welfare and Institutions Code sections 309(e) and 628(d) that a county social services agency or probation department (hereafter agency) use due diligence in conducting an investigation to identify, locate, and notify all of a child's relatives, as defined, within 30 days of the child's removal from the home of his or her parent or guardian;
2. Implement the requirement in Welfare and Institutions Code sections 309(e) and 628(d) that the agency notify located relatives, except any who have a history of family or domestic violence, of the child's removal and explain the various options for caring for the child or otherwise participating in the child's life;
3. Provide relatives with an instrument for informing the court about the child's health and welfare, as well as their ability to provide care and support for the child, with *Relative Information* (form JV-285) mandated by Welfare and Institutions Code, section 309(e)(2);
4. Offer a method for relatives and other individuals submitting information to the juvenile court to keep their addresses and telephone numbers confidential, as permitted by law, with *Confidential Information* (form JV-287).
5. Incorporate the requirement in Welfare and Institutions Code section 309(e)(2)³ that the social worker distribute a copy of *Relative Information* (form JV-285) to each relative identified and located as a result of the investigation required by section 309(e)(1);
6. Establish a procedure for the agency to report to the court on the nature and results of its required family-finding investigation; and

² See Welf. & Inst. Code, §§ 202, subds. (a)–(b); 300.2; Judicial Council of Cal./Admin Off. of Cts., *Operational Plan for California's Judicial Branch, 2008–2011*, at 38 (2008).

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

7. Establish a procedure for the juvenile court to consider whether the agency has used due diligence in conducting its investigation to identify, locate, and notify relatives, and affirm the court’s authority to order the agency to conduct such an investigation.

The text of the proposed rules and forms is attached at pages 10–17.

Previous Council Action

In response to section 103 of the federal Fostering Connections to Success and Increasing Adoptions Act, which requires states to exercise due diligence to identify, locate, and notify adult relatives within 30 days of a child’s removal from parental custody,⁴ the Judicial Council in 2009 sponsored AB 938. The council sought to improve outcomes for children in foster care by seeking to ensure that children removed from their homes can maintain connections with and be cared for by loving family members. AB 938 amends sections 309(e) and 628(d) and was enacted into law, effective January 1, 2010. This proposal would implement the requirements of AB 938.

Rationale for Recommendation

This proposal seeks to implement the legislative policies and purposes of sections 309(e) and 628(d), in the context of the statutory scheme set forth in division 2, part 1, chapter 2 (Juvenile Court Law). In particular, the proposal incorporates and clarifies statutory mandates that seek to preserve a dependent or delinquent child’s connections to his or her families and communities by requiring social workers and probation officers to identify, locate, and notify relatives when a child is removed from the home as the result of a juvenile dependency or delinquency petition. The proposal suggests a procedure for the agency to document and report to the court on its investigation to identify, locate, and notify the child’s relatives. The proposal also requires the juvenile court to determine at the disposition hearing whether the social worker has used due diligence in conducting the investigation to identify, locate, and notify the relatives. The circulated version of this proposal raised a number of concerns, discussed below. The committee has carefully considered these concerns and modified the proposal accordingly, as discussed at pages 7–9.

Statutory background

The proposal responds to the broad mandates of the Juvenile Court Law that children removed from their parents receive “care, treatment, and guidance consistent with their best interest and the best interest of the public” (§ 202(b)); that the care, custody, and discipline afforded these children be “as nearly as possible equivalent to that which should have been given by his or her parents” (§ 202(a)); and that the focus of child-welfare efforts be on the “preservation of the family as well as the safety, protection, and physical and emotional well-being of the child” (§ 300.2).

⁴ Pub. L. No. 110-351, § 103 (Oct. 7, 2008) 122 Stat. 3949, 3956, codified at 42 U.S.C. § 671(a)(29).

This proposal also specifically implements AB 938, which amended sections 309(e) and 628(d) to require that when a child is removed from his or her parents, the child’s social worker or probation officer must identify, locate, and notify within 30 days the child’s adult relatives as defined in section 319(f)(2). (§§ 309(e)(1); 628(d)(2).) Section 309(e)(1) implements the principal requirement of the federal Act, and section 628(d)(2) extends that requirement to delinquent children at risk of entering foster care.

AB 938 both tracks and expands on the federal act by requiring the social worker or probation officer to notify located relatives that the child has been removed from a parent and to explain the various options available to participate in the care and placement of the child and to support the child’s family.⁵ In an element unique to California, section 309(e)(2) requires that, on or after January 1, 2011, the agency give notified relatives a form to provide the agency and the court with information about the child’s status and needs as well as the responding relative’s willingness and ability to provide support during the reunification process or to remain in the child’s life should reunification fail. Section 309(e)(2) directs the Judicial Council, in consultation with the California Department of Social Services (CDSS) and the County Welfare Directors Association of California (CWDA),⁶ to develop this form. Amendments to section 628(d) extend analogous, though not identical, requirements to children at risk of foster care placement in juvenile delinquency cases. Finally, AB 938 also implements federal requirements that social workers and probation officers use due diligence in their investigations to identify, locate, and notify relatives when planning for the child’s out-of-home or permanent placement.⁷

Requirements of the proposed rules and forms

The proposed rules and forms implement AB 938’s requirements that the social worker or probation officer identify and locate a child’s relatives within 30 days of the child’s removal from the home and notify located relatives of certain statutorily specified information. The social worker must also give each located relative a copy of the *Relative Information* form to solicit information about the child’s health and education and the relative’s ability to act as resources for the child or family. The proposed rules and forms, which specifically require the agency to identify, locate, and notify relatives, promote the purposes of AB 938 and the Juvenile Court Law.

Identifying and locating relatives (rule 5.637).

⁵ §§ 309(e)(1)(A)–(B); 628(d)(2)(A)–(B). In particular, the requirement that the social worker or probation officer explain to relatives their options to “support the child’s family” expands on the requirements of the federal act. (*Cf.* 42 U.S.C. § 671(a)(29)(B).)

⁶ CWDA is a professional association comprising the directors of California’s 58 county social services agencies or their representatives. In addition to consulting with CWDA as required by section 309(e)(2) on the development of the *Relative Information* form, the committee also consulted with the CWDA Children’s Committee on the content of the rules. Many of their concerns were addressed in adjustments to the rules before circulation for comment. CWDA also provided extensive comments and legal analysis on the rules and forms proposal that circulated for comment. Those comments are addressed later in this report and on the comment chart.

⁷ 42 U.S.C. § 671(a)(29); Welf. & Inst. Code §§ 309(e)(3), 628(d)(3).

Rule 5.637(a) reiterates the requirements in sections 309(e)(1) and 628(d)(2) that the agency conduct an investigation to identify and locate a child's family members within 30 days of removal. Removal from the home is inevitably traumatic for a child, no matter how serious the abuse or neglect suffered before removal. When a child is taken into protective custody or placed in foster care, that child is removed from more than his or her parents. Without the investigation required by the federal Act and AB 938 and the judicial oversight implemented by this proposal, the child can become disconnected from his or her siblings, extended family, school, friends, and community, in short, her entire life as she has known it. AB 938's amendments to sections 309(e) and 628(d) indicate a legislative intent to mitigate these hardships on children already subject to abuse and neglect. Rule 5.637(b) includes an important exception to the duty to notify, excusing the agency of this duty if a "relative's history of family or domestic violence makes notification inappropriate." (§ 309(e)(1).)

Initial Contact and Notification of Relatives (rule 5.534(f); forms JV-285 & JV-287).

Proposed amendments to rule 5.534(f) give relatives the right to submit information about the child to the court at any time and, to this end, describe the documents that the social worker or probation officer must give to the relative during their initial contact, including: the written notice required by sections 309(e)(1)(B) and 628(d)(2)(B), a copy of *Relative Information* (form JV-285) required by section 309(e)(2), and a copy of form JV-287, *Confidential Information*. In addition, because many relatives might lack the full information necessary to identify a child's case for accurate filing, the rule requires the social worker to fill in caption information such as the court address, child's name, and case number before giving the *Relative Information* form to a relative.

As noted above, section 309(e)(2) requires the Judicial Council to create an information form to be given to any located relative in a dependency case, beginning January 1, 2011. The purposes of the form are to give relatives a convenient tool to report important information about the child to the social worker and the court, to indicate ways they can provide support and connections to the child and family and to express any desire they may have to address the court. The proposed *Relative Information* (form JV-285) serves these purposes.

Often, for reasons of safety or privacy, relatives in juvenile court want to keep their addresses and other personal information from the parents. The proposed *Confidential Information* (form JV-287) would allow a relative to provide information to the court and agency while keeping this information confidential. Over the years, courts have pointed out that other juvenile forms should allow for filing without revealing contact information and addresses. Although the corresponding rules for these forms are not being changed at this time, proposed form JV-287 indicates on its face that it can be used to keep information confidential in conjunction with a number of other forms, such as *Application and Affidavit for Restraining Order* (form JV-245), *Caregiver Information Form* (form JV-290), and *De facto Parent Request* (form JV-295), if applicants want to keep information confidential.

Additional amendments to rule 5.534(f) would establish a filing process for form JV-285, requiring the clerk's office to distribute copies of that form or any relative's letter received to all attorneys and unrepresented parties. The committee recognizes the burden that this expansion of duties will place on court staff and has considered whether any other method of distribution would relieve that burden. But because family members may submit these forms at any time to whomever they may have contact—whether it be the social worker, Court-Appointed Special Advocate (CASA), child's attorney, or someone else—the court clerk's office is the only natural clearinghouse that can ensure distribution to all parties.⁸

Documentation in the dispositional report (rule 5.690(a)).

To provide a sufficient factual basis for the court's family finding determinations, the proposed rules direct the agency to include information regarding its efforts to identify, locate, and notify relatives in its dispositional report to the court. Proposed amendments to rule 5.690(a)(1)(C) describe important elements of the report's discussion of the agency's efforts to identify and locate the child's relatives and the results of its investigation. Proposed rule 5.690(f) would allow the court, if the dispositional hearing must be continued, to set a special hearing to consider the agency's report on its family-finding efforts.

Judicial findings (rule 5.695(f), (g)).

Sections 309(e) and 628(d) require the social worker and probation officer to identify, locate, and provide notification to all the child's relatives as defined in section 319(f)(2) within 30 days. To allow the court to exercise oversight of these duties, the proposed rules require findings at the disposition hearing. The proposed amendments to rule 5.695, which governs findings and orders at the disposition hearing, require the court to determine whether the agency has made diligent efforts to identify, locate, and notify the child's relatives. Proposed rule 5.695(g) provides examples of activities that the court may consider when reviewing the diligence of the agency's efforts.

Definition of terms (rule 5.502).

Sections 309(e)(1) and 628(d)(2) incorporate section 319, which defines relatives as “adults related to the child by blood, adoption, or affinity within the fifth degree of kinship.” The proposed amendments to the definition of “relatives” in rule 5.502(28) track the requirements in section 319 and specify those relationships that fall within the fifth degree of kinship. (*See generally* Prob. Code § 13.) Because the Indian Child Welfare Act, as incorporated into state law, defines tribal “extended family members” to include relatives (§ 224.1(b); 25 U.S.C. § 1903) and requires the juvenile court to “give full faith and credit to the public acts, records,

⁸ Because relatives may provide information at any stage of a child's case, the form will not necessarily be filed in conjunction with a hearing date. There is no mechanism in the proposed rules for setting a hearing on every *Relative Information* form filed. The committee contemplates that, in the unlikely event that the information in a *Relative Information* form warrants a special hearing, any interested person may file a section 388 petition to request a hearing, or the court may set a hearing on its own motion.

judicial proceedings, and judgments” of an Indian tribe (§ 224.5; 25 U.S.C. § 1911(d)), the proposed amendments also incorporate tribal extended family members into the rule’s definition of “relatives.”

Findings and orders on Judicial Council forms.

As discussed above, the proposed amendments to rule 5.695 require new or modified findings at the disposition hearing. The language of these findings is included in the proposed amendments. The findings are also detailed on optional Judicial Council forms JV-420 and JV-421 for orders after the disposition hearing. Because these forms also require extensive additional updates outside the scope of this proposal to bring them into compliance with current law, they have been submitted separately as part of the report entitled *Juvenile Dependency Law: Findings and Orders After Hearing and Termination of Juvenile Court Jurisdiction*.⁹

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment as part of the spring 2010 invitation to comment cycle. The circulated proposal included requirements for ongoing family-finding and engagement activities. Fifteen individuals or organizations submitted comments.¹⁰ Two commentators agreed with the proposal. Five commentators agreed contingent on its modification. Five commentators disagreed with the proposal. The remaining three commentators did not indicate specific positions, but a fair assessment of their remarks suggests that two agreed with the proposal contingent on its modification, while one disagreed. Of those who disagreed with the proposal, CWDA raised the most numerous and significant concerns. CWDA’s response was separately endorsed by in the comments of the Kern County Department of Social Services and the Orange County Bar Association, and most other commentators echoed at least some of CWDA’s concerns. CWDA also submitted legal analysis,¹¹ which referenced the support of numerous county counsels, as well as the County Counsels’ Association of California. Partly in response to these concerns, the committee extensively revised the proposed rules and withdrew one of the originally proposed forms.

The chief concern expressed by commentators, including CWDA, was that certain elements of the circulated rules and forms exceeded the family-finding requirements of AB 938.¹² Given

⁹ The forms and items relevant to family finding in the companion proposal are JV-420, *Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent*, item 7; and JV-421, *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent*, item 7.

¹⁰ A chart providing the full text of the comments and the committee responses is attached at pages 18–57.

¹¹ The complete text of CWDA’s comment and legal analysis is attached at pages 64–79.

¹² Concerns also arose about the authority of the Judicial Council to adopt rules of court that impose duties beyond those expressly mandated by statute. Although the committee notes that the authority granted the Judicial Council by Article VI, section 6, of the California Constitution includes authority to add to existing statutory requirements (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1010–13; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 946 (a rule of court may be broader than the literal terms of a statute provided it reasonably furthers the statutory purpose); *Butterfield v. Butterfield* (1934) 1 Cal.2d 227 (going beyond what is contained in a statute does not make a rule inconsistent with the statute)), the committee has restricted the scope of this proposal to those requirements specifically required by statute in light of the uncertain fiscal climate and the serious nature of concerns raised about the burden that any mandated family finding and engagement duties could impose on child welfare agencies.

recent budget cuts, commentators also expressed concern about the financial burden that the proposed requirements would have imposed. In recognition of the exigencies of the current political and fiscal climate, the committee now recommends restricting the scope of the proposal so that it simply implements the specific requirements of AB 938, with the additional recommendation that the agency discuss its family finding investigation in the social study prepared for the disposition hearing and the requirement that the juvenile court consider whether the agency conducted the investigation and used due diligence in so doing.

Identifying and locating relatives (rule 5.637).

Many commentators objected to the circulated proposal's requirement that social workers and probation officers make ongoing efforts to identify, locate, and notify relatives. CWDA pointed out that the statute requires the family-finding investigation to be completed within 30 days of the child's removal, after which the statute contains no express provision for an ongoing investigation. The statute also requires that relatives be notified within 30 days of the child's removal. The committee has stricken from its recommendation all requirements of ongoing efforts. The proposal now requires only that the agency use due diligence to conduct an investigation to identify, locate, and notify a child's relatives within 30 days of the child's removal.

Commentators, including CWDA, also objected that the circulated proposal, without statutory authorization, required social workers to engage the child's relatives "until the case is dismissed or the child is in a placement willing to adopt or accept legal guardianship of the child." CWDA noted that the statute imposed no express duties on the agency following the initial investigation and notification. The committee omitted all requirements that the agency continue to engage relatives located as a result of its family-finding investigation.

Some commentators objected that the proposal's requirement to engage individuals important to the child was, to the extent authorized, redundant, and to the extent not redundant, unauthorized. CWDA noted that sections 366(a)(1)(B), 366.1(g), and 366.21(c) already require the agency to make efforts to encourage relationships between a child 10 years of age or older and individuals important to that child. The committee has deleted the proposed definition of important individuals from rule 5.502 and stricken all references to engagement from the entire proposal.

Documentation in agency reports.

CWDA and others objected that the circulated proposal's requirement for the agency to report on its family-finding investigation, even at the disposition hearing, would be inconsistent with legislative intent. They point to the fact that, as introduced, AB 938 would have required the agency to report on its investigations, but this requirement was removed from the bill before its enactment. A bill introduced earlier this year, AB 1852, would have also required the agency to report its family-finding efforts and investigation results, but this bill did not pass out of committee. This committee has modified the proposed amendment to rule 5.690(a)(1)(C) to recommend ("should") rather than mandate ("must") a discussion of the family-finding investigation in the agency's dispositional report. The committee has withdrawn all requirements that the agency document its efforts in status review reports.

Judicial findings and orders.

Commentators' objections to ongoing-effort, engagement, and reporting requirements, and the committee's decision to strike or modify these requirements, also led the committee to withdraw proposed amendments to rules 5.708 and 5.810, which respectively govern the conduct of post-dispositional status review hearings in dependency and delinquency cases. The proposal no longer requires the court to make new findings and orders at status review hearings.

Judicial Council forms.

Many of the above elements, in particular the reporting requirements, were initially implemented with a third form, *Family Finding Report to the Court*. Commentators almost unanimously opposed this form as well as the proposed requirement that it be filed at every review hearing. Given the modifications already discussed, the committee withdrew this proposed form.

Impact of relative placement on family finding and engagement.

The committee sought comment on whether the rule should treat children already placed with relatives differently from those not placed with relatives. Before the proposal was circulated for comment, CWDA expressed doubts that sections 309(e) and 628(d) even permitted agency family-finding efforts on behalf of children already placed with relatives. But most commentators, including CWDA, were overwhelmingly in favor of giving the full benefit of the process to both categories of children. The committee concurs. The statute does not distinguish between placement types. Although the urgency to find better placements for those children already placed with relatives may be less than for those placed with nonrelative foster families, the committee believes the benefits of family finding extend beyond physical placement to encompass securing support and lifelong connections for the child. The committee also recognizes that circumstances can change and an initial placement with a relative does not guarantee a lasting placement or connection with that relative or any other. Balanced against such a possible change of circumstances, the committee believes that collecting all available information at the beginning of a case will save incalculable costs and efforts later.

The committee received many other comments of a detailed or technical nature that have been addressed in the proposed rules and are discussed in the accompanying comment chart.

Implementation Requirements, Costs, and Operational Impacts

The proposed rules impose a duty on court staff to copy and distribute the *Relative Information* forms as they are submitted, increasing staff workload to an extent to be determined. The committee explored other channels for distributing these forms, but none proved adequate. The submission of a *Relative Information* form may necessitate an occasional special hearing. The proposal recommends that agency staff document their investigation in the dispositional report.

Attachments

1. Cal. Rules of Court, rules 5.502, 5.534, 5.637, 5.690, and 5.695, at pages 10–15.
2. Forms JV-285 and JV-287, at pages 16–18.
3. Chart of comments, at pages 19–59.
4. Assembly Bill 938, as chaptered, at pages 60–66.
5. CWDA comment and legal analysis, at pages 67–81.

California Rules of Court, rule 5.637 is adopted; rules 5.502, 5.534, 5.690, and 5.695 are amended, effective January 1, 2011, to read as:

1 **Rule 5.502. Definitions and use of terms**

2
3 Definitions (§§ 202(e), 319, 361, 361.5(a)(3), 628.1, 636, 726, 727.3(c)(2), 727.4(d); 20
4 U.S.C. § 1415; 25 U.S.C. § 1903(2))

5
6 As used in these rules, unless the context or subject matter otherwise requires:

7
8 (1)–(27) ***

9
10 (28) “Relative” means

11
12 (A) An adult who is related to the child by blood, adoption, or affinity within the
13 fifth degree of kinship. This term includes:

14
15 (i) A parent, sibling, grandparent, aunt, uncle, nephew, niece, great-
16 grandparent, great-aunt or -uncle (grandparents’ sibling), first cousin,
17 great-great-grandparent, great-great-aunt or -uncle (great-grandparents’
18 sibling), first cousin once removed (parents’ first cousin), and great-
19 great-great-grandparent;

20
21 (ii) including A stepparents, or stepsiblings; and

22
23 (iii) The spouse or domestic partner of any of these the persons described in
24 subparagraphs (A)(i) and (ii), even if the marriage or partnership was
25 terminated by death or dissolution; or

26
27 (B) An extended family member as defined by the law or custom of an Indian
28 child’s tribe. (25 U.S.C. § 1903(2).)

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30 (29)–(35) ***

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32
33 **Rule 5.534. General provisions—all proceedings**

34
35 (a)–(e) ***

36
37 (f) **Relatives**

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39 (1) On a sufficient showing, the court may permit relatives of the child to:

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41 (1)(A) Be present at the hearing; and

42
43 (2)(B) Address the court.

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- (2) Relatives of the child have the right to submit information about the child to the court at any time. Written information about the child may be submitted to the court using *Relative Information* (form JV-285) or in a letter to the court.

- (3) When a relative is located through the investigation required by rule 5.637, the social worker must give that relative:
 - (A) The written notice required by section 309 and the “Important Information for Relatives” document as distributed in California Department of Social Services All County Letter No. 09-86;

 - (B) A copy of *Relative Information* (form JV-285), with the county and address of the court, the child’s name and date of birth, and the case number already entered in the appropriate caption boxes by the social worker; and

 - (C) A copy of *Confidential Information* (form JV-287).

- (4) When form JV-285 or a relative’s letter is received by the court, the court clerk must provide the social worker, all unrepresented parties, and all attorneys with a copy of the completed form or letter.

- (5) When form JV-287 is received by the court, the court clerk must place it in a confidential portion of the case file.

(g)–(p) ***

Advisory Committee Comment

Because the intent of subdivision (m) is to expand access to the courts for caregivers of children in out-of-home care, the rule should be liberally construed. To promote caregiver participation and input, judicial officers are encouraged to permit caregivers to ~~verbally~~ orally address the court when caregivers would like to share information about the child. In addition, court clerks should allow filings by caregivers even if the caregiver has not strictly adhered to the requirements in the rule regarding number of copies and filing deadlines.

1 **Rule 5.637. Family Finding (§§ 309(e), 628(d))**

2
3 **(a)** Within 30 days of a child’s removal from the home of his or her parent or guardian,
4 if the child is in or at risk of entering foster care, the social worker or probation
5 officer must use due diligence in conducting an investigation to identify, locate,
6 and notify all the child’s adult relatives.

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8 **(b)** The social worker or probation officer is not required to notify a relative whose
9 personal history of family or domestic violence would make notification
10 inappropriate.

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12
13 **Advisory Committee Comment**

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15 This rule restates the requirements of section 103 of the federal Fostering Connections to Success
16 and Increasing Adoptions Act (Pub. L. No. 110-351, § 103 (Oct. 7, 2008) 122 Stat. 3949, 3956,
17 codified at 42 U.S.C. § 671(a)(29)) as implemented by California Assembly Bill 938 (Com. on
18 Judiciary; Stats. 2009, ch. 261, codified at Welf. & Inst. Code §§ 309(e) and 628(d)). These
19 statutes enacted elements of the child welfare practice known as Family Finding and Engagement,
20 which has been recommended to improve outcomes for children by the Judicial Council’s
21 California Blue Ribbon Commission on Children in Foster Care and the California Child Welfare
22 Council. (See Cal. Blue Ribbon Com. on Children in Foster Care, *Fostering a New Future for*
23 *California’s Children*, pp. 30–31 (Admin. Off. of Cts., May 2009) (final report and action plan),
24 www.courts.ca.gov; *Permanency Committee Recommendations to the Child Welfare Council*, pp.
25 1–4 (Sept. 10, 2009), www.chhs.ca.gov.)

26
27
28 **Rule 5.690. General conduct of disposition hearing**

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30 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5)**

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32 The petitioner must prepare a social study of the child, ~~including~~ The social study
33 must include a discussion of all matters relevant to disposition and a
34 recommendation for disposition.

35
36 (1) The petitioner must comply with the following when preparing the social
37 study:

38
39 (A) If petitioner recommends that the court appoint a legal guardian,
40 petitioner must prepare an assessment under section 360(a), to be
41 included in the social study report prepared for disposition or in a
42 separate document.
43

- 1 (B) If petitioner recommends removal of the child from the home, the
2 social study must include:
3
4 (i) A discussion of the reasonable efforts made to prevent or
5 eliminate removal and a recommended plan for reuniting the
6 child with the family, including a plan for visitation;
7
8 (ii) A plan for achieving legal permanence for the child if efforts to
9 reunify fail; and
10
11 (iii) A statement that each parent has been advised of the option to
12 participate in adoption planning and to voluntarily relinquish the
13 child if an adoption agency is willing to accept the
14 relinquishment, and the parent's response.

15
16 (C) The social study should include a discussion of the social worker's
17 efforts to comply with rule 5.637, including but not limited to:

- 18
19 (i) The number of relatives identified and the relationship of each to
20 the child;
21
22 (ii) The number and relationship of those relatives described by item
23 (i) who were located and notified;
24
25 (iii) The number and relationship of those relatives described by item
26 (ii) who are interested in ongoing contact with the child; and
27
28 (iv) The number and relationship of those relatives described by item
29 (ii) who are interested in providing placement for the child.
30

31 ~~(D)~~ If petitioner alleges that section 361.5(b) applies, the social study
32 must state why reunification services should not be provided.

33
34 ~~(D)~~(E) All other relevant requirements of sections 358 and 358.1.
35

- 36 (2) The petitioner must submit the social study and copies of it to the clerk at
37 least 48 hours before the disposition hearing is set to begin, and the clerk
38 must make the copies available to the parties and attorneys. A continuance
39 within statutory time limits must be granted on the request of a party who has
40 not been furnished a copy of the social study in accordance with this rule.

41 (b)-(c) ***
42
43

1 **Rule 5.695. Findings and orders of the court—disposition**

2
3 (a)–(e) ***

4
5 **(f) Family-finding determination**

6
7 (1) The court must consider whether the social worker has used due diligence in
8 conducting the investigation to identify, locate, and notify the child’s
9 relatives. The court may consider as examples of due diligence the activities
10 listed in subdivision (g) of this rule.

11
12 If the disposition hearing is continued, the court may set a hearing at any time
13 after 30 days from the date of removal to consider whether the social worker
14 has used due diligence in conducting the investigation to identify, locate, and
15 contact the child’s relatives.

16
17 (2) The court must make one of the following findings:

18
19 (A) The social worker has used due diligence in conducting its
20 investigation to identify, locate, and notify the child’s relatives; or

21
22 (B) The social worker has not used due diligence in conducting its
23 investigation to identify, locate, and notify the child’s relatives. If the
24 court makes this finding, the court may order the social worker to use
25 due diligence in conducting an investigation to identify, locate, and
26 notify the child’s relatives—except for any individual the social worker
27 identifies who is inappropriate to notify under rule 5.637(b)—and may
28 require a written or oral report to the court at a later time.

29
30 **(g)** When making the finding required under paragraph (f)(2) of this rule, the court may
31 consider, among other examples of due diligence to identify, locate, and notify the
32 child’s relatives, whether the social worker has done any of the following:

33
34 (1) Asked the child, in an age-appropriate manner and consistent with the child’s
35 best interest, about his or her relatives;

36
37 (2) Obtained information regarding the location of the child’s relatives;

38
39 (3) Reviewed the child’s case file for any information regarding relatives;

40
41 (4) Telephoned, e-mailed, or visited all identified relatives;

42
43 (5) Asked located relatives for the names and locations of other relatives;

- 1 (6) Used Internet search tools to locate relatives identified as supports; or
2
3 (7) Developed tools, including a genogram, family tree, family map, or other
4 diagram of family relationships, to help the child or parents to identify
5 relatives.
6
7 ~~(f)-(j)~~ (h)-(l) ***

Clerk stamps date here when form is filed.

**DRAFT 9 10/15/10 mc
Not Approved by the
Judicial Council**

Social worker fills in court name and street address:

Superior Court of California, County of

Social worker fills in child's name and date of birth:

Child's Name:

Date of Birth:

Social worker fills in case number:

Case Number:

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out the *Confidential Information* (form JV-287) and do not write your address or telephone number below.

① Your name: _____
Your address: _____

Your telephone number: _____

Check here if contact information is confidential and form JV-287 is attached.

② Your relation to the child: maternal paternal
 grandparent brother/sister aunt/uncle cousin
 family friend
 tribal extended family member
 other (specify): _____

③ Child's name: _____

④ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

⑤ Information about the child's medical, dental, and general physical health:

⑥ Information about the child's emotional and behavioral health:

⑦ Information about the child's education:

⑧ Other information that might be helpful to the court:



Child's name: _____

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

9 I want to

- telephone the child.
- write letters to the child.
- take the child on outings.
- take the child to/from school.
- take the child to visits with brothers or sisters.
- take the child to therapy.
- take the child to family gatherings.
- help the social worker make a case plan for the child.
- take the child to visits with parents.
- take the child to medical appointments
- supervise the child during visits with brothers or sisters.
- watch the child after school.
- have the child live with me.
- other (describe): _____

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

10 I want to help the father mother

(Describe): _____

11 Other relatives who might be able to help the child:

- a. Name: _____ Relationship to child: _____
 Contact information: _____
 or I want to keep the contact information confidential and ask that the child's social worker get this information from me.
- b. Name: _____ Relationship to child: _____
 Contact information: _____
 or I want to keep the contact information confidential and ask that the child's social worker get this information from me.
- c. Name: _____ Relationship to child: _____
 Contact information: _____
 or I want to keep the contact information confidential and ask that the child's social worker get this information from me.

12 If you need more space to respond to any section on this form, please check this box and attach additional pages.

Number of pages attached: _____

Date: _____

Type or print your name

Sign your name

This form is used to keep contact information confidential. It may be used along with any Judicial Council Juvenile Court form, including *Request to Change Court Order* (form JV-180), *Application and Affidavit for Restraining Order* (form JV-245), *Relative Information* (form JV-285), *Caregiver Information Form* (form JV-290), and *De Facto Parent Request* (form JV-295).

You do not need to fill out this entire form, only the information that you know.

① Your name: _____
 Your telephone number: _____
 Your address: _____

② Child's name: _____
 Child's telephone number, if known: _____
 Child's address, if known: _____

③ If known:
 Child's Indian custodian, if any (*name each*): _____
 Custodian's telephone number: _____
 Custodian's address: _____

④ If known:
 Child's caregiver (*name each*): _____
 Caregiver's telephone number: _____
 Caregiver's address: _____

Clerk stamps date here when form is filed.

DRAFT 9 10/13/10 mc
Not approved by the
Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Clerk fills in case number when form is filed:

Case Number:

SPR10-33

Juvenile Law: Family Finding and Engagement (adopt Cal. Rules of Court, rule 5.637; amend rules 5.502, 5.534, 5.690, and 5.695; approve Judicial Council forms JV-285 and JV-287)

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

	Commentator	Position	Comment	Committee Response
1.	Kelly Lynn Beck, J.D. Trainer Seneca Center	NI	<p>Invitation to Comment: “...garnered through child and family interviews ... and often involve use of Internet search...” Information can be garnered through other means such as: Family Team Meetings, Family Group Conferencing or conversations/interviews with non-related extended family members, neighbors, school personnel and other important connections.</p> <p>“...to identify and contact adult relatives up in the fifth degree within 30 days.” Should read: “identify and contact adult relatives up to and including the fifth degree within 30 days of the date of removal.” (Note: Should you define whether it is physical removal vs. court ordered removal? Do we need to define “days”?)</p> <p>“The committee is concerned, however, that the juvenile court have all of the information it needs to make the required findings in a timely manner...” This section refers to the FFE efforts and reporting those on the JV-130, including a narrative. Is there anything prohibiting oral testimony at the hearing? The SW is required to attend; if the court needs the information to make the findings, the SW should be allowed to provide oral testimony.</p> <p>JV-130 as mandatory. Agree with adopting as</p>	<p>This paragraph simply describes a typical search and neither prescribes nor prohibits any particular search method. The committee contemplates that the methods suggested by the commentator could be used as part of the search for relatives and does not, by mentioning other methods, intend to exclude these suggested methods from use.</p> <p>The committee has inserted “of removal” into the report to make it consistent with AB 938 and proposed rule 5.637(a). The committee believes that neither defining “days” nor distinguishing physical from court-ordered removal is necessary in the context of the current statutory and regulatory scheme governing child welfare practice.</p> <p>There is no prohibition on receipt of oral testimony at the hearings.</p> <p>The committee has reconsidered the prudence of</p>

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	Commentator	Position	Comment	Committee Response
			<p>mandatory with the notation that the Court can make further inquiry and follow up questioning at the time of the hearing.</p> <p>JV-285—<i>Relative Information Form</i>: Would there be a form available if a relative cannot provide support or participate in finding permanency for the youth at this time – but perhaps would like to be contacted later?</p> <p>Relative Placements: Committee seeks comment on whether rules should apply differently to children who are placed with relatives. Family finding efforts should be the same for relative placement cases. Relatives that are not connected with the youth should be</p>	<p>requiring documentation of the agency’s efforts in a specific format on a mandatory form and now withdraws its recommendation of form JV-130 from the proposal. To ensure that the court receives adequate information upon which to base a finding of diligent efforts, the committee now proposes that the Judicial Council amend Cal. Rules of Court, rule 5.690, as suggested in footnote 6 of the Invitation to Comment, to detail the information that should be included in the family finding narrative in the agency’s social study or report. Regardless whether written documentation of diligent efforts to identify, locate, and notify relatives is submitted or the form of that submission, there is no prohibition on receipt of oral testimony at the hearings.</p> <p>The committee considers form JV-285 sufficient for this purpose. If a relative is not willing or able to provide support, placement, or connection for the child in the early stages of the proceedings, but remains open to the possibility of later contact, he or she can fill out the form, provide contact information, and indicate a desire for later contact in item 9 while leaving the rest of item 9 blank.</p> <p>The committee agrees that, because the benefits of family finding and engagement extend beyond placement to include securing lifelong support and connections for the child, such efforts should apply equally to children placed with relatives and children placed in other settings. The</p>

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	Commentator	Position	Comment	Committee Response
			<p>found and at a minimum their contact information should be available to the youth (if safe) – in the event he/she is moved from relative placement, ages out of the system or wants to re-connect/connect with those relatives while in relative care. This will necessitate additional training and education/preparation for the relative caregivers. It is important to note also that if the permanent plan is [long-term placement], we still need a more permanent goal – Guardianship, Adoption, etc. Family finding/important connections should be ongoing throughout the life of the case – perhaps alleviating the need for continued PPLA – respite, support for relative caregivers. This could be termed “concurrent planning.”</p> <p>Rule 5.502 Definitions: “(18) ‘Important Individual’ means...” Should this read: Important individual means an adult (person over 18 years of age), whom has a significant, positive connection...or whom the youth has identified as an important connection... (e.g., neighbor, coach, godparents, friends, etc)?</p> <p>“(28) ‘Relative’ means...” It would be easier to provide a grid – showing the levels of relationships or to provide a family tree for relatives to fill out.</p>	<p>committee also agrees that circumstances can change and that initial placement with a relative does not guarantee lasting placement or connection with that or another relative. In the event of such a change of circumstances, the committee believes that collecting all available relative information at the beginning of a case would save incalculable costs and efforts later in the case.</p> <p>In response to objections by other commentators, the committee has withdrawn this element of the proposal.</p> <p>The committee has concluded that setting forth these relationships in the form of a grid would be incompatible with the format of the rules of court. As proposed, the definition clarifies, while remaining consistent with, the language of Welf.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Rule 5.534(f): “Relatives ... (B) address the court” Should this say: “provide verbal information to the court”?</p> <p>“Relatives ... (3) ... the social worker must give the relative: ...” Should this say, “at a minimum, the social worker must give the relatives ... or”?</p> <p>Advisory Committee Comment: “[J]udicial officers are encouraged to permit caregivers to verbally address the court” Note: although this seems appropriate, sometimes the caregiver can address the court with negative information either about the youth or the parent. Should we have a safeguard/focused discussion such as: “...address the court regarding current health, education or</p>	<p>& Inst. Code § 319(f)(2). If this definition of “relative” continues to prove confusing, the committee would entertain proposals further to clarify it in cooperation with its partners in the child welfare community.</p> <p>The committee believes that the suggested language might unnecessarily limit the scope of the relative’s remarks to the court. Because limiting the scope of a caregiver’s remarks to the court is a substantive change to the regulatory scheme, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during the next rules cycle.</p> <p>The committee believes that, in the context of providing comprehensive information to relatives, requiring the distribution of the specified documents implies that distributing additional documents is permitted. No new language is required.</p> <p>The committee has not recommended modifying the advisory committee comment regarding caregivers in this proposal. Because limiting the scope of a caregiver’s remarks to the court is a substantive change to the regulatory scheme, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during the next rules cycle.</p>

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	Commentator	Position	Comment	Committee Response
			<p>placement concerns,” or – right to cross or ask clarifying questions?</p> <p>Rule 5.637(a): “Within 30 days of removal” Should we define removal as physical removal from parent/guardian?</p> <p>Rule 5.637(d): “The agency must submit [the JV-130] at the dispositional hearing” Should this say, “the agency must submit ... no later than the dispositional hearing?</p> <p>“(2) The number of people contacted” Should we list “how they were contacted” (i.e., phone, in person, mail)?</p>	<p>The committee believes that, in the context of the current statutory and regulatory scheme governing child welfare practice, “removal” is commonly understood to mean removal from the home of the parent or guardian. The committee recommends adding language to the rule to make this clear.</p> <p>The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency’s family finding efforts earlier than the continued disposition hearing.</p> <p>Proposed rule 5.637 no longer requires submission of a form. Proposed amendments to rule 5.690, as circulated in footnote 6 to the Invitation to Comment, establish minimum information that the agency should include in its</p>

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	Commentator	Position	Comment	Committee Response
			<p>“(3) The number of people interested in ongoing contact . . .” Should this say, “the number of people interested in ongoing contact or who are willing to participate in permanency planning meetings with the youth...”?</p> <p>“(4) The number of people interested in placement of the child.” Should this section and others have extra spaces for follow up? May not be interested at this time, but a later time? Insert a blank for the date of initial contact.</p> <p>Rule 5.637(e): “...at each review hearing....” Should this say “every 6 months”? What if review hearing is scheduled for trial or is continued for another reason? The form should still be submitted.</p> <p>“(3) The number of people contacted by the agency....” Should we include “...by the agency and any other professionals or individuals”? Others can be looking and</p>	<p>report, but do not restrict the information that the agency may provide.</p> <p>Proposed rule 5.637 no longer requires submission of a form. Proposed amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, establish minimum information that the agency should include in its report, but do not restrict the information that the agency may provide.</p> <p>Proposed rule 5.637 no longer requires submission of a form. Proposed amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, establish minimum information that the agency should include in its report, but do not restrict the information that the agency may provide.</p> <p>Proposed rule 5.637 no longer requires submission of a form. Proposed amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, establish minimum information that the agency should include in its report, but do not restrict the information that the agency may provide. The amendments to rule 5.708, which would have required a report at each review hearing, have been withdrawn.</p> <p>Proposed rule 5.637 no longer requires submission of a form. Proposed amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, establish minimum</p>

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Juvenile Law: Family Finding and Engagement (adopt Cal. Rules of Court, rule 5.637; amend rules 5.502, 5.534, 5.690, and 5.695; approve Judicial Council forms JV-285 and JV-287)

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	Commentator	Position	Comment	Committee Response
			<p>contacting as well – rule should not prohibit others from partnering in this process.</p> <p>Rule 5.637(f): “...the court should consider, as examples of diligent efforts ...” This should read: “The court may consider, among other things, the following examples...”</p> <p>Include regular “service of process” efforts such as: telephone directory search at last known whereabouts; basic internet search of name or possible spelling of name; property tax rolls, mailing to last known address; voter registration; DMV search; child support rolls; reverse directory search.</p> <p>Note also: (6) search conducted is based on parent(s) names, not the youth; and (7) ongoing dialogue is important, leave list for youth and relative to complete and return</p> <p>Rule 5.637(g)(1): “Interviewed the family...” Should read: “meaningful dialogue with family members ... with the goal of identifying/agreeing on the importance of identifying supports...” Otherwise, we are back to SW asking questions from a form –</p>	<p>information that the agency should include in its report, but do not restrict the information that the agency may provide. Other professionals and individuals may submit the results of their efforts to the court or the agency. If the information generated by these efforts does not reach the court under the proposed scheme, the committee will consider proposing amendments to the rule in an upcoming cycle.</p> <p>The committee agrees and recommends that language substantially similar to that suggested be inserted in proposed rule 5.695(f) and (g).</p> <p>The committee recommends that the rule not specify this level of detail. As noted above, the efforts and methods listed in rule 5.695(g) are examples and do not preclude any other search methods that the agency might find appropriate.</p> <p>Subdivision 5.637(g) has been withdrawn.</p>

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	Commentator	Position	Comment	Committee Response
			<p>engagement involves much more “case-specific,” thoughtful interchange.</p> <p>(g)(2) “Held team meetings...” Meetings should include the youth when age appropriate and adequate preparation.</p> <p>Rule 5.637(h): “If the disposition hearing is continued...” How will the court know if disposition will be continued? Usually doesn’t happen until date of disposition – so setting 30 days from physical removal can’t be done unless set at time of removal. Can it be required that this be filed at the time of the original date of disposition hearing? This can be filed, even though no actual dispo hearing. Otherwise, will not get done on time or SW can ask for continuance to complete the form. Dispo should be set at time of removal – all present at the hearing will know the date and court can indicate that the form needs to be filed on that date.</p> <p>Rule 5.695(f)(3)(B): What are the consequences if the agency does not make diligent efforts to identify, locate, and contact? Is IV-E funding jeopardized; sanctions; youth returns home? Also, don’t want to set up so hearing can be continued – “the court must order the agency to make diligent efforts” will cause the hearing to be continued. If not follow court’s order, then what?</p>	<p>Subdivision 5.637(g) has been withdrawn.</p> <p>The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency’s family finding efforts earlier than the continued disposition hearing.</p> <p>If the court finds that the agency has not used due diligence, the court may then order the agency to do so. If the agency does not obey the court order, the court may hold the agency or worker in contempt of court.</p>

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Juvenile Law: Family Finding and Engagement (adopt Cal. Rules of Court, rule 5.637; amend rules 5.502, 5.534, 5.690, and 5.695; approve Judicial Council forms JV-285 and JV-287)

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	Commentator	Position	Comment	Committee Response
			<p>Rule 5.715(b)(4)(C): “and also finding that the agency has made diligent efforts to locate an appropriate relative...” Should we include [nonrelative extended family members] or other important individuals identified by the youth and/or others, as possible caregiver? – this language is throughout the proposed rules.</p> <p>Form JV-130: Family Finding Report to Court: Do we have a form that the relatives, youth, or important connections can fill out? Can the attorney or other professionals help their clients to complete and return to the SW and/or court?</p> <p>Item 2.: Second degree: Instead of siblings – brothers and sisters?</p> <p>Form JV-285: Item (4) “I ask to talk to the judge at the next” Suggest: “I would like to talk to the judge at the next court hearing about: _____ (fill in the blank).”</p> <p>(Note: How will these relatives get notice of the hearing and whether or not continued?)</p>	<p>The committee withdraws the recommended amendment to rule 5.715.</p> <p>The committee intends that relatives complete the proposed <i>Relative Information Form</i> (form JV-285) and submit it to the agency or the court. These individuals may seek anyone’s help in completing the form.</p> <p>The committee has withdrawn its recommendation of form JV-130 from the proposal.</p> <p>The committee agrees with this suggestion in part. The committee recommends changing “asks” to “would like” but does not recommend adding a blank for stating the topic(s) to be discussed. The committee does not want relatives to feel that they must restrict in advance the scope of their remarks to the court.</p> <p>The social worker will notify located relatives of the child’s removal using the required “Relative Cover Letter” developed by the California Department of Social Services (CDSS) under Welf. & Inst. Code § 309(e)(1). This letter</p>

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	Commentator	Position	Comment	Committee Response
			<p>Item (5) “Current status...” Suggest: “Any information you have about the child’s current status of”</p> <p>Item (6) “Current status...” Suggest: “Any information you have about the child’s current status of...”</p> <p>Item (7) “Current status...” Suggest: “any information you have about the current status of how the child is doing in school, etc. (give examples?)”</p> <p>Item (9) “I want to:” Add box: “<input type="checkbox"/> help the social worker and youth in planning future events such as education, where the youth will live, etc.”</p>	<p>includes the name, address, phone number, and email address of both the social worker and supervisor. In addition, each county welfare department must “create and make public a procedure by which relatives ... may identify themselves to the county welfare department and be provided with” the required notices. <i>Id.</i> § 309(e)(3).</p> <p>The committee agrees in part. It recommends modifying the language of items (5)–(7) to read: “Information about the child’s”</p> <p>The committee does not recommend accepting this suggestion. The box for helping to develop a case plan and the “other” box give relatives adequate opportunity to express their desire to help the child to plan for his or her future.</p>
2.	Children’s Advocacy Institute Christina Riehl Staff Attorney	NI	CAI is particularly pleased with the conclusion of the Family and Juvenile Law Advisory Committee that increased stability and permanency for children and the foster care funds saved over the long term outweigh the burden that locating and engaging important individuals would impose on local agencies. It is refreshing to see an understanding that it	No response required.

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Juvenile Law: Family Finding and Engagement (adopt Cal. Rules of Court, rule 5.637; amend rules 5.502, 5.534, 5.690, and 5.695; approve Judicial Council forms JV-285 and JV-287)

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	Commentator	Position	Comment	Committee Response
			<p>sometimes requires spending a penny to, later, save a penny or two.</p> <p>CAI supports the rule package proposed to implement AB 938, except its requirement that the agency include information regarding its FFE efforts at the disposition and review hearings by completing proposed form JV-130. CAI understands CWDA’s concerns that requiring completion of this form would increase agency workload, and we would rather see staff time spent on finding and engaging family members. However, we also agree with the Committee’s goal of giving the court as much detailed information as possible regarding FFE efforts. Therefore, CAI supports the alternate recommendation that the rules instead specify what information must be included in an FFE narrative. CAI generally supports the proposed language as delineated in footnote 6 of SPR 10-33, but we believe that the rules should require the narratives to include more detailed information, and we would ask for two specific revisions: <i>First</i>, we recommend that the rules require that the FFE narrative contained in both the social study and review hearing reports include information regarding the relationship of each person contacted, the relationship of each person interested in ongoing contact with the child, and the relationship of each person interested in placement of the child, in addition to the relationship of each person identified.</p>	<p>The committee agrees with the suggestion to withdraw proposed form JV-130 and recommends amending rule 5.690(a)(1)(C), as discussed in footnote 6 to the Invitation to Comment, to specify the information that the agency should include in the dispositional report. The committee also agrees that the report should include more than the simple number of relatives identified, located, or notified, and recommends that the relationship of those relatives be included in the report. The report should also document the agency’s efforts in this regard. To protect relatives’ privacy and so as not to unduly burden the agency, the committee recommends against including the names and contact information of relatives in the report. The court will have access to this information through the filing of form JV-285 or JV-287.</p>

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	Commentator	Position	Comment	Committee Response
			<p><i>Second</i>, unless requested to be confidential, CAI recommends that the rules require that the FFE narrative include each relative’s name and/or contact information. As social workers, attorneys, or judges change in the lives of foster children, often the court reports are the documents used by their successors to become familiar with the case. CAI believes it is critical that as much information as possible be included in the court reports so that if the information is needed at a later time during the court proceeding, it is easily accessible.</p> <p>CAI does not believe that the rules should apply differently to children who are placed with relatives. As the committee notes, although it may not seem urgent to find a relative placement for those children already placed with relatives, circumstances change quickly, and it is always important to know of other family members who are ready, willing, and able to step-up if a placement deteriorates. Also, the more family members we have participating in the life of each foster child—even if they are not acting as a placement for the foster child—the more support and advocates that child will have as he or she transitions through childhood and into adulthood.</p>	<p>The committee agrees and recommends that, because the benefits of family finding extend beyond placement to include securing lifelong support and connections for the child, such efforts should apply equally to children placed with relatives and children placed in other settings. The committee also agrees that circumstances can change and that initial placement with a relative does not guarantee lasting placement or connection with that or another relative. In the event of such a change of circumstances, the committee believes that collecting all available relative information at the beginning of a case would save incalculable costs and efforts later in the case.</p>
3.	County Welfare Directors Association of California Frank Mecca Executive Director	NI	The County Welfare Directors Association of California (CWDA) supports efforts to implement AB 938 (Statutes of 2009), which requires county child welfare agencies to	No response required.

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	Commentator	Position	Comment	Committee Response
			<p>identify, locate and notify relatives when a child is placed into care as a result of abuse and neglect. AB 938 was passed in California to conform to recent federal law, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), which requires all states to ensure relatives are notified when children come into care.</p> <p>However, CWDA has grave concerns with the proposed amendments to Rules of Court (Rule 5.637 et al) that we believe go well beyond the requirements of the California statute, and which if enacted would place onerous new and unfunded requirements on county social services staff, further straining existing local resources.</p> <p>AB 938 requires social workers to conduct, within 30 days, an investigation to identify and locate all grandparents, adult siblings and other adult relatives of the child, including any other adult relatives suggested by the parent. Once located, the social worker must provide, again within 30 days of the child's removal, a written notification and verbal notification as appropriate of certain information as specified by the bill. AB 938 is consistent with the new federal law, which requires states "<u>within</u> 30 days after the removal of a child from the custody of the parent" to "exercise <u>due diligence</u> to identify and provide notice to all</p>	<p>The committee appreciates these concerns and has modified its proposal to strike all requirements of ongoing efforts and engagement of relatives. The committee has modified the reporting requirements at the disposition hearing to make them recommended rather than mandatory and has eliminated amendments that would have required agency reports and judicial findings at review hearings.</p> <p>The committee agrees with this reading of AB 938.</p>

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	Commentator	Position	Comment	Committee Response
			<p>adult grandparents and other adult relatives of the child." (Section 103, P.L. 110-351, emphasis added). It is important to note that the federal law directs states to exercise "due diligence" to find and notify relatives "within 30 days," a construct mirrored in AB 938.</p> <p><u>Proposal ignores federal and state laws, goes beyond what is required in those laws.</u> CWDA opposes the proposed Rules of Court as they exceed both federal requirements and state law and would place onerous new requirements onto county staff with no additional resources to support these new activities. We believe the Judicial Council of California is also exceeding its authority in executing the law irrespective of the will of the Executive and Legislative branches of California State government. It does so by requiring child welfare agencies to "make ongoing efforts to locate, contact and engage" relatives... "until the case is dismissed or the child is in a placement willing to adopt or accept legal guardianship of the child." The Judicial Council proposes to take current best practice known as "Family Finding and Engagement" and attempts, inappropriately, to mandate such practice throughout the life of the dependency case. This conflicts with AB 938, which contains no such requirement for county agencies for ongoing search and engagement of relatives nor does it mandate ongoing reports to the court. Had the</p>	<p>The committee has modified the proposal so that it does not impose any burden on the agency other than those expressly required by statute.</p>

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			<p>Legislature and Governor intended for county agencies to continue to search and notify relatives throughout the case, AB 938 would have amended other sections of the Welfare and Institutions Code to ensure continued efforts by the social worker in this regard (i.e. Section 366.21 status review hearing), and the Legislature would have allocated sufficient resources to accomplish such mandate. Since it did not, we must oppose the Judicial Council's proposed rules.</p> <p>Attached is a legal analysis of the proposed Rule of Court, affirming that the proposed rule is inconsistent with AB 938 and the Legislature's intent, and in doing so, the Judicial Council is exceeding its constitutional powers in attempting to create a Rule of Court that inappropriately expands upon the law. We note that numerous county counsels throughout California have indicated concurrence with this legal analysis, specifically the county counsels in Calaveras, Los Angeles, Mariposa, Napa, San Bernardino, San Diego, Tehama, and Tulare have all weighed in with concerns. The County Counsels Association of California has also reviewed and concurs with the legal analysis presented in Attachment A. [The complete text of CWDA's comment and legal analysis is attached to this report at pages 64–79.]</p>	<p>The committee has considered the attached analysis and appreciates the concerns that it raises. Although the committee notes that the authority granted the Judicial Council by Article VI, section 6, of the California Constitution includes authority to add to existing statutory requirements (<i>Sara M. v. Superior Court</i> (2005) 36 Cal.4th 998, 1010–13; <i>Jevne v. Superior Court</i> (2005) 35 Cal.4th 935, 946 (a rule of court may be broader than the literal terms of a statute provided it reasonably furthers the statutory purpose); <i>Butterfield v. Butterfield</i> (1934) 1 Cal.2d 227 (that a rule goes beyond what is contained in a statute does not make it inconsistent with the statute)), the committee has restricted the scope of this proposal to those requirements specifically required by statute in light of the uncertain fiscal climate and the serious nature of concerns raised about the burden that any mandated family finding and engagement duties would pose on child welfare</p>

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			<p><u>Proposal would mandate activities that are unfunded and considered “best practice.”</u></p> <p>The Judicial Council’s summary digest of the proposed rule (SPR 10-33) acknowledges that the provisions of AB 938 require the social worker and probation officer to contact, locate and notify relatives within 30 days, and acknowledges that “identifying, locating, contacting, and engaging relatives interested in contact and placement with a child, is an ongoing process, however.” CWDA believes this practice is on-going, as social workers are continuously working to help children achieve positive outcomes of safety, permanency, and well-being for children in care. However, our efforts to achieve positive outcomes that all children deserve have been thwarted by recent budget cuts, including a \$133 million budget hole statewide due to the Governor’s veto in the child welfare services program. Compounding this, the State has failed to implement the findings of the SB 2030 Workload Study, which found caseload sizes were double the recommended minimal standard necessary to meet the needs of children in foster care, and well short of the optimal standards needed to achieve positive outcomes that children deserve.</p> <p>The proposed rule would take best practice and expand it to all children, something counties</p>	<p>agencies.</p> <p>The committee appreciates these concerns and hopes that the amendments to the proposal alleviate its burdens. The committee has tried to recognize the ongoing nature of family finding activities in the proposed rules.</p> <p>The committee appreciates these concerns, but intends that the proposal, as modified,</p>

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			<p>simply cannot afford to do in this current economic climate, and which is inconsistent with AB 938. We oppose requirements in the proposed Rule of Court to prove social workers have made diligent efforts to “engage” relatives who are notified and contacted, as engagement is not a requirement of the new law. We believe AB 938 is adequate in facilitating engagement with relatives by establishing mechanisms for relatives to indicate their desire to be involved in the child’s case plan. We are extremely concerned the proposed rule creates new expectations to conduct family finding that cannot be met given existing resources, for example by requiring courts to inquire whether county agencies have used “Internet search tools to locate families,” or developed “genograms, family trees, family maps or other diagrams of family relationships.”</p> <p>We believe existing law and rules of court already ensure children will receive the necessary services to promote familial and lifelong connections throughout the child’s stay in the dependency system, and addresses reporting to the court of such. For example, Welfare & Institutions Code section 361.3 requires that relatives are given preferential consideration when children are placed into care or subsequently have a change in placement while in care. Also, Welfare & Institutions Code section 366.21(c) provides:</p>	<p>incorporate only those elements of family-finding expressly required by AB 938. Requirements that the agency engage relatives have been stricken. The court may consider the examples cited by the commentator in determining whether the agency has made the diligent efforts expressly required to do by AB 938. It may also consider other search methods and practices used by the agency.</p> <p>The committee agrees that existing law, including AB 938, is intended to ensure that children will receive services to promote familial relationships and lifelong connections. The committee believes that this proposal, as modified, only furthers that intent.</p>

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			<p>The “social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition.” As the Judicial Council accurately notes, the formal practice of “Family Finding and Engagement (FFE) can be an important tool in finding and engaging relatives.” However, AB 938 does not attempt to mandate this practice, and the Legislature recognizes this is an intensive effort that requires skilled and knowledgeable staff to engage foster children and relatives to ensure that all parties are ready and capable to engage in a familial relationship. As such, FFE is a best practice and not fully supported by state funding. We note that the Legislature has considered bills to mandate family finding in the past, but these bills were not passed due to cost concerns.</p>	

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	Commentator	Position	Comment	Committee Response
			<p><u>Additional form [JV-130] is unnecessary and violates state law.</u></p> <p>The proposed Rule of Court would mandate other activities for county agencies that go beyond the requirements of AB 938, which CWDA also opposes. First, the proposed rule would require county social work staff to complete a form and supply extensive information concerning family finding efforts, and require such form to be completed at the dispositional hearing and each subsequent review hearing. Second, the proposed rule would require county social workers to make a specific showing to the court that contacting a relative is inappropriate when the history of family or domestic violence makes contact and engagement inappropriate. If the Legislature and Governor had intended for such extensive reporting to the courts, they would have specified this in the law and provided funding to support the associated workload. Rather, AB 938 required the creation of only two specific forms: one to notify the relative of their various options to participate in the care and placement of the child and support of the child’s family, and a second form to be used by relatives to provide information to the social worker and court regarding the child’s needs. It further required these forms to be developed in consultation with CWDA, which has been accomplished. Therefore, we believe the Legislature and Governor intended that <u>only</u> these forms would be required to be</p>	<p>Although the Judicial Council has clear authority to adopt forms beyond those expressly required by statute, the committee has reconsidered the value of proposed form JV-130 and withdraws its recommendation of that form from this proposal. The commentator does not argue that AB 938 imposes no new duties on agencies, and the committee believes that the amendments to sections 309 and 628 do impose mandatory legal duties on the agencies. This proposal, as modified, recommends that agencies use one of several possible procedures to document to the court their fulfillment of these duties. As the commentator notes, judicial officers retain discretion to inquire whether the agency has fulfilled its legal duties and to order the fulfillment of those duties if the agency cannot show that it has done so.</p>

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	Commentator	Position	Comment	Committee Response
			<p>developed and completed, and specifically intended that counties be involved in the forms design to ensure consistency with social work practice. Since AB 938 does not prescribe a supplemental report, or any court report, we believe the proposed rule violates the spirit of the law. Nothing precludes the dependency court judge or officer from making an inquiry during juvenile court proceedings regarding these requirements.</p> <p><u>Applying the law for children placed with relatives.</u> The Judicial Council SPR 10-33 also requested feedback on whether the proposed rule should apply differently when children are placed with relatives or with non-relatives, stating the law is silent on this issue. We believe the law applies to all children, regardless if the child is initially placed with relatives. The intent of the federal law and AB 938 is to promote family connections when children are placed into care, by creating a mechanism by which relatives can stay informed and provide information to the court regarding the child in care. AB 938 requires these procedures for children who have been removed from his or her parents or guardians, regardless of placement type.</p> <p>CWDA Amendments to SPR 10-33 Revised Rules of Court</p>	<p>The committee agrees that, because the benefits of family finding and engagement extend beyond placement to include securing lifelong support and connections for the child, such efforts apply equally to all foster children regardless of placement type.</p>

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	Commentator	Position	Comment	Committee Response
			<p><u>Rule 5.637. Family Finding and Engagement</u> Strike (b) “The agency must make ongoing efforts to locate, contact and engage the individuals in rule 5.502(18), (28), and (35) in efforts to achieve a permanent home or lifelong connection for the child, until the care is dismissed or the child is in a placement willing to adopt or accept legal guardianship of the child.</p> <p>Strike in (c) “If the agency does not contact an individual, the agency must make a showing sufficient for the court to find that contact is inappropriate.”</p> <p>Strike (d) The agency must submit a completed Family Finding Report to Court (form JV-130) at the dispositional hearing. The form must contain information regarding the individuals identified under this rule and a summary that includes, but need not be limited to, the following information: (1) The number of people identified and their relationship (2) The number of people contacted (3) The number of people interested in ongoing contact with the child (4) The number of people interested in placement of the child</p> <p>Strike (e) The agency must submit a completed <i>Family Finding Report to Court</i> (form JV-130)</p>	<p>The committee has stricken former subdivision (b) from rule 5.637. The rule no longer requires ongoing efforts or engagement.</p> <p>The committee has stricken this language from former subdivision (c) of rule 5.637. The rule no longer requires the agency to make a showing that notification would be inappropriate.</p> <p>The committee has stricken subdivision (d) from rule 5.637. The recommendations for a discussion of the agency’s family-finding investigation in the dispositional report are now found in rule 5.690.</p> <p>The committee has stricken subdivision (e) from rule 5.637. The rule no longer requires the</p>

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			<p>at each review hearing. The form must contain information regarding the individuals identified under this rule and a summary of Family Finding and Engagement activities occurring since the last hearing, including but not limited to:</p> <ol style="list-style-type: none"> (1) The number of people identified since the last hearing; (2) The number of potential placement options identified since the last hearing; (3) The number of people contacted by the agency since the last hearing; (4) A description of activities to secure a permanent home or lifelong connection for the child; and (5) A summary of progress made in identifying possible placements and lifelong connections based on these activities. <p>Strike all of (f) and (g)</p> <p><u>Rule 5.695 Findings and Orders of the Court – Disposition</u> Strike all of (f). Recommended revision: (a) “The court may consider whether the agency has made diligent efforts to locate and contact the relatives referred to in rule 5.637(a).</p>	<p>agency to document its family-finding activities at review hearings.</p> <p>The committee has stricken subdivisions (f) and (g) from rule 5.637. Rule 6.695(g) now suggests activities for the court to consider as evidence of due diligence in the agency’s family-finding investigation.</p> <p>The committee has modified subdivision (f) of rule 5.695. The rule no longer requires the court to consider whether the agency engaged the child’s relatives.</p>

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			<p>(b) The court may make the following findings:</p> <p>(A) The agency has made diligent efforts to locate and contact the individuals referred to in Rule 5.637(a); or</p> <p>(B) The agency did not make diligent efforts to locate and contact the individuals referred to in rule 5.637(a). If the court makes this finding, the court must order the agency to make diligent efforts to locate and contact the individuals referred to in rule 5.637(a) except for an individual the agency finds inappropriate to contact under rule 5.637(c), and may require a written or verbal report to the court at a later time.</p> <p>Strike all other changes in Rules 5.708 (General review hearing requirements), 5.715 (Twelve-month permanency hearing), Rule 5.720 (Eighteen-month permanency review hearing), Rule 5.722 (Twenty-four-month subsequent permanency review hearing), and Rule 5.810 (Reviews, hearing and permanency planning).</p>	<p>The committee has withdrawn the proposed amendments to rules 5.708, 5.715, 5.720, 5.722, and 5.810.</p>
4.	State Bar of California Family Law Section Saul Bercovitch Legislative Counsel	A	SPR10-33 builds upon Assembly Bill 938 passed and signed into law in 2009. AB 938 requires the child welfare agency to engage in diligent efforts to locate relatives of detained children within 30 days of their removal from	No response required.

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			<p>parental custody. Further, relatives found through this process would have the right to address the court and submit their name for consideration as placement options for the child. SPR10-33 provides implementing rules for these legislative mandates, as well as forms for insuring compliance by the child welfare agency and access to the court by relatives. SPR10-33 goes further by requiring these diligent efforts to locate relatives to continue at every status review hearing following the child's adjudication as a dependent.</p> <p>FLEXCOM [the Executive Committee of the Family Law Section of the State Bar of California] supports the effort of the Judicial Council to provide children in the foster care system greater opportunities to maintain or initiate contact with close relatives and other extended family. Many children in the foster care system languish for lengthy periods of time without developing significant relationships that will assist them upon emancipation. Requiring the search and notification processes beyond just the initial 30 days will lead to the development of these contacts.</p> <p>FLEXCOM would also like to comment on the question posed as to whether the child welfare agency should provide this information on a new form or through the narrative section of a social study. FLEXCOM agrees with the conclusion that a form is more appropriate.</p>	<p>The committee appreciates that efforts to engage relatives beyond the first 30 days following a child's removal would improve outcomes for children. Given the absence of an express requirement in AB 938, and the existence of statutory engagement requirements for older children, <i>see, e.g.</i>, section 366.1(g), the committee is confident that the agency will make diligent efforts to ensure that children have the opportunity to develop significant relationships that will assist them upon emancipation.</p> <p>The committee appreciates this concern, which led to the initial development of proposed form JV-130. The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended</p>

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			<p>Leaving this crucial information to be provided in the narrative exposes the court and counsel to the possibility of missing important details in the process of determining whether the child welfare agency has complied with its responsibilities. The form is comprehensive, in that it allows for specific questions and broader support information. While the concern about increased workload on the child welfare agency is valid, FLEXCOM believes it is outweighed by the value of the information that will be provided through completion of the form.</p>	<p>elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency’s family finding efforts earlier than the continued disposition hearing.</p>
5.	<p>Kern County Department of Human Services Monique Hawkins Program Director</p>	N	<p>Our agency is in agreement with the comments/recommendations of CWDA. Implementation of the proposed changes would greatly impact child welfare services staff by adding to their workload.</p> <p>Once placement with a relative is achieved, Family Finding efforts should not need to be documented any further.</p> <p>Requiring identification of TDM [team decision-making] participants in the court report will be detrimental to the practice as TDMs are confidential meetings.</p>	<p>The committee appreciates these concerns and has modified its recommendations to balance the legislative mandate to identify, locate, and notify relatives with the current exigencies of child welfare practice in California. The committee has restricted the scope of the proposal to strike all but the express requirements of AB 938.</p> <p>The committee believes that, because the benefits of family finding and engagement extend beyond placement to include securing lifelong support and connections for the child, such effortsshould apply equally to all foster children regardless of placement type.</p> <p>The proposal does not require the disclosure of confidential information. All juvenile court records are confidential under section 204. Furthermore, certain identifying information, including information regarding relatives,</p>

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				caregivers, and other individuals, must, upon request, be placed in a special confidential section of the court file.
6.	Enrique Monteagudo, J.D. No additional information provided.	N	<p>Rule 5.637(c) [and related rules 5.695(f)(1)(E) & 5.708(k)(1)(E)] should be reexamined to better define domestic violence (“DV”), and mitigate the discretion given to the Agency. This area should be reexamined by a broad cross section of stakeholders in the matter, including but not limited to mothers, fathers, and other relatives that may be subject to its provisions.</p> <p>The current proposed definition (or lack thereof) of DV is vague and subject to multiple interpretations. The current language lacks safeguards and accountability. In particular, this rule creates an unwieldy exception in child removal proceedings, providing for Agency staff to not contact a child's other parent (or another relative) for possible placement consideration, based on a "history of DV..." and lacks adequate safeguards and accountability provisions to overcome this deficiency.</p> <p>It is well-known that there is no uniform definition of DV, but that the definition of DV varies from area of law to area of law (e.g., Criminal, Family, Welfare, Civil). Moreover, the more commonly used "working definitions" of DV are of a subjective nature, which may be interpreted differently from person to person. Thus, the current proposed rules lack a</p>	<p>The committee appreciates these concerns, but believes that defining domestic violence would constitute a substantive change beyond the scope of this proposal. The committee may consider such a change in a subsequent rule-making cycle.</p> <p>The committee appreciates these concerns, but believes that defining domestic violence would constitute a substantive change beyond the scope of this proposal. The committee may consider such a change in a subsequent rule-making cycle.</p> <p>The committee appreciates these concerns, but believes that the proposed rules include adequate safeguards against abuse of agency discretion. In addition, sections 290–294 require the agency to give notice of all proceedings before termination of parental rights to the child’s mother, as well as the child’s fathers, both presumed and alleged. The agency has no discretion to exclude a parent</p>

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			<p>reference to a uniform definition of DV, let alone a definition that would justify precluding contacting a child's other parent (or other relatives) in the event of removing the child from his/her home.</p> <p>For example, currently, a determination of DV (and thus a history of DV) may be made on as little as probable cause (police), “unsubstantiated” reports (CPS), or merely preponderance of the evidence (Family Court). This level of due process is incommensurate with the rights of both the child and the other parent. Moreover, since “a determination of DV” is not always made in the context of interfering with a parent’s fundamental right to parent or in view of the long-term effects on the child of removing him or her from family, it may be based on a much lower standard than actual physical violence (e.g., verbal abuse, financial abuse, situational abuse -including self-defense). Thus, while some DV determinations may be appropriate for a TRO, this may not reach the level of severity to preclude a parent (or other relative) from taking responsibility of his/her child when the child is removed from his/her home. Accordingly, here, failure to include a parent, without more, may be more damaging to the child on a long term basis (and the parent), than the real possibility of placing the child with non-relatives.</p> <p>Finally, it should be noted that the Judicial</p>	<p>from the proceedings.</p> <p>The committee appreciates these concerns, but believes that the proposed rules include adequate safeguards against abuse of agency discretion. In addition, sections 290–294 require the agency to give notice of all proceedings before termination of parental rights to the child’s mother, as well as the child’s fathers, both presumed and alleged. The agency has no discretion to exclude a parent from the proceedings.</p> <p>The committee appreciates this concern and may</p>

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			<p>Council's Family and Juvenile Law Advisory Committee lacks any representation of parents or their perspectives as users of the court. It should be further noted the Judicial Council's Commission on Impartial Courts recently recommended that members of the public in general and users of the courts in particular be solicited for feedback and that the Judicial Council's Elkins Family Law Task Force has reported parent and advocate group interest is very high in this area. In addition, it should be noted that various governmental activities have already used parent/advocate input from members of the public with great success (e.g., Elkins, Commission on Impartial Courts, 2010 Child Support Guideline Review, DCSS Quarterly Advocate Call). As such, it is highly recommended that Judicial Council's FAMILY AND JUVENILE LAW ADVISORY COMMITTEE membership be increased to include members of the public representing perspectives of parent court users. This addition of membership category(ies) may be analogous to Family Code section 4054(f)(1),(2),(3),(7), & (8). In addition this membership category(ies) may be initially limited to an advisory (e.g., non-voting) role.</p>	<p>consider recommending an expansion of its membership to the Judicial Council in the future.</p>
7.	<p>Orange County Bar Association Lei Lei Wang Ekvall President</p>	AM	<p>These changes relate to recent statutory amendments requiring more in-depth and continued investigation of relative placement options when a child is removed from a parent's care.</p>	<p>No response required.</p>

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Juvenile Law: Family Finding and Engagement (adopt Cal. Rules of Court, rule 5.637; amend rules 5.502, 5.534, 5.690, and 5.695; approve Judicial Council forms JV-285 and JV-287)

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

	Commentator	Position	Comment	Committee Response
			<p>We recommend two modifications:</p> <ol style="list-style-type: none"> 1) That the inclusion of “important individual(s)” in the rule be deleted. 2) That the requirement of filing additional JV-130 forms at review hearings after the dispositional hearing be deleted. <p>Our concerns are anticipated on page three of the Invitation to Comment. Our first issue is with the proposed rule modifications including “important individuals” in the process who are not related to the child. Such non-related “important individuals” are not expressly covered by the statutory changes in AB 938 that the rules seek to facilitate. As mentioned in the packet at p. 3, the County Welfare Directors’ Association (CWDA) has already objected to such language in the new rule, and their objections are well-taken. The proposed rules go above and beyond what the statute requires, and including any “important individual” (defined in proposed rule 5.502(17) as “an adult who has a significant, positive connection with a child and may be able to provide support or services to a child and family”) takes an already broad requirement far beyond the delineated reach of the statute.</p> <p>Our second issue is with the proposed rules’ requirement in 5.637(e) for continued</p>	<p>The committee appreciates this concern and has modified the proposed rules to strike any reference to individuals important to the child.</p> <p>The committee has reconsidered the prudence of requiring the agency to report its family-finding efforts on a mandatory form and has withdrawn form JV-130 from the proposal.</p> <p><i>See above.</i></p> <p>The committee has modified the proposal to eliminate requirements that the agency make</p>

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			<p>showings at a child’s review hearings as to an agency’s ongoing notification efforts to relatives. There is nothing in AB 938 that seems to suggest any continuing duty to ferret out possible relative placements and relative information at the 6-, 12-, or 18-month review hearings, as the statute is focused on such efforts at the time of the child’s initial removal. To the extent any such duty should exist, CWDA’s objection to requiring the newly-proposed JV-130 form is well-taken. (See p. 3 of the SPR10-33 document). There is little reason to require yet another filed form at hearings that are already saturated in required filings, particularly when any new information could be included in the status review reports already filed at these hearings.</p>	<p>efforts to notify or engage relatives beyond the first 30 days following a child’s removal.</p>
8.	<p>Jo Ann Iwasaki Parker Deputy County Counsel Office of the Solano County Counsel</p>	N	<p>(1) Completion of the proposed form is burdensome. The requirements under this statutory scheme, while well intended, are more onerous than the ICWA notice requirements. There are many cases where there are more than five children with one mother and multiple legal, biological alleged or presumed fathers. Copying, mailing and maintaining the forms in the files will add additional costs. As an alternative, consideration should be given to more clearly defining what is to be included in the social work report. A separate proof of service which lists the family members to whom the required notices were sent could be developed to supplement the information included in the court report. This will result in</p>	<p>The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency’s family finding efforts earlier than the continued disposition hearing.</p>

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			<p>less paperwork, and would provide a basis for the Court to assess follow-through in providing notices.</p> <p>2) Due to the shortage of the time period for making the inquiries and the workload on the social workers, consideration should be given to supplementing the social worker's duty of inquiry with a process similar to that used in child support proceedings where parents, alleged parents or relatives who appear at the initial hearing are sworn in and ordered to complete a family genealogy form under penalty of perjury. The Family Finding Report to the Court could be modified to be a Family Member Identification Form that is completed by each parent, alleged parent and relative that appears at the hearing as well as minor(s)'s counsel which is signed by the parent, relative or counsel and submitted to the court and social worker.</p> <p>The completed form would be used by the social worker for contact and notice purposes. The contact efforts will be included in the social worker report and the mailing of the letter and attachments developed by DSS would be reflected in a family finding notice proof of service.</p> <p>(3) Parents' and minors' counsels should share the duty of inquiry of their clients and be required to provide relative and affinity</p>	<p>The committee appreciates this concern and has recommended in the proposed rules that the court be permitted to consider whether the agency used a family tree or genogram as one of its family-finding tools. Furthermore, proposed form JV-285, <i>Relative Information Form</i>, would serve the purpose suggested by the commentator. The committee envisions that this form would be given to all relatives who are present in court.</p> <p>The committee believes that the proposal, as modified, conforms substantially to the commentator's suggestions.</p> <p>Because these would be important substantive changes to the proposal, the committee believes public comment should be sought before they are</p>

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			<p>information to the social worker and the court.</p> <p>(4) In many cases, a child may have multiple "alleged fathers". During the course of the case, the "alleged fathers" may not appear and none of the alleged fathers may be elevated to biological, legal or presumed. The diligence requirements should apply only to the relatives of fathers who have been determined by the juvenile court to be biological or presumed fathers. To require otherwise, would add to the burden being imposed by the statutory requirements.</p>	<p>considered for adoption. The committee will consider these suggestions during the next rules cycle.</p> <p>Because these would be important substantive changes to the proposal, the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.</p>
9.	San Diego Child Welfare Services Corey Kissel Policy Analyst	N	<p>San Diego CWS recognizes the efforts this proposed rule is trying to achieve; however, San Diego CWS opposes this proposed rule change. The Judicial Council created two different forms similar to the state forms already issued.</p> <p>The proposed amendments create four new forms, one of which is mandatory and three of which are optional. Two of the three optional forms (relative cover letter and relative information document) are redundant. The state already provided similar information to the counties and because the bill was effective January 1, 2010, the counties were already required to implement. Since counties were required to implement already, it is likely that counties will not change their process to incorporate optional forms.</p>	<p>This proposal does not address the statutorily required notification letter or information form that AB 938 requires the agency to send to every located relative. These forms were developed and distributed, as required by AB 938, by the California Department of Social Services. The were included in the Invitation to Comment for informational purposes only. The Judicial Council has no authority to modify them.</p>

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			<p>Throughout the proposed changes, it repeatedly states, “The intent of the Legislature...” This language is used in the proposed rule change when the change is going above and beyond what the bill actually required. For example, the proposed changes are requiring that the court makes findings when in fact; the bill does not say that. In the legislative overview training that San Diego’s County Counsel provided, this specific issue was addressed and CWS was told that the court is not required to do this.</p> <p>Further, this bill violates confidentiality rules and is a significant cost increase of \$1.4 million dollars, which San Diego cannot financially afford at this time.</p>	<p>The committee does not recommend removing the requirement that the court consider whether the agency has made diligent efforts as required by law. The committee believes that such an inquiry is integral to the court’s role. And to consider whether the agency has made legally required diligent efforts without finding that it has or has not would be to abdicate the judicial role.</p> <p>The bill was enacted by the Legislature. The Judicial Council has no authority to modify its provisions.</p>
10.	Santa Barbara County Probation Department Brian Swanson Probation Manager	AM	<p>1. The proposed rules would require probation officers to locate and engage “important individuals” for review hearings. This presents a workload burden to agencies for a group of persons not identified in the legislation. The rules do not indicate who can identify an “important individual” for consideration, although it is presumed a parent, relative, or minor could do so. Aside from those persons with a history of family or domestic violence, the rules do not indicate what steps an agency may take if it objects to the selection of an “important individual” for other reasons. Existing legislation and administrative rules may govern this issue, but it should be clarified.</p>	<p>The committee appreciates these concerns and has modified its recommendations to remove the requirement that the probation department engage individuals important to the child from the proposal.</p>

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	Commentator	Position	Comment	Committee Response
			<p>2. The proposed changes mandate the use of a <i>Family Finding Report to Court</i> (JV-130) form. This would increase agency workload by requiring the provision of detailed information on a separate form that may remain unchanged from a previous hearing. The information sought can be included in narrative form in a social history report that meets the intent of the law while providing the most useful information.</p> <p>3. The proposed rules should take into account when a minor is placed in a stable home with an appropriate relative caregiver, and not require an ongoing search for other relatives for potential care, especially if the arrangement is long-term or permanent. Efforts to seek other relatives may appear unsupportive of the current placement. These efforts can commence when a caregiver has indicated they can no longer care for the minor or there is some other reason to seek another arrangement. Even if another relative caregiver had been previously identified, an agency would still have to contact that individual and determine current interest and evaluate for appropriateness. The rules</p>	<p>The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency's family finding efforts earlier than the continued disposition hearing.</p> <p>The committee recommends that, because the benefits of family finding extend beyond placement to include securing lifelong support and connections for the child, such efforts should apply equally to children placed with relatives and children placed in other settings. The committee hopes that caregivers would see the benefit to a child of maintaining as many positive relationships as possible.</p>

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			<p>should recognize that when a minor is placed with a relative caregiver the intent of the law has been realized.</p> <p>4. Proposed rule 5.637(a) indicates that “within 30 days of removal, the agency must conduct an investigation to locate and contact the child’s family members ...” Section 628(d)(2) Welfare and Institutions Code (WIC) indicates that “if the minor is detained and the probation officer has reason to believe that the minor is at risk of entering foster care placement ... then the probation officer shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other relatives of the child” The rule appears to have a specific requirement based on removal whereas the statute requires detention <i>and</i> a reason to believe a minor is at risk of entering foster care. It appears the rule was written in consideration of dependency matters and may create a conflict for delinquency cases.</p> <p>5. Proposed rule 5.637(b) indicates that “the agency must make ongoing efforts to locate, contact, and engage the individuals in rule 5.502(18), (28), and (35) in efforts to achieve a permanent home or lifelong connection ...” Section 628 WIC does not make specific mention of having to “engage” any individual after locating, contacting, and providing them with the information detailed in Section 628(d)(2)(B) WIC. The rule adds “important</p>	<p>The committee recommends adding the requirement that the child be at risk of entering foster care. The committee believes that this modification makes no substantive change to the rule in dependency cases because every child removed from his or her home due to abuse or neglect is at risk of entering foster care. At the same time, the added language acknowledges that not every child removed in a delinquency case is likely to enter foster care. This may reduce the burden on the probation department somewhat, but the committee recommends that probation departments take a broad view of what it means for a child to be at risk of entering foster care.</p> <p>The committee appreciates these concerns and has modified its recommendations to strike from the proposed rules any requirements that the agency engage relatives or important individuals.</p>

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			<p>individual” to the requirements of the law. It indicates that the agency is to engage these persons and relatives “in efforts to achieve a permanent home or lifelong connection.” It is not clear if an “important individual” is to be available only as a connection and support, or as a formal placement option as well.</p> <p>6. Proposed rules 5.637(d) and (e) require the submission of the <i>Family Finding Report to Court</i> (JV-130) at the dispositional hearing and each subsequent review hearing. It lists the following as “permanency goals:” reunification, adoption, Tribal Customary adoption, legal guardianship, permanent placement with relative, and independent living with lifelong connection. The list does not include independent living (without a lifelong connection), emancipation, or foster care as a planned permanent arrangement. The form provides space to identify relatives contacted, their relationship, and what form of contact they may be interested in having. It does not provide a space to indicate if there is no interest from that person. It also makes mention of “family team meetings.” It is not clear if the space was provided for dependency use or if there is an expectation that these meetings be held in delinquency cases.</p> <p>7. The proposal would require efforts to locate and engage relatives and “important individuals” throughout the time that a minor</p>	<p>The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency’s family finding efforts earlier than the continued disposition hearing.</p> <p>The committee has withdrawn all requirements that the agency engage relatives once it has notified them as required by law.</p>

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			is in foster care. Most delinquency placement cases are in group care settings; it may be preferable and indeed a matter of public safety to maintain a minor in a group care setting because of treatment or supervision needs. In those circumstances it may not be advisable to place a minor with a relative or continually inquire about the possibility. There are often very legitimate reasons for having a minor in a group care setting, in some cases for long periods. In many cases, reunification remains the long-term plan. It does not make practical sense to continually seek out relatives for placement or support for a minor who is in a specific treatment program with a goal of reunification to appropriate parents, especially if they are meeting treatment milestones. There should be a provision for these sorts of cases so that long-term treatment interventions are maintained. Seeking out relatives for placement on an ongoing basis for the life of a case may be a best practice. However, in some delinquency cases, doing so may prove to be disruptive and send mixed messages in situations where relative care is not appropriate or an option.	
11.	Solano County Probation Department Isabelle Voit Chief Probation Officer	AM	I disagree with the JV-130 being a mandatory form. The approach described in the footnote on page 4 (detail in the rules what must be included in the FFE narrative in the court report) would be preferable. For workload management purposes, it is better to minimize the number of separate forms that have to be	The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the

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			completed.	court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency's family finding efforts earlier than the continued disposition hearing.
12.	Superior Court of San Bernardino County Debra Meyers Director	N	Implement the mandates and legislative intent of Assembly Bill 938. Disagree. The rules are unnecessarily detailed. The forms accurately reflect the findings required.	The committee prefers to leave the rules at the proposed level of detail. If the rules prove unworkable at this level, the committee will consider amendments in a future RUPRO cycle. No response required.
13.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	Rule 5.534(f)(4) & (5) create additional work for court clerks, who already have a substantial amount of paperwork to process. *In addition to the above comment, the Superior Court of San Diego County submitted detailed technical suggestions marked on a copy of the proposed rules and forms.	The committee appreciates this concern and has sought ways to reduce the burden on court clerks. The committee has modified its recommendations to maximize the flexibility with which court clerks can process this paperwork in the hope that this will alleviate some of the burden. The committee has taken these suggestions into account during its revision of the proposal and made many of them.
14.	Trial Court Presiding Judges Advisory Committee / Court Executives Advisory Committee Joint Rules Working Group	AM	Remove requirement for a separate form for the Department of Social Services and the County Probation Department.	The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional

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			<p>Operational impacts identified by working group:</p> <ol style="list-style-type: none"> 1. These rule amendments could result in an increase to judicial officer’s workload. The proposed amendments require the court to determine whether the agency has made diligent efforts to identify and locate the individuals specified in the rules at the dispositional hearing (rule 5.695) and each subsequent status review hearing (rule 5.708). <p>The proposed procedure in rule 5.534(f) would require the clerk to file, photocopy, and provide the social worker, all unrepresented</p>	<p>report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency’s family finding efforts earlier than the continued disposition hearing.</p> <p>The committee appreciates these concerns and has taken them into account in developing its recommendations. The proposed rules do require additional findings, but, unless the disposition hearing must be continued, these findings would be made at existing mandatory hearings. The court must already make a series of similar findings at these hearings, and the committee hopes that the increase in workload would be only incidental. The committee considers the potential increase in judicial workload to be outweighed by the benefits to families and children from judicial oversight of the family-finding process. In addition, the amendments to rule 5.708 have been withdrawn.</p> <p>The committee appreciates this concern and has explored ways to reduce the burden on court clerks. The committee has modified its</p>

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			<p>parties, and all attorneys a copy of each completed JV-285, <i>Relative Information Form</i>, received by the court and could result in an increase to the clerk’s workload. All the documents filed with the court have to be imaged into a case management system. Additionally, the names and personal information of individuals who file documents and are entitled to notice, based on those documents, must also be entered.</p> <p>In courts which contain federally recognized Indian tribes, the increase in staff workload could be substantial. Culturally, many Indian tribes define family members very broadly. In addition, Indian tribes have a large pool of tribal members supporting tribal children all of whom could fall under the definition of “important individual” under Rule 5.502.</p> <p>There is a likelihood that substantial numbers of Relative Information Forms could be filed in any given Dependency Action.</p> <p>2. The creation of proposed form JV-130 will substantially increase the workload of the Department of Social Services and the County Probation Department. Under the proposed rule, social workers would be required to complete proposed form JV-130, <i>Family Finding Report to Court</i>, at the dispositional hearing and each subsequent review hearing to ensure that the court has all the information it needs to make the required findings in a timely manner.</p>	<p>recommendations to increase the scope of discretion with which court clerks can process this paperwork in the hopes that this will alleviate some of the burden. The committee has also removed from the proposal all requirements that the agency engage important individuals.</p> <p>The committee recommends replacing proposed form JV-130 with amendments to rule 5.690, as discussed in footnote 6 to the Invitation to Comment, detailing the recommended elements of a family finding narrative in the dispositional report. Unless the disposition hearing is continued because the report is not ready, the court will have the information it needs to make the required findings at least 48 hours before the original disposition hearing. In light of this change, the committee recommends the adoption</p>

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			<p>The court is required to make numerous findings of significant import at detention, disposition and review hearings when a child is removed from the home. The necessary information to make these findings is dealt with in the agency's reports in narrative form. The findings required by FFE, while vitally important, seem no more so than other required findings. Creating another JV form seems unnecessary. As with other findings the necessary information should be handled in narrative form and included as a required part of all disposition and review hearing reports.</p>	<p>of rule 5.695(f)(1), circulated for comment as rule 5.637(h). This rule leaves the court discretion to schedule a separate hearing on the agency's family finding efforts earlier than the continued disposition hearing.</p> <p>The committee agree with this comment.</p>
15.	Cynthia Wojan Juvenile Court Coordinator Superior Court of Solano County	A	<i>No specific comment.</i>	No response required.

Assembly Bill No. 938

CHAPTER 261

An act to amend Sections 309 and 628 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 938, Committee on Judiciary. Relative caregivers and foster parents.

(1) Existing law authorizes a social worker to take a child who is at risk of abuse or neglect into temporary custody under specified circumstances. Existing law requires the social worker to investigate the circumstances of the child and the facts surrounding the taking of the child into custody. Existing law requires that the social worker immediately release the child to the custody of the child's parent or guardian, or other responsible relative, except under certain conditions. If the child is not released to the custody of his or her parent or guardian, the child is deemed to be detained, and a detention hearing must be conducted before the expiration of the next judicial day after a petition to declare the minor a dependent child of the juvenile court has been filed.

This bill would require a social worker, when a child is removed from the home, to conduct, within 30 days, an investigation, as specified, in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, in order to provide, except when that relative's history of family or domestic violence makes notification inappropriate, those persons with specified information, including that the child has been removed from the custody of his or her parents or guardians and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort. The bill would require the State Department of Social Services to develop the written notice providing that information to relatives.

The bill would also require the Judicial Council to develop a relative information form, as specified. The form would provide information regarding the needs of the child, and would include a provision whereby the relative may request the permission of the court to address the court. The bill would require a social worker to provide that form, on and after January 1, 2011, to the adult relatives identified pursuant to the provision described above. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law authorizes a peace officer to take a minor into temporary custody without a warrant and to deliver that minor to a probation officer under specified circumstances.

This bill would enact provisions similar to those described in paragraph (1) that would be applicable to minors who are taken into temporary custody and delivered to a probation officer. The bill would impose new duties on probation officers, similar to those imposed upon social workers, as described above in paragraph (1), with respect to conducting an investigation to locate adult relatives and providing those relatives with specified information. These provisions would not, however, require probation officers to develop the relative information form or provide it to those relatives. By imposing new duties upon probation officers, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 309 of the Welfare and Institutions Code is amended to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(5) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician and surgeon or a hospital, clinic,

or other medical facility and cannot be immediately moved and is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician and surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) (1) If an able and willing relative, as defined in Section 319, or an able and willing nonrelative extended family member, as defined in Section 362.7, is available and requests temporary placement of the child pending the detention hearing, the county welfare department shall initiate an assessment of the relative's or nonrelative extended family member's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child's needs, and a consideration of the results of a criminal records check conducted pursuant to subdivision (a) of Section 16504.5 and a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home. Upon completion of this assessment, the child may be placed in the assessed home. For purposes of this paragraph, and except for the criminal records check conducted pursuant to subdivision (a) of Section 16504.5, the standards used to determine suitability shall be the same standards set forth in the regulations for the licensing of foster family homes.

(2) Immediately following the placement of a child in the home of a relative or a nonrelative extended family member, the county welfare department shall evaluate and approve or deny the home for purposes of AFDC-FC eligibility pursuant to Section 11402. The standards used to evaluate and grant or deny approval of the home of the relative and of the home of a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.

(3) To the extent allowed by federal law, as a condition of receiving funding under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.), if a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for the relative or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative or nonrelative extended family member, and each adult in the home, has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

(4) If the criminal records check indicates that the person has been convicted of a crime for which the Director of Social Services cannot grant an exemption under Section 1522 of the Health and Safety Code, the child shall not be placed in the home. If the criminal records check indicates that the person has been convicted of a crime for which the Director of Social Services may grant an exemption under Section 1522 of the Health and Safety Code, the child shall not be placed in the home unless a criminal records exemption has been granted by the county based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child.

(e) (1) If the child is removed, the social worker shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319, including any other adult relatives suggested by the parents. The social worker shall provide to all adult relatives who are located, except when that relative's history of family or domestic violence makes notification inappropriate, within 30 days of removal of the child, written notification and shall also, whenever appropriate, provide oral notification, in person or by telephone, of all the following information:

(A) The child has been removed from the custody of his or her parent or parents, or his or her guardians.

(B) An explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. The notice shall provide information about providing care for the child while the family receives reunification services with the goal of returning the child to the parent or guardian, how to become a foster family home or approved relative or nonrelative extended family member as defined in Section 362.7, and additional services and support that are available in out-of-home placements. The notice shall also include information regarding the Kin-GAP Program (Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9), the CalWORKs program for approved relative caregivers (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9), adoption, and adoption assistance (Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9), as well as other options for contact with the child, including, but not limited to, visitation. The State Department of Social Services, in consultation with the County Welfare Directors Association and other interested stakeholders, shall develop the written notice.

(2) On and after January 1, 2011, the social worker shall also provide the adult relatives notified pursuant to paragraph (1) with a relative information form to provide information to the social worker and the court regarding the needs of the child. The form shall include a provision whereby the relative may request the permission of the court to address the court, if the relative so chooses. The Judicial Council, in consultation with the State

Department of Social Services and the County Welfare Directors Association, shall develop the form.

(3) The social worker shall use due diligence in investigating the names and locations of the relatives pursuant to paragraph (1), including, but not limited to, asking the child in an age-appropriate manner about relatives important to the child, consistent with the child's best interest, and obtaining information regarding the location of the child's adult relatives. Each county welfare department shall create and make public a procedure by which relatives of a child who has been removed from his or her parents or guardians may identify themselves to the county welfare department and be provided with the notices required by paragraphs (1) and (2).

SEC. 2. Section 628 of the Welfare and Institutions Code is amended to read:

628. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody and shall immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the minor's welfare and one or more of the following conditions exist:

(1) The minor is in need of proper and effective parental care or control and has no parent, legal guardian, or responsible relative; or has no parent, legal guardian, or responsible relative willing to exercise or capable of exercising that care or control; or has no parent, legal guardian, or responsible relative actually exercising that care or control.

(2) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(3) The minor is provided with a home which is an unfit place for him or her by reason of neglect, cruelty, depravity or physical abuse by either of his or her parents, or by his or her legal guardian or other person in whose custody or care he or she is entrusted.

(4) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.

(5) The minor is likely to flee the jurisdiction of the court.

(6) The minor has violated an order of the juvenile court.

(7) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(b) If the probation officer has reason to believe that the minor is at risk of entering foster care placement as defined in paragraphs (1) and (2) of subdivision (d) of Section 727.4, then the probation officer shall, as part of the investigation undertaken pursuant to subdivision (a), make reasonable efforts, as described in paragraph (5) of subdivision (d) of Section 727.4, to prevent or eliminate the need for removal of the minor from his or her home.

(c) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in subdivision (d) of Section 300, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this chapter while he or she is at the office of the physician or surgeon or that medical facility.

(d) (1) It is the intent of the Legislature that this subdivision shall comply with paragraph (29) of subsection (a) of Section 671 of Title 42 of the United States Code as added by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). It is further the intent of the Legislature that the identification and notification of relatives shall be made as early as possible after the removal of a youth who is at risk of entering foster care placement.

(2) If the minor is detained and the probation officer has reason to believe that the minor is at risk of entering foster care placement, as defined in paragraphs (1) and (2) of subdivision (d) of Section 727.4, then the probation officer shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319, including any other adult relatives suggested by the parents. The probation officer shall provide to all adult relatives who are located, except when that relative's history of family or domestic violence makes notification inappropriate, within 30 days of the date on which the child is detained, written notification and shall also, whenever appropriate, provide oral notification, in person or by telephone, of all the following information:

(A) The child has been removed from the custody of his or her parent or parents, or his or her guardians.

(B) An explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. The notice shall provide information about providing care for the child, how to become a foster family home or approved relative or nonrelative extended family member as defined in Section 362.7, and additional services and support that are available in out-of-home placements. The notice shall also include information regarding the Kin-GAP Program (Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9), the CalWORKs program for approved relative caregivers (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9), adoption and adoption assistance (Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9), as well as other options for contact with the child, including, but not limited to, visitation. When oral notification is provided, the probation officer is not required to provide detailed information about the various options to help with the care and placement of the child.

(3) The probation officer shall use due diligence in investigating the names and locations of the relatives pursuant to paragraph (2), including, but not limited to, asking the child in an age-appropriate manner about

relatives important to the child, consistent with the child's best interest, and obtaining information regarding the location of the child's adult relatives.

(4) To the extent allowed by federal law as a condition of receiving funding under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.), if the probation officer did not conduct the identification and notification of relatives, as required in paragraph (2), but the court orders foster care placement, the probation officer shall conduct the investigation to find and notify relatives within 30 days of the placement order. Nothing in this section shall be construed to delay foster care placement for an individual child.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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June 17, 2010

Camilla Kieliger
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Transmitted via email to invitations@jud.ca.gov and fax (415) 865-7664

RE: PROPOSED JUDICIAL COUNCIL RULE OF COURT -- SPR 10-33

Dear Ms. Kieliger:

The County Welfare Directors Association of California (CWDA) supports efforts to implement AB 938 (Statutes of 2009), which requires county child welfare agencies to identify, locate and notify relatives when a child is placed into care as a result of abuse and neglect. AB 938 was passed in California to conform to recent federal law, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), which requires all states to ensure relatives are notified when children come into care. However, CWDA has grave concerns with the proposed amendments to Rule of Court (Rule 5.637 et al) that we believe go well beyond the requirements of the California statute, and which if enacted would place onerous new and unfunded requirements on county social services staff, further straining existing local resources.

AB 938 requires social workers to conduct, within 30 days, an investigation to identify and locate all grandparents, adult siblings and other adult relatives of the child, including any other adult relatives suggested by the parent. Once located, the social worker must provide, again within 30 days of the child's removal, a written notification and verbal notification as appropriate of certain information as specified by the bill. AB 938 is consistent with the new federal law, which requires states "within 30 days after the removal of a child from the custody of the parent" to "exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child." (Section 103, P.L. 110-351, emphasis added). It is important to note that the federal law directs states to exercise "due diligence" to find and notify relatives "within 30 days," a construct mirrored in AB 938.

Proposal ignores federal and state laws, goes beyond what is required in those laws.

CWDA opposes the proposed Rules of Court as they exceed both federal requirements and state law and would place onerous new requirements onto county staff with no additional resources to support these new activities. We believe the Judicial Council of California is also exceeding its authority

in executing the law irrespective of the will of the Executive and Legislative branches of California State government. It does so by requiring child welfare agencies to “make ongoing efforts to locate, contact and engage” relatives...“until the case is dismissed or the child is in a placement willing to adopt or accept legal guardianship of the child.” The Judicial Council proposes to take current best practice known as “Family Finding and Engagement” and attempts, inappropriately, to mandate such practice throughout the life of the dependency case. This conflicts with AB 938, which contains no such requirement for county agencies for ongoing search and engagement of relatives nor does it mandate ongoing reports to the court. Had the Legislature and Governor intended for county agencies to continue to search and notify relatives throughout the case, AB 938 would have amended other sections of the Welfare and Institutions Code to ensure continued efforts by the social worker in this regard (i.e. Section 366.21 status review hearing), and the Legislature would have allocated sufficient resources to accomplish such mandate. Since it did not, we must oppose the Judicial Council’s proposed rules.

Attached is a legal analysis of the proposed Rule of Court, affirming that the proposed rule is inconsistent with AB 938 and the Legislature’s intent, and in doing so, the Judicial Council is exceeding it’s constitutional powers in attempting to create a Rule of Court that inappropriately expands upon the law. We note that numerous county counsels throughout California have indicated concurrence with this legal analysis, specifically the county counsels in Calaveras, Los Angeles, Mariposa, Napa, San Bernardino, San Diego, Tehama, and Tulare have all weighed in with concerns. The County Counsels Association of California has also reviewed and concurs with the legal analysis presented in Attachment A.

Proposal would mandate activities that are unfunded and considered “best practice.”

The Judicial Council’s summary digest of the proposed rule (SPR 10-33) acknowledges that the provisions of AB 938 require the social worker and probation officer to contact, locate and notify relatives within 30 days, and acknowledges that “identifying, locating, contacting, and engaging relatives interested in contact and placement with a child, is an ongoing process, however.” CWDA believes this practice is on-going, as social workers are continuously working to help children achieve positive outcomes of safety, permanency, and well-being for children in care. However, our efforts to achieve positive outcomes that all children deserve have been thwarted by recent budget cuts, including a \$133 million budget hole statewide due to the Governor’s veto in the child welfare services program. Compounding this, the State has failed to implement the findings of the SB 2030 Workload Study, which found caseload sizes were double the recommended minimal standard necessary to meet the needs of children in foster care, and well short of the optimal standards needed to achieve positive outcomes that children deserve.

The proposed rule would take best practice and expand it to all children, something counties simply cannot afford to do in this current economic climate, and which is inconsistent with AB 938. We oppose requirements in the proposed Rule of Court to prove social workers have mad

made diligent efforts to “engage” relatives who are notified and contacted, as engagement is not a requirement of the new law. We believe AB 938 is adequate in facilitating engagement with relatives by establishing mechanisms for relatives to indicate their desire to be involved in the child’s case plan. We are extremely concerned the proposed rule creates new expectations to conduct family finding that cannot be met given existing resources, for example by requiring courts to inquire whether county agencies have used “Internet search tools to locate families,” or developed “genograms, family trees, family maps or other diagrams of family relationships.”

We believe existing law and rules of court already ensure children will receive the necessary services to promote familial and lifelong connections throughout the child’s stay in the dependency system, and addresses reporting to the court of such. For example, W&I Code 361.3 requires that relatives are given preferential consideration when children are placed into care or subsequently have a change in placement while in care. Also, W&I Code 366.21(c) provides:

The “social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child’s best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition.”

As the Judicial Council accurately notes, the formal practice of “Family Finding and Engagement (FFE) can be an important tool in finding and engaging relatives.” However, AB 938 does not attempt to mandate this practice, and the Legislature recognizes this is an intensive effort that requires skilled and knowledgeable staff to engage foster children and relatives to ensure both parties are ready and capable to re-engage in a familiar relationship. As such, FFE is a best practice and not fully supported by state funding. We note that the Legislature has considered bills to mandate family finding in the past, but these bills were not passed due to cost concerns.

Additional Form is unnecessary and violates state law.

The proposed Rule of Court would mandate other activities for county agencies that go beyond the requirements of AB 938, which CWDA also opposes. First, the proposed rule would require county social work staff to complete a form and supply extensive information concerning family finding efforts, and require such form to be completed at the dispositional hearing and each subsequent review hearing. Second, the proposed rule would require county social workers to make a specific showing to the court that contacting a relative is inappropriate when the history of family or domestic violence makes contact and engagement inappropriate. If the Legislature and Governor had intended for such extensive reporting to the courts, it would have specified

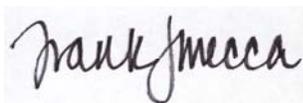
this in the law, and provided funding to support the associated workload. Rather, AB 938 required the creation of only two specific forms: one to notify the relative of their various options to participate in the care and placement of the child and support of the child's family, and a second form to be used by relatives to provide information to the social worker and court regarding the child's needs. It further required these forms to be developed in consultation with CWDA, which has been accomplished. Therefore, we believe the Legislature and Governor intended that only these forms would be required to be developed and completed, and specifically intended that counties be involved in the forms design to ensure consistency with social work practice. Since AB 938 does not prescribe a supplemental report, or any court report, we believe the proposed rule violates the spirit of the law. Nothing precludes the dependency court judge or officer from making an inquiry during juvenile court proceedings regarding these requirements.

Applying the law for children placed with relatives.

The Judicial Council SPR 10-33 also requested feedback on whether the proposed rule should apply differently when children are placed with relatives or with non-relatives, stating the law is silent on this issue. We believe the law applies to all children, regardless if the child is initially placed with relatives. The intent of the federal law and AB 938 is to promote family connections when children are placed into care, by creating a mechanism by which relatives can stay informed and provide information to the court regarding the child in care. AB 938 requires these procedures for children who have been removed from his or her parents or guardians, regardless of placement type.

CWDA appreciates this opportunity to provide comment. Please do not hesitate to contact me at (916) 443-1749 if you have any questions.

Sincerely,



Frank J. Mecca
Executive Director

Attachments: Legal Analysis of Judicial Council Proposed Rule of Court
Recommended Amendments to Proposed Rule of Court

C: CWDA Board of Directors
CWDA Children's Committee
Greg Rose, Deputy Director, Children and Family Services Division, CDSS
Jennifer Henning, Executive Director, County Counsels Association of California

ATTACHMENT A

Legal Analysis of Judicial Council Proposed Rule of Court 5.637 As presented in SPR 10-33

The issue being addressed is whether proposed California Rule of Court, rule 5.637, is consistent with the intent expressed by the Legislature when enacting AB 938. More precisely, is the Judicial Council of California (Judicial Council) exceeding its constitutional powers by promulgating a rule of court that is not consistent with the legislative history of the statute in which the rule purportedly implements.

ISSUE

The first issue presented is whether the statutory intent behind AB 938 is readily determinable and if so, what was the intent of the Legislature when enacting AB 938. The second issue presented is whether proposed rule 5.637 is consistent with the intent expressed by the legislative enactment of AB 938. The third and final issue concerns the legal impact if the proposed rule of court is measured against the legislative history of AB 938 and is then found to be inconsistent with the legislative intent.

As discussed in further detail below, the statutory intent behind AB 938 is readily determinable. Moreover, it appears that the proposed rule of court is not consistent with the legislative intent expressed by the enactment of AB 938. Thus, the proposed rule, when measured against the legislative history of AB 938, is “inconsistent with statute.” The legal impact of the inconsistency is that the proposed rule is very likely to be held invalid by a court of law as the Judicial Council appears to be exceeding its constitutional authority and violating the separation of powers doctrine by promulgating such a rule of court.

RESPONSE

Pursuant to the State’s Constitution, the Judicial Council is empowered to adopt rules for court administration, practice and procedure, not inconsistent with statute. When evaluating whether a rule of court is “not inconsistent with statute,” a court must determine the Legislature’s intent behind the statutory scheme in which the rule was intended to implement and measure the rule’s consistency with that intent. Here, the statutory scheme in question is AB 938 which revised Welfare and Institutions Code section 309. In reviewing the legislative history of AB 938, it is clear that the bill, when first introduced by the Judicial Council, was intended to require ongoing efforts by social workers throughout the dependency to identify, locate and contact all adult relatives of a child who was removed from parental care.

However, over time and with each new amendment, the requirements of the bill were scaled back. In particular, language that arguably would have supported an ongoing investigation to identify, locate and contact the adult relatives was struck and replaced with language indicating a legislative intent of limiting the investigation to the first 30 days following a child’s removal from parental care. Nevertheless, the proposed rule of court is drafted as if the amendments to AB 938 never occurred as it requires an ongoing investigation until the case is either dismissed or the child is placed with caregivers willing to adopt or accept legal guardianship; and further requires social workers to report back to the court every six months regarding their efforts.

Although a rule of court may be broader than the literal terms of its authorizing statute, provided it reasonably furthers the statutory purpose, the rule of court cannot be inconsistent with the legislative intent nor deviate from the procedure chosen by the Legislature to achieve the statute's goal. Simply put, the Judicial Council cannot promulgate a rule of court that, when measured against the statutory scheme, is inconsistent with or deviates from the intent expressed by the legislative enactment. If a rule of court is found to be "inconsistent with statute," then such a rule of court is invalid as the Judicial Council, by adopting such a rule, would be exceeding its constitutional authority.

DISCUSSION

Readily Determinable Statutory Intent

AB 938 was introduced on February 26, 2009, and was sponsored by the Judicial Council. As indicated by the Legislative Counsel's Digest, the bill "would require a social worker, when a child is detained, to immediately begin conducting an investigation, as specified, in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, in order to provide, except in cases of domestic violence, those persons with specified information, including that the child has been removed from the home and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort." [Emphasis added.] The bill would further "require the court to inquire, at the detention hearing, and at the initial petition hearing, regarding those efforts." As originally drafted, AB 938 provided: "If the child is detained, the social worker shall immediately conduct an investigation in order to identify and locate all grandparents and other adult relatives of the child. The social worker shall notify all adult relatives who have been located, except in cases of domestic violence, of the following information" Thus, as originally proposed by the Judicial Council, AB 938 did not include language regarding the length of the investigation nor did it contain language as to when social workers were to report back to the court as to their efforts. Based on the foregoing, it could reasonably be argued that the intent was for an ongoing investigation that social workers were to immediately begin, in order to identify, locate and notify the adult relatives of a detained child.

AB 938 was amended in the Assembly on March 27, 2009, and it was indicated by the Legislative Counsel's Digest that the "bill would require a social worker, when a child is removed [as opposed to "detained] from the home, to immediately begin conducting an investigation, as specified, in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, in order to provide, except when that relative's history of family or domestic violence makes notification inappropriate [adding "family violence"], those persons with specified information, including that the child has been removed from the custody of his or her parents or guardians and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort." The bill would further require "each social study or evaluation to include a factual discussion of these efforts, as specified" [a "social study or evaluation" is the report submitted at the disposition hearing pursuant to Welfare and Institutions Code sections 358 and 358.1], and require "the court to inquire at the initial petition hearing regarding those efforts [striking the requirement that the court must inquire at the detention hearing]." The provisions of AB 938 were revised somewhat to reflect the amendment: "If the child is removed, the social worker shall immediately begin conducting an investigation in order to identify

and locate all grandparents, adult siblings and other adult relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319. For all adult relatives who are located, except when that relative's history of family or domestic violence makes that notification inappropriate, the social worker shall immediately provide written notification and shall also provide oral notification in person or by phone, whenever appropriate, of the following information ..." Again, the provisions of the amended AB 938 did not include language as to when the social worker was to report back to the court nor did it address the issue of how long the investigation was to continue. However, it was now clear that the intent was for social workers to immediately begin conducting their investigations when a child is removed from parental care.

AB 938 was amended in the Assembly on April 20, 2009, but as indicated by the Legislative Counsel's Digest, the amendment did not revise the language in question regarding the investigation ("immediately begin conducting an investigation") nor did it change the requirement that "each social study or evaluation" include "a factual discussion of these efforts"; and the proposed language of AB 938 remained the same: "If the child is removed, the social worker shall immediately begin conducting an investigation in order to identify and locate all ... adult relatives ... [and] "for all adult relatives who are located, ... the social worker shall immediately provide written notification and shall also provide oral notification in person or by phone, whenever appropriate, ..." As no indication was given as to the duration of the investigation – just that it was to begin immediately – it could still be reasonably argued that the Legislature intended an ongoing investigation throughout the course of the dependency.

However, AB 938 was then amended in the Assembly on June 1, 2009, and it was now indicated by the Legislative Counsel's Digest that the bill would require social workers to "begin conducting, within 30 days, an investigation, as specified, in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, ... and to report to the court at the initial petition hearing regarding that effort." Not only was the word "immediately" struck, but the requirement that each social study or evaluation include a factual discussion of these efforts was struck as well. Thus, as proposed, the bill would no longer require an immediate investigation but instead, the bill would require the investigation to begin within 30 days of the child's removal. The provisions of AB 938 were amended accordingly but an additional requirement was added: "If the child is removed, the social worker shall begin conducting, within 30 days, an investigation in order to identify and locate" all adult relatives and for all adult relatives who are located, "the social worker shall provide within 30 days, written notification and shall also provide oral notification in person or by phone, whenever appropriate, ..." As amended, AB 938 now addressed the issue as to when relatives had to be noticed – "within 30 days" of being located - but the issue regarding the length of the investigation remained unanswered. Thus, it still appeared that an ongoing investigation was still being contemplated by the Legislature.

But then AB 938 was amended in the Senate on June 18, 2009, and it was indicated by the Legislative Counsel's Digest that the "bill would require a social worker, when a child is removed from the home, to conduct, within 30 days, an investigation, ...and to report to the court at the initial petition hearing regarding that effort." [Emphasis added.] The relevant portion of AB 938 was revised to read: "If the child is removed, the social worker shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319." The amended provisions went on to provide: "For all adult relatives who are located, ... the social worker shall provide, within 30 days of removal of the child, written notification and shall also provide oral notification in person or by telephone, whenever appropriate, the following information ..." By striking the words "begin conducting" and replacing

them with “conduct, within 30 days, an investigation,” it appears that the intent of the Legislature was now to limit the duration of the investigation to the first 30 days following the child’s removal. This position is buttressed by the fact that the Legislature was now requiring that notice to the adult relatives be completed within the same time period – within 30 days of the child’s removal. Thus, by the express terms of AB 938, both the investigation and the noticing were to occur within 30 days of the child’s removal from parental care. Such express language strongly suggests that the Legislature considered and then rejected the possibility of an ongoing investigation.

Although AB 938 was amended 2 more times (August 19 and September 3, 2009), the intent of the bill with respect to the investigation did not change and the bill was then passed by the Senate on September 10, 2009 and by the Assembly on September 11, 2009. According to the Legislative Counsel’s Digest, the purpose of the bill remained the same: “this bill would require a social worker, when a child is removed from the home, to conduct, within 30 days, an investigation, as specified, in order to identify and locate all grandparents, adult siblings and other adult relatives of the child, in order to provide, except when that relative’s history of family or domestic violence makes notification inappropriate, those persons with specified information, including that the child has been removed from the custody of his or her parents or guardians and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort.”

The Assembly Floor Analysis summarized AB 938 as follows: “1)Requires that, when a child is removed from his or her parents and placed in foster care, the child’s social worker must, within 30 days, conduct an investigation to identify and locate the child’s adult relatives, as defined. Requires the social worker to use due diligence in investigating the names and locations of the relatives, including asking the child; 2) Requires, for all relatives who are located pursuant to #1 above, the social worker to provide, within 30 days of removal, specified written notification and, when appropriate, oral notification ...”

AB 938, which revised section 309 of the Welfare and Institutions Code, was approved by the Governor on October 11, 2009, and filed with the Secretary of State on the same date. The paragraph in question, subdivision (e)(1) of section 309, provides: “If the child is removed, the social worker shall conduct within 30 days an investigation in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, including any other adult relatives suggested by the parents. The social worker shall provide adult relatives who are located, except when that relative’s history of family or domestic violence makes notification inappropriate, within 30 days of removal of the child, written notification ... of all the following information ...” [Emphasis added.]

As enacted, AB 938 implemented a federal mandate found in Public Law 110-351, which requires “... within 30 days after the removal of a child from the custody of a parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence ...” In effect, AB 938 came full circle. The synopsis of the bill, when it was first introduced, indicated the following: “This Committee bill, sponsored by the Judicial Council, seeks to ensure better outcomes for children in foster care by implementing one of the requirements of the federal Fostering Connections to Success and Increasing Adoptions Act (the Fostering Connections Act, HR 6893, Pub. L. 110-351, 2008)...First, the bill implements the federal mandate that child welfare agencies provide notice to all adult relatives within 30 days of a child’s removal from his or her parents and placement in foster care...”

Clearly, as the legislative history of AB 938 reveals, the Legislature intended to implement the federal mandate of noticing all adult relatives within 30 days of a child’s removal from parental care. If all adult relatives are to be noticed within 30 days of the child’s removal, then obviously the Legislature intended for a social worker’s investigation to identify and locate those same relatives to be completed within the same time period – within 30 days following the child’s removal. Any other interpretation would be specious at best.

Is Proposed California Rules of Court, rule 5.637, Consistent with the intent of the Legislature

Proposed California Rules of Court, rule 5.637, provides in pertinent part:

- (a) “Within 30 days of removal, the agency must conduct an investigation to locate and contact the child’s family members, as defined in rule 5.502(28) and (35).
- (b) “The Agency must make ongoing efforts to locate, contact, and engage the individuals in rule 5.502(18), (28), and (35) in efforts to achieve a permanent home or lifelong connection for the child, until the case is dismissed or the child is in a placement willing to adopt or accept legal guardianship of the child.
- (c) “...
- (d) “The agency must submit a completed Family Finding Report to Court (form JV-130) at the dispositional hearing. The form must contain information regarding the individuals identified under this rule and a summary that includes, but need not be limited to, the following information:
 - (1) The number of people identified and their relationship to the child;
 - (2) The number of people contacted;
 - (3) The number of people interested in ongoing contact with the child; and
 - (4) The number of people interested in placement of the child.
- (e) “The agency must submit a completed Family Finding Report to Court (form JV-130) at each review hearing. The form must contain information regarding the individuals identified under this rule and a summary of Family Finding and Engagement activities occurring since the last hearing, including but not limited to:
 - (1) The number of people identified since the last hearing;
 - (2) The number of potential placement options identified since the last hearing;
 - (3) The number of people contacted by the agency since the last hearing;
 - (4) A description of activities to secure a permanent home or lifelong connection for the child; and
 - (5) A summary of progress made in identifying possible placements and lifelong connections based on these activities.” [Emphasis added.]

It is clear from the foregoing that the Judicial Council is contemplating a rule of court wherein social workers are required to not only conduct an investigation to identify, locate and notice all adult relatives within 30 days of a child’s removal, but to continue to their investigation throughout the dependency until the case is either dismissed or the child’s placement is willing to adopt or accept legal guardianship. Indeed, the proposed rule would require social workers to report back to the

court every six months at review hearings regarding their efforts and to submit a completed Judicial Council form listing, among other things, the number of people identified since the last hearing, the number of potential placement options identified since the last hearing, and the number of people contacted by the agency since the last hearing.

As drafted, the proposed rule of court appears to have been drafted to coincide with the legislative intent at or near the time the Judicial Council introduced AB 938. However, as discussed above, the language that would have arguably supported an ongoing investigation did not survive the amendment process of the bill. In fact, the express language of AB 938 clearly indicates that the intent of the Legislature, at the time the bill was enacted, was for social workers to not only identify and locate the adult relatives within 30 days of the child's removal, but to contact and notify those same relatives within the same 30 day period. Indeed, subdivision (e)(1) of section 309 provides: "If the child is removed, the social worker shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child,The social worker shall provide to all adult relatives who are located, ..., within 30 days of removal of the child, written notification and shall also, whenever appropriate, provide oral notification, in person or by telephone, of all the following information ..."

Based on the foregoing, it can be reasonably argued that an ongoing investigation, as required by the proposed rule, is not consistent with the legislative history of AB 938. To the contrary, such an investigation was considered and rejected by the Legislature through the amendment process.

Legal Impact if the Proposed Rule of Court is "Inconsistent with Statute"

Article VI, section 6(d), of the California Constitution empowers the Judicial Council to adopt rules for court administration, practice and procedure, not inconsistent with statute. Although rules of court have the force of law, the Judicial Council may not adopt rules that are inconsistent with governing statutes. (California Court Reporters Assoc. v. Judicial Council of California (1995) 39 Cal.App.4th 15, 22.) This is because the Constitution reserves to the Legislature and the people of California the higher right to provide rules of procedure; and the Judicial Council's right is secondary – a right to adopt rules only when the higher authority of the Legislature and the people has not been exercised. (California Court Reporters Assoc. v. Judicial Council of California, supra, at 22.)

In other words, the Judicial Council's rulemaking power is limited by existing law as enacted by the Legislature, thus making the legislative branch an inherently higher authority than the Judicial Council itself. (California Court Reporters Assoc. v. Judicial Council of California, supra, at 22.) Consequently, a challenged rule of court must be measured for consistency against the legislative enactments. (California Court Reporters Assoc. v. Judicial Council of California, supra, at 24.)

Accordingly, the phrase "not inconsistent with statute" does not mean the impossibility of concurrent operative effect or contradictory in the sense that the provisions cannot co-exist. Nor does it mean that the provisions must be mutually repugnant or contradictory or contrary, the one to the other, so that both cannot stand; nor does it mean that the rule of court is so antithetical that it is impossible as a matter of law that they can both be effective. (California Court Reporters Assoc. v. Judicial Council of California, supra, at 23.)

With these guiding principles, California courts have in the past found rules of court "inconsistent with statute" and thus, found the challenged rules to be invalid. These courts did not test the validity

of the rule of court by determining whether it was impossible as a matter of law for both the statute and the rule to have concurrent operative effect. Instead, the courts measured the challenged rule against the statutory scheme to determine whether the rule was consistent with the intent expressed by the Legislative enactment. More specifically, when evaluating whether a rule of court is “not inconsistent with statute” within the meaning of the California Constitution, a court must determine the Legislature’s intent behind the statutory scheme that the rule was intended to implement and measure the rule’s consistency with that intent. (California Court Reporters Assoc. v. Judicial Council of California, *supra*, at 24; see *In re Robb M.* (1978) 21 Cal3d 337, 346; see *Iverson v. Superior Court* (1985) 167 Cal.App.3d 544, 548.) Simply put, the Judicial Council may not adopt rules inconsistent with the governing statutes (see *People v. Hall* (1994) 8 Cal.4th 950, 960) nor may they adopt rules that are inconsistent with the readily determinable statutory intent (see *In re Robin M.*, *supra*, at 346).

As presently drafted, proposed rule 5.673 can co-exist with AB 938. In fact, it appears that the proposed rule was specifically drafted so that its provisions could have concurrent operative effect with the provisions of AB 938. But as stated above, this is not the test under the constitution. The proposed rule of court must be measured against the statutory scheme to determine whether the rule is consistent with the intent expressed in the legislative enactment. Clearly, the Legislature contemplated an ongoing investigation early on but as the legislative history demonstrates, the requirement of an ongoing investigation was discarded and instead, the federal mandate of Public Law 110-351 was adopted: an investigation to identify, locate and notify all adult relatives within 30 days of the child’s removal from parental care.

The Judicial Council may argue that because social workers are required to exercise due diligence in investigating the names and locations of the child’s adult relatives (see subsection (e) (3) of section 309), this requirement necessarily implies a legislative intent for an ongoing investigation as due diligence cannot possibly be exercised in a mere 30 days. Such an argument is not persuasive, however. As indicated, AB 938 adopted the federal mandate found in Public Law 110-351 which not only contemplates the exercise of due diligence in a 30 day period but actually demands it: “... within 30 days after the removal of a child from the custody of a parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child ...” [Emphasis added.] Thus, notwithstanding the Judicial Council’s belief to the contrary, both federal and state Legislators have determined that due diligence can be exercised within 30 days of a child’s removal with respect to both identifying and noticing adult relatives.

Interesting to note, when AB 938 was amended for the first time in the Assembly, the following language was added: “Each county welfare department shall create and make public a procedure by which relatives of a child who has been removed from his or her parents or guardians may identify themselves to the department and be provided with the notices as required by paragraphs (1) and (2).” Throughout the amendment process, this language survived and became part of subsection (e) (3) of section 309. By adding this requirement to AB 938 while striking the language that arguably supported an ongoing investigation, the Legislature was ensuring that procedures would be in place in the event that not all relatives could be identified and contacted within 30 days of the child’s removal and in doing so, made it clear that an ongoing investigation was neither required nor necessary under AB 938.

The Judicial Council may also argue that it is permissible to adopt a rule that is broader than the literal terms of its authorizing statute as long as it reasonably furthers the statutory purpose; and this

is true unless the statute implicitly or inferentially reflects a legislative choice to require a particular procedure and the rule deviates from that procedure. (See *Jevne v. Superior Court (JB Holdings)* (2005) 25 Cal.4th 935.) Clearly, the purpose of AB 938 is to ensure that the adult relatives of a child, who has been removed from parental care, receive notice of the removal and are advised as to the various ways they could involve themselves in the child's life. Just as clear, however, is the fact that the Legislature choose a particular procedure in which to achieve the statute's goal – a social worker, within 30 days of the child's removal, is to exercise due diligence in investigating and notifying all the adult relatives of the child; and if the social worker is unsuccessful in his or her efforts, each county welfare department is required to establish a procedure that would allow relatives to identify themselves to the county and to receive the information regarding how they could participate in the child's life. By adopting the forgoing while striking the language that arguably supported an ongoing investigation, the Legislature clearly selected the procedure that child welfare agencies were to follow in their attempts to achieve the statute's goal of notifying relatives of a child's removal. It would appear, therefore, that the proposed rule of court, with its requirement for an ongoing investigation, deviates from the legislative choice to require a particular procedure to notify relatives of a child's removal.

Based on the forgoing, it can be strongly argued that the proposed rule and its requirement for an ongoing investigation is not consistent with the legislative history of AB 938, the statute in which the rule purportedly implements. More precisely, it appears that the Judicial Council is attempting to adopt a procedure that was clearly rejected by the Legislature. Thus, not only does it appear that the Judicial Council is exceeding its constitutional authority but it also appears the Judicial Council is violating the separation of powers doctrine under the California Constitution. The primary purpose of the separation of powers doctrine is to prevent the combination of fundamental powers of government in the hands of a single person or group. (*Manduley v. Superior Court* (2002) 27 Cal. 4th 537, 557; *Parker v. Riley* (1941) 18 Cal.2d 83, 89.)

The separation of powers doctrine has not been interpreted to require "the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another." (*Manduley v. Superior Court*, *supra*, at 90.) Thus, the Judicial Council may properly promulgate rules as necessary to effectuate its power to control court administration, practice and procedure. (See *Parker v. Riley*, *supra*, at 90-91.) The limiting principle, however, is that the exercise of such overlapping functions must be incidental and ancillary to the core powers of the branch in question, rather than a usurpation of a power delegated to another branch. (See *Parker v. Riley*, *supra*, at 88-89.) Here, it would seem that the Judicial Council is attempting to usurp the power delegated to the Legislature by adopting a procedure that is to be carried out by child welfare agencies state-wide, even though the Legislature has already considered and rejected the proposed procedure. Under these circumstances, it cannot reasonably be argued that the adoption of such a procedure is incidental or ancillary to the powers of the Judicial Council and therefore, it appears that the Judicial Council would be violating the separation of powers doctrine by adopting the proposed rule.

CONCLUSION

When evaluating whether a rule of court is "not inconsistent with statute" within the meaning of the California Constitution, a court must determine the Legislature's intent behind the statutory scheme that the rule was intended to implement and measure the challenged rule against that intent. The Legislature's intent in enacting AB 938 was clearly to adopt the federal mandate requiring social

workers, within 30 days following a child's removal from paternal custody, to exercise due diligence to identify and contact the adult relatives of the child. Moreover, a review of the legislative history of AB 938 clearly reveals that the Legislature considered and rejected an ongoing investigation by social workers. By requiring ongoing efforts, the Judicial Council appears to be promulgating a rule that is not only "inconsistent with statute" but one that violates the separation of powers doctrine as well. As a result, a court of law is very likely to find that the Judicial Council is exceeding its constitutional authority which would render the proposed rule of court invalid.

In addition to proposed rule 5.673, the Judicial Council is also promulgating amendments to rules 5.502, 5.534, 5.695, 5.708, 5.715, 5.720, 5.722 and 5.810 so as to be consistent with proposed rule 5.673 and the requirement for an ongoing investigation. If proposed rule 5.673 is found to be invalid, then these remaining revisions would be invalid as well.

Attachment B

CWDA Amendments to SPR 10-33 Revised Rules of Court

Rule 5.637. Family Finding and Engagement

Strike (b) “The agency must make ongoing efforts to locate, contact and engage the individuals in rule 5.502(18), (28), and (35) in efforts to achieve a permanent home or lifelong connection for the child, until the care is dismissed or the child is in a placement willing to adopt or accept legal guardianship of the child.

Strike in (c) “If the agency does not contact an individual, the agency must make a showing sufficient for the court to find that contact is inappropriate.”

Strike (d) The agency must submit a completed Family Finding Report to Court (form JV-130) at the dispositional hearing. The form must contain information regarding the individuals identified under this rule and a summary that includes, but need not be limited to, the following information:

- (1) The number of people identified and their relationship
- (2) The number of people contacted
- (3) The number of people interested in ongoing contact with the child
- (4) The number of people interested in placement of the child

Strike (e) The agency must submit a completed *Family Finding Report to Court* (form JV-130) at each review hearing. The form must contain information regarding the individuals identified under this rule and a summary of Family Finding and Engagement activities occurring since the last hearing, including but not limited to:

- (1) The number of people identified since the last hearing;
- (2) The number of potential placement options identified since the last hearing;
- (3) The number of people contacted by the agency since the last hearing;
- (4) A description of activities to secure a permanent home or lifelong connection for the child; and
- (5) A summary of progress made in identifying possible placements and lifelong connections based on these activities.

Strike all of (f) and (g)

Rule 5.695 Findings and Orders of the Court – Disposition

Strike all of (f). Recommended revision:

- (a) “The court may consider whether the agency has made diligent efforts to locate and contact the relatives referred to in rule 5.637(a).
- (b) The court may make the following findings:
 - (A) The agency has made diligent efforts to locate and contact the individuals referred to in Rule 5.637(a); or

- (B) The agency did not make diligent efforts to locate and contact the individuals referred to in rule 5.637(a). If the court makes this finding, the court must order the agency to make diligent efforts to locate and contact the individuals referred to in rule 5.637(a) except for an individual the agency finds inappropriate to contact under rule 5.637(c), and may require a written or verbal report to the court at a later time.

Strike all other changes in Rules 5.708 (General review hearing requirements), 5.715 (Twelve-month permanency hearing), Rule 5.720 (Eighteen-month permanency review hearing), Rule 5.722 (Twenty-four-month subsequent permanency review hearing), and Rule 5.810 (Reviews, hearing and permanency planning).