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INVITATION TO COMMENT SPR14-14

Title	Action Requested
Juvenile Dependency: Attorney Training	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.660	January 1, 2015
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges
Hon. Jerilyn L. Borack, Cochair	415-865-4507
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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending rule 5.660 to conform to a recent statutory change to the education and training requirements for attorneys who appear in juvenile dependency proceedings. Assembly Bill 868 amended section 317(c) of the Welfare and Institutions Code, effective January 1, 2014, to require that this training include instruction on sensitivity to the needs of lesbian, gay, bisexual, and transgender youth. The proposed amendment would add this topic to those required by the rule and make minor, nonsubstantive modifications to clarify the text.

The Proposal

Assembly Bill 868 (Stats. 2013, ch. 300) amended section 68553 of the Government Code and sections 102(d), 304.7(a), and 317(c) of the Welfare and Institutions Code¹ to incorporate additional required elements into training and education programs for family and juvenile court judicial officers, Court Appointed Special Advocate (CASA) volunteers, and court-appointed attorneys representing children in juvenile dependency proceedings. All of the amended code sections implicate the rules of court indirectly; sections 102(d) and 317(c) expressly require that the Judicial Council implement their respective mandates by adopting rules of court.² However, because of the manner in which the council has exercised its authority with respect to education

¹ All further statutory citations refer to the Welfare and Institutions Code unless otherwise specified.

² Government Code section 68553, which applies to Judicial Council training programs for family court bench officers and professionals, and section 304.7, which applies to Judicial Council training standards for juvenile dependency judges and subordinate judicial officers, do not expressly require implementation through rules of court.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

standards and requirements for judicial officers and CASA volunteers, no amendments to the rules addressing these subjects are needed.

Rule 5.660. Section 4 of AB 868 amends section 317(c) to require that the training requirements for court-appointed dependency attorneys for children, established by rule of court, “include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.” (Welf. & Inst. Code, § 317(c).) Rule 5.660(d), which establishes experience and education requirements for attorneys who appear in juvenile dependency proceedings as required by sections 317, 317.5, and 317.6, lists, by topic, the information that must be included in training for an attorney who appears in juvenile dependency proceedings. It does not currently include the requirement added by section 4 of AB 868.

The committee proposes the following amendment to rule 5.660:

Amend rule 5.660(d)(3) to require that training and education for an attorney who appears in juvenile dependency proceedings include instruction on “cultural competency and sensitivity relating to lesbian, gay, bisexual, and transgender youth, and on best practices for providing adequate care to these youth when they are placed out of their homes.”

Alternatives Considered

The committee considered whether sections 1, 2, and 3 of AB 868 require conforming amendments to the rules of court. For the reasons discussed below, the committee does not propose any further rule amendments in response to AB 868.

CASA programs and rule 5.655. Section 2 of AB 868 amends section 102(d) to require the Judicial Council’s rules establishing an “initial and ongoing training program” for CASA volunteers to include instruction on “[c]ultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.” (Welf. & Inst. Code, § 102(d).) Rule 5.655, which establishes guidelines for local CASA programs, incorporates the mandatory training topics in section 102(d) by referring directly to that code section rather than listing the topics. (See Cal. Rules of Court, rule 5.655(d).) Therefore, no amendment to rule 5.655 is required to conform to AB 868.

The committee noted, however, that although rule 5.655(d), which covers initial training, incorporates section 102(d)’s requirements by reference, rule 5.655(i), which covers ongoing training, does not. The committee considered proposing an amendment to fill this apparent gap, but ultimately concluded that no change was warranted. First, the rule is not directly affected by AB 868. Section 102(d) has used the language “initial and ongoing training program” since it was enacted in 1988. (Assem. Bill 4445; Stats. 1988, ch. 723, § 5.) Rule 5.655(i) has never listed topics required for ongoing training since its adoption, as rule 1424, in 1995. Second, the Judicial Council has received no indication that this omission has led to any shortcomings in the ongoing

training provided to CASA volunteers. Indeed, when rule 1424 underwent extensive amendment in 2004, the continued omission of mandatory topics from the ongoing training requirements provoked no comment.

Other training rules. Several rules of court in title 5³ and title 10⁴ address training and education requirements for judicial officers and court-connected professionals who perform duties in family law matters. After reviewing the statutory language, legislative history, and current rules of court, the committee does not recommend amending these rules.

Section 1 of AB 868 amends section 68553 of the Government Code to require the Judicial Council to include, in its training programs for specific court officers who perform duties in family law matters, instruction on the effects of gender identity and sexual orientation on family law proceedings. This amendment does not require any specific action by family law judicial officers or court personnel. The Judicial Council can comply with these mandates by ensuring that its family-law training programs include the required elements. No amendment of the rules is needed.

In a similar way, section 3 of AB 868 amends section 304.7(a) of the Welfare and Institutions Code to require the council to include, in standards for the education of juvenile dependency judges, instruction on “cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.” Although judges are not required to complete this training, section 304.7(b) does require subordinate judicial officers assigned to dependency hearings to do so. The council has already implemented this requirement through references to section 304.7(b) in rules 10.469(c) and 10.701(c).⁵ No further amendment is needed.

Implementation Requirements, Costs, and Operational Impacts

Providers of legal education and training for dependency attorneys would need to incorporate information on sensitivity to and care for lesbian, gay, bisexual, and transgender youth into their curricula. The committee does not anticipate that this requirement will lead to any significant cost or operational impact on the courts.

³ See rule 5.210 (custody mediators), rule 5.225 (custody evaluators), rule 5.242 (family law children’s counsel), rule 5.340 (child support commissioners), and rule 5.430 (family law facilitators).

⁴ See rule 10.462 (all trial judges and subordinate judicial officers), 10.463 (family court judges and subordinate judicial officers), 10.469 (training recommendations), and 10.701 (subordinate judicial officers).

⁵ Court-connected juvenile dependency mediators, for whom rule 5.518(e) establishes minimum training requirements, are not addressed by AB 868. In addition, rule 5.518(e)(3)(I) already includes a requirement that dependency mediators receive training on awareness of differing cultural values. For these reasons, no amendment to rule 5.518 is proposed.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Text of proposed Cal. Rules of Court, rule 5.660, at pages 5–6
2. Assembly Bill 868 (Stats. 2013, ch. 300),
leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB868&search_key=words

Rule 5.660 of the California Rules of Court would be amended, effective January 1, 2015, to read:

1 **Rule 5.660. Attorneys for parties (§§ 317, 317.6, 353, 366.26, 16010.6)**

2
3 (a)–(c) ***

4
5 (d) **Competent counsel**

6
7 ***

8
9 (1)–(2) ***

10
11 (3) *Experience and education*

12
13 (A) Only those attorneys who have completed a minimum of eight hours of
14 training or education in the area of juvenile dependency, or who have
15 sufficient recent experience in dependency proceedings in which the
16 attorney has demonstrated competency, may be appointed to represent
17 parties. This training must include:

18
19 (i) ~~In addition to a summary~~ An overview of dependency law and
20 related statutes and cases;

21 (ii) ~~training and education for attorneys must include~~ Information on
22 child development, child abuse and neglect, substance abuse,
23 domestic violence, family reunification and preservation, and
24 reasonable efforts, and;

25 (iii) Instruction on cultural competency and sensitivity relating to
26 lesbian, gay, bisexual, and transgender youth, and on best
27 practices for providing adequate care to these youth when they
28 are placed out of their homes.

29
30 (B) Within every three years, attorneys must complete at least eight hours
31 of continuing education related to dependency proceedings.

32
33 (4)–(6) ***

34
35 (e)–(g) ***

36
37 **Advisory Committee Comment**

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39 ***

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41 Nothing in this rule is intended to ~~expand~~ extend the permissible scope of any judicial inquiry
42 into an attorney's reasons for declining to represent one or more siblings or requesting to
43 withdraw from representation of one or more siblings, due to an actual or reasonably likely

Rule 5.660 of the California Rules of Court would be amended, effective January 1, 2015, to read:

1 conflict of interest. (See ~~Cal. Bar Rules, Prof. Conduct R 3-310, Subd (C)~~. State Bar Rules Prof.
2 Conduct, rule 3-310(C).) While the court has the duty and authority to inquire as to the general
3 nature of an asserted conflict of interest, it cannot require an attorney to disclose any privileged
4 communication, even if such information forms the basis of the alleged conflict. (*In re James S.*
5 (1991) 227 Cal.App.3d 930, 934; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592–593.)