

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR17-16

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**Title**

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

**Action Requested**

Please review

**Proposed Effective Date**

January 1, 2018

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 5.552

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**Proposed by**

Family and Juvenile Law Advisory  
Committee  
Hon. Jerilyn L. Borack, Cochair  
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Tribal Court–State Court Forum  
Hon. Abby Abinanti, Cochair  
Hon. Dennis M. Perluss, Cochair

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee (committee) and Tribal Court–State Court Forum (forum) jointly propose to amend California Rules of Court, rule 5.552 to conform to California statutory law. This proposal is in response to comments from practitioners and court staff advising that the discrepancies between the rule and statutory requirements were causing confusion.

### Background

Effective January 1, 2015, Assembly Bill 1618 (Stats. 2014, ch. 57, § 1) added subdivision (f) to section 827 of the Welfare and Institutions Code<sup>1</sup> to clarify the right of an Indian child's tribe to have access to the juvenile court file of a case involving that child. At that time, no changes were made to rule 5.552 of the California Rules of Court, which implements this section. Contrary to section 827 as amended, rule 5.552 continues to require that representatives of an Indian child's

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<sup>1</sup> Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

*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 These proposals are circulated for comment purposes only.*

tribe petition the juvenile court if the tribe wants access to the juvenile court file. This inconsistency has created confusion and results in unnecessary motions.

In addition, court staff have noted that rule 5.552(d)(1)(C) requires that notice of a petition for disclosure be served on “[t]he child,” while the relevant statutes stipulate that notice be served on a child 10 years of age or older.<sup>2</sup> Commentators have noted that serving notice on an infant or young child makes no sense and is a waste of resources.

In addition to these two inconsistencies, the committee and forum also recommend that language in the rule that is duplicative of statutory language be deleted. This follows the request of the Judicial Council Rules and Projects Committee that the Family and Juvenile Law Advisory Committee review rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate. Since repetitions of statutory text in the rules of court necessitate that they be amended whenever the underlying statutes are amended, deleting the duplicative language will reduce the frequency of rule amendments.

### **The Proposal**

This proposal would:

- Delete subdivision (b) of the rule, which is duplicative of section 827(a). This deletion also addresses the inconsistency between the rule and section 827(f);
- Reletter and amend subdivision (c) of the rule in light of the removal of subdivision (b);
- Change references to “juvenile court record” in subdivision (c) to “juvenile case file” to be consistent with the rest of the rule. Effective 2009, this language was changed throughout the rule except in subdivision (c) which was inadvertently omitted<sup>3</sup>;
- Revise and reletter subdivision (d)(1)(C) of the rule to require notice to a child only when the child is 10 years of age or older, in conformity with sections 290.1 through 295;
- Revise and reletter subdivision (f) of the rule to remove language that is duplicative of section 828; and
- Delete subdivision (g) of the rule, which is duplicative of section 827(b)(2).

These revisions will make the rule consistent with, but not duplicative of, statutes and remove confusion.

### **Alternatives Considered**

The committee and forum considered taking no action at this time. However, as discussed above, rule 5.552 as currently drafted is inconsistent with statutory law. The inconsistency has caused confusion and results in unnecessary court motions and notices, which is an inefficient use of judicial and party resources. The committee and forum also considered whether to leave in the language that is duplicative of statutory law, as some commentators have observed that it helps

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<sup>2</sup> See Welf. & Inst. Code, §§ 290.1–295.

<sup>3</sup> See page 6 of item A36 on the Judicial Council meeting agenda from October 24, 2008 available at: <http://www.courts.ca.gov/documents/102408itema36.pdf>

explain and clarify the statutory requirements that are otherwise confusing. The committee and forum seek comments on this option.

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

No implementation requirements or operational impacts are expected. To the extent any costs are associated with the rule revisions, it is anticipated that they will result in cost savings by avoiding unnecessary motions and notices.

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would courts require in order to implement this proposal? 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 an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?
- How well would this proposal work in small courts? Large courts?

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rule 5.552, at pages 4–7

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 5. Family and Juvenile Rules**

2  
3 **Division 3. Juvenile Rules**

4  
5 **Chapter 3. General Conduct of Juvenile Court Proceedings**

6  
7 **Rule 5.552. Confidentiality of records (§§ 827, 828)**

8  
9 (a) \*\*\*

10  
11 ~~(b) — General provisions~~

12  
13 ~~(1) — The following individuals and entities may inspect, receive, and copy the~~  
14 ~~juvenile case file without an order of the juvenile court:~~

15  
16 ~~(A) — Court personnel;~~

17  
18 ~~(B) — The district attorney, a city attorney, or a city prosecutor authorized to~~  
19 ~~prosecute criminal or juvenile cases under the law;~~

20  
21 ~~(C) — The child who is the subject of the proceeding;~~

22  
23 ~~(D) — The child’s parents;~~

24  
25 ~~(E) — The child’s guardians;~~

26  
27 ~~(F) — The attorneys for the parties, including any trial court or appellate~~  
28 ~~attorney representing a party in the juvenile proceeding or related~~  
29 ~~appellate proceeding;~~

30  
31 ~~(G) — Judges, referees, other hearing officers, probation officers, and law~~  
32 ~~enforcement officers who are actively participating in criminal or~~  
33 ~~juvenile proceedings involving the child;~~

34  
35 ~~(H) — The county counsel, city attorney, or any other attorney representing~~  
36 ~~the petitioning agency in a dependency action;~~

37  
38 ~~(I) — Members of child protective agencies as defined in Penal Code section~~  
39 ~~11165.9; and~~

40  
41 ~~(J) — The California Department of Social Services in order to carry out its~~  
42 ~~duty to oversee and monitor county child welfare agencies, children in~~  
43 ~~foster care or receiving foster care assistance, and out-of-state~~  
44 ~~placements.~~  
45

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

- 1           ~~(2) The following individuals and entities may inspect the juvenile case file~~  
2           ~~without a court order and may receive a copy of the juvenile case file~~  
3           ~~pursuant to a court order:~~  
4  
5           ~~(A) All persons and entities listed in Welfare and Institutions Code sections~~  
6           ~~827 and 828 who are not listed in (b)(1) above; and~~  
7  
8           ~~(B) An Indian child's tribal representative if the tribe has intervened in the~~  
9           ~~child's case.~~  
10  
11          ~~(3) Authorization for any other person or entity to inspect, obtain, or copy~~  
12          ~~juvenile case files may be ordered only by the juvenile court presiding judge~~  
13          ~~or a judicial officer of the juvenile court.~~  
14  
15          ~~(4) Juvenile case files may not be obtained or inspected by civil or criminal~~  
16          ~~subpoena.~~  
17  
18          ~~(5) When a petition is sustained for any offense listed in section 676, the~~  
19          ~~charging petition, the minutes of the proceeding, and the orders of~~  
20          ~~adjudication and disposition that are contained in the juvenile case file must~~  
21          ~~be available for public inspection, unless the court has prohibited disclosure~~  
22          ~~of those records under that section.~~  
23  
24

25          ~~(e)~~**(b) Petition**

26  
27          Juvenile case files may only be obtained or inspected in accordance with sections  
28          827 and 828. They may not be obtained or inspected by civil or criminal subpoena.  
29          With the exception of those persons permitted to inspect juvenile case files ~~court~~  
30          ~~records~~ without court authorization under sections 827 and 828, every person or  
31          agency seeking to inspect or obtain juvenile case files ~~court records~~ must petition  
32          the court for authorization using *Petition for Disclosure of Juvenile Case File* (form  
33          JV-570).  
34

- 35          (1) The specific ~~records~~files sought must be identified based on knowledge,  
36          information, and belief that such records exist and are relevant to the purpose  
37          for which they are being sought.  
38  
39          (2) Petitioner must describe in detail the reasons the ~~records~~files are being sought  
40          and their relevancy to the proceeding or purpose for which petitioner wishes  
41          to inspect or obtain the records.  
42

43          ~~(d)~~**(c) Notice of petition for disclosure**

- 44  
45          (1) \*\*\*  
46

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 (A)-(B) \*\*\*

2 (C) The child if the child is 10 years of age or older;

3  
4 (D)-(I) \*\*\*

5  
6 (2) \*\*\*

7  
8 (3) If the petitioner does not know the identity or address of any of the parties in  
9 ~~(d)~~(c)(1) above, the clerk must:

10  
11 (A)-(B) \*\*\*

12  
13 (4) \*\*\*

14  
15 **(e)(d) Procedure**

16  
17 (1) \*\*\*

18  
19 (2) If petitioner shows good cause, the court may set a hearing. The clerk must  
20 notice the hearing to the persons and entities listed in ~~(d)~~(c)(1) above.

21  
22 (3)-(8) \*\*\*

23  
24 **(f)(e) Reports of law enforcement agencies (§ 828)**

25  
26 ~~Except for records sealed under section 389 or 781, or Penal Code section 1203.45,~~  
27 ~~information gathered and retained by a law enforcement agency regarding the~~  
28 ~~taking of a child into custody may be disclosed without court authorization to~~  
29 ~~another law enforcement agency, including a school district police or security~~  
30 ~~department, or to any person or agency that has a legitimate need for the~~  
31 ~~information for the purposes of official disposition of a case.~~

32  
33 ~~(1) If the law enforcement agency retaining the report is notified under section~~  
34 ~~1155 that the child has escaped from a secure detention facility, the agency~~  
35 ~~must release the name of the child and any descriptive information on~~  
36 ~~specific request by any agency or individual whose attempts to apprehend the~~  
37 ~~child will be assisted by the information requested.~~

38  
39 ~~(2) In the absence of a specific request, the law enforcement agency retaining the~~  
40 ~~report may release information about a child reported to have escaped from a~~  
41 ~~secure detention facility if the agency determines that the information is~~  
42 ~~necessary to assist in the apprehension of the child or the protection of~~  
43 ~~members of the public from substantial physical harm.~~

44  
45 ~~(3) Except as authorized under section 828, all others seeking to inspect or obtain~~  
46 ~~such reports information gathered and retained by a law enforcement agency~~

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1           regarding the taking of a child into custody must petition the juvenile court  
2           for authorization, using *Petition to Obtain Report of Law Enforcement*  
3           *Agency* (form JV-575).

4  
5           **~~(g)~~—School notification**

6  
7           ~~When a child enrolled in a public school is found to have committed one of the~~  
8           ~~offenses described in section 827(b)(2), the court must provide written notice of the~~  
9           ~~offense and the disposition to the superintendent of the school district within seven~~  
10          ~~days. The superintendent must disseminate information to the principal of the~~  
11          ~~school the child attends, and the principal may disseminate information to any~~  
12          ~~teacher or administrator for the purposes of the rehabilitation of the child or the~~  
13          ~~protection of other students and staff.~~

14  
15          **~~(h)~~(f) Other applicable statutes**

16  
17          Under no circumstances must this rule or any section of it be interpreted to permit  
18          access to or release of ~~records~~files protected under any other federal or state law,  
19          including Penal Code section 11165 et seq., except as provided in those statutes, or  
20          to limit access to or release of records permitted under any other federal or state  
21          statute, including Government Code section 13968.  
22