

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR15-23

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Title	Action Requested
Juvenile Law: Proceedings Before a Referee	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend California Rules of Court, rule 5.538	January 1, 2016
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Audrey Fancy, 415-865-7706
Hon. Jerilyn L. Borack, Cochair	<a href="mailto:audrey.fancy@jud.ca.gov">audrey.fancy@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending California Rules of Court, rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1).<sup>1</sup> The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.

### The Proposal

Rule 5.538(b)(3) is inconsistent with Welfare and Institutions Code section 248, subdivision (b)(1), and must be amended to conform to existing law and to prevent unnecessary appellate delays.

Welfare and Institutions Code section 248(b)(1) was amended by Senate Bill 179, effective January 1, 2011, to provide that if the parent, guardian, or child is present in court at the time the referee's findings and orders are made, then the orders and rehearing rights may be personally served. Otherwise, under subdivision (b)(2), service must be by mail to the last known or designated address.

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<sup>1</sup> See Senate Bill 179 (Stats. 2010, ch. 66), [http://leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_179&sess=0910&house=B&author=runner](http://leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_179&sess=0910&house=B&author=runner) (as of Dec. 8, 2014).

*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 These proposals are circulated for comment purposes only.*

To reconcile this discrepancy, the committee proposes amending rule 5.538(b)(3) by replacing the final sentence with the following subparagraphs:

- (A) Service is deemed complete at the time of personal, in-court service as provided in Welfare and Institutions Code section 248, subdivision (b)(1).
- (B) If personal, in-court service as in (A) is not possible, service must be by mail to the last known address and is deemed complete at the time of mailing as provided in subdivision (b)(2) of that section.

### **Alternatives Considered**

No alternatives were considered because the rule is inconsistent with statute.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation will require some changes in court procedures and training, but costs should be minimal given that many courts already comply with Welfare and Institutions Code section 248. In addition, once court practices are changed, this revision should result in savings because the statutory change allows for service in court, a less costly method of service than service by mail. In addition, implementation should prevent delays in appeals from orders terminating parental rights. The legislative history of Senate Bill 179 indicates that the purpose of the amendment allowing for personal courtroom service of a referee's orders was to prevent such delays.<sup>2</sup>

## **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?

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<sup>2</sup> Sen. Rules Com., Off. of Sen. Floor Analyses, unfinished business analysis of Sen. Bill No. 179 (2010–2011 Reg. Sess.) as amended May 20, 2010, at (as of Dec. 8, 2014).

**Attachments and Links**

1. Proposed Cal. Rules of Court, rule 5.538, at page 4

Rule 5.538 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 5.538. Conduct of proceedings held before a referee not acting as a temporary**  
2 **judge**

3  
4 (a) \* \* \*

5  
6 (b) **Furnishing and serving findings and order; explanation of right to review**  
7 **(§ 248)**

8  
9 After each hearing before a referee, the referee must make findings and enter an  
10 order as provided elsewhere in these rules. In each case, the referee must cause all  
11 of the following to be done promptly:

12  
13 (1) Furnish a copy of the findings and order to the presiding judge of the juvenile  
14 court.

15  
16 (2) Furnish to the child (if the child is 14 or more years of age or, if younger, as  
17 requested) a copy of the findings and order, with a written explanation of the  
18 right to seek review of the order by a juvenile court judge.

19  
20 (3) Serve the parent and guardian—and counsel for the child, parent, and  
21 guardian—a copy of the findings and order, with a written explanation of the  
22 right to seek review of the order by a juvenile court judge. ~~Service must be by~~  
23 ~~mail to the last known address and is deemed complete at the time of mailing.~~

24  
25 (A) Service is deemed complete at the time of personal, in-court service as  
26 provided in Welfare and Institutions Code section 248, subdivision  
27 (b)(1).

28  
29 (B) If personal, in-court service as in (A) is not possible, service must be by  
30 mail to the last known address and is deemed complete at the time of  
31 mailing as provided in subdivision (b)(2) of that section.  
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