



Judicial Council of California Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 24, 2012

Title

Family Law: Miscellaneous Technical
Changes to Rules

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend rule 5.118; rechapter rules 5.380,
5.381, and 5.386

Effective Date

July 1, 2012

Date of Report

March 29, 2012

Recommended by

Family and Juvenile Law Advisory
Committee
Hon. Kimberly Nystrom-Geist and
Hon. Dean Stout, Cochairs

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Executive Summary

The Family and Juvenile Law Advisory Committee has identified technical errors in the chaptering of rules 5.380, 5.381, and 5.386 in Title V. In addition, with the adoption of rule 5.92, effective July 1, 2012, rules regarding the application for a court order will conflict with provisions of rule 5.118. To avoid confusion for family law court users, clerks, and judicial officers, the Family and Juvenile Law Advisory Committee recommends correcting these errors by rechaptering and amending the rules effective July 1, 2012.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2012, make the following technical amendments to the California Rules of Court:

1. Amend rule 5.118 (Application for court order) to:

- a. Delete subdivisions 5.118(a)–(e);
 - b. Change the title to “Declarations supporting and responding to a request for court order”;
 - c. Conform the rule to the provisions of rule 5.92 by replacing the terms “order to show cause” and “notice of motion” with “request for court order,” deleting references to revoked forms, and referencing newly adopted form FL-300; and
 - d. Reformat the rule to comply with requirements of the California Rules of Court.
2. Move rules 5.380, 5.381, and 5.386 from chapter 7 into a new chapter 8 entitled “Domestic Violence Cases,” with rules 5.380 and 5.381 grouped under article 1 (Domestic Violence Prevention Act Cases) and rule 5.386 under article 2 (Tribal Court Protective Orders).

Previous Council Action

Effective July 1, 2011, the Judicial Council amended rule 5.118 (Application for court order) to add subdivision (f), which specifies the requirements for declarations supporting and responding to a request for a court order.¹

Effective January 1, 2012, the council adopted rules 5.380 (Agreement and judgment of parentage in Domestic Violence Prevention Act cases)² and 5.381 (Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases).³

Effective July 1, 2012, the council adopted rule 5.386 (Procedures for filing a tribal court protective order).⁴

Also effective July 1, 2012, the council adopted rule 5.92 (Request for court order; response), revised the title and content of *Request for Order* (form FL-300), revoked forms FL-301 and FL-310, and revised and adopted other forms to omit references to the revoked forms.⁵

Effective January 1, 2013, the council adopted new, restructured, and amended rules of court that made significant substantive and organizational changes to the rules relating to family law.⁶

¹ Rule 5.118 is found at www.courtinfo.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_118.

² The Judicial Council report is found at www.courts.ca.gov/documents/ItemA17.pdf.

³ The Judicial Council report is found at www.courts.ca.gov/documents/ItemA16.pdf

⁴ The Judicial Council report is found at www.courts.ca.gov/documents/jc-20120124-itemA9.pdf

⁵ The Judicial Council report is found at www.courts.ca.gov/documents/jc-20120124-itemA5.pdf.

⁶ The Judicial Council report is found at www.courts.ca.gov/documents/jc-20120228-itemA11.pdf.

Rationale for Recommendation

The technical errors identified by the committee are unintended consequences of the new, restructured, and amended rules of court for family law becoming effective after the adoption of the other rules specified in this report.

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force originally recommended that the proposal for new family law rules and four other proposals—for rules 5.92, 5.380, 5.381, and 5.386—be treated as companion proposals and all take effect on January 1, 2012.

In discussions with the Judicial Council Rules and Projects Committee, however, decisions were made to defer the effective date of some proposals to allow courts more time to prepare for and implement the new and amended rules in Title V. The four reports were ultimately presented to the council over four different meetings from October 2011 to February 2012. In addition, the recommended effective date of the family law rules reorganization has changed from January 1, 2012 to January 1, 2013. This resulted in rules 5.380 and 5.381 being adopted by the council one year earlier than the effective date of the restructured family law rules, and rules 5.92 and 5.386 six months before the effective date of the restructured family law rules.

Although the committee and task force attempted to coordinate the various council reports as described below, formatting and other technical errors arose that need to be addressed in the rules of court during the six-month period (July 2012 to January 2013) before the new, restructured, and amended family law rules become effective.

Amend rule 5.118

Without a technical amendment to rule 5.118, rules on applications for court orders will be in conflict with rule 5.92 as of July 1, 2012.

Rule 5.92 (Application for court order; response) was intended to replace subdivisions (a)–(e) of rule 5.118 (Application for court order). This intention is reflected in the drafting note after rule 5.92 on page 13 of the council report, which states, “Existing rule 5.118 addressing the subject of applications for court order and supporting declarations is repealed. Proposed new rule 5.92 includes content on the same subject.”⁷ That report, however, did not include a specific recommendation to repeal those provisions of rule 5.118 that would conflict with new rule 5.92.

⁷ Judicial Council of Cal. Family and Juvenile Law Advisory Committee and Elkins Family Law Implementation Task Force Rep., *Family Law: Request for Order in Lieu of Existing Notice of Motion or Order to Show Cause, and Witness List for Use in Family* (Jan. 5, 2012).

Although the new, restructured, and amended family law rules address this issue, they do not take effect until January 1, 2013, resulting in a gap of six months in which the conflicting provisions of rule 5.118 will remain in effect. To avoid this situation, the committee recommends amending rule 5.118 by striking subdivisions (a)–(e), renaming the rule as “Declarations supporting and responding to a request for court order” to match the former (f), and making formatting changes, and technical changes so that the rule is consistent with the language of rule 5.92 in its reference to the term “request for order” instead of “order to show cause” and “notices of motion”.

Adopting these recommended changes to rule 5.118 to take effect on July 1, 2012, will avoid confusion among litigants, court clerks, judicial officers, and practitioners who consult this rule to find procedures for filing and serving requests for court orders, the forms needed to request or respond to a request for court orders, or the requirements for supporting and responsive declarations.

New Chapter 8. Domestic Violence Cases.

A technical change to move rules 5.380, 5.381, and 5.386 from title 5, chapter 7 of the California Rules of Court (Rules for Title IV-D Support Actions) is required because these three rules do not pertain to governmental child support proceedings. These three rules were intended to be placed into a new chapter 8 under the current family law rules’ organizational scheme until changed to chapter 11 in the restructured family law rules, effective January 2013.⁸

Adopting the committee’s technical changes in this report will avoid confusion for litigants, practitioners, court professionals, and judicial officers unable to find rules 5.380, 5.381, and 5.386 because they incorrectly appear in the chapter on governmental child support matters where they do not apply.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for public comment because the proposed changes are noncontroversial and involve purely technical revisions and therefore fall within the Judicial Council’s purview to adopt without circulation. (Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

There are no known operational impacts associated with amending the rules as recommended in this report. Because the proposed changes are technical corrections, it is not anticipated that any other rules or systems will need to be updated to implement them. The proposed changes will correct conflicting rules that could cause confusion to clerks

⁸ Judicial Council of Cal. Family and Juvenile Law Advisory Committee and Elkins Family Law Implementation Task Force Rep., *Family Law: New, Restructured, and Amended Family Law Rules of Court* (Feb. 14, 2012).

and judicial officers handling applications for court orders. The proposed changes also correct organizational errors that could confuse court users trying to locate rules 5.380, 5.381, and 5.386 in the appropriate section of the Family Rules.

Attachments

1. Rule 5.118 with proposed revisions, at pages 6–7
2. Organizational outline of new chaptering for rules 5.380, 5.381, and 5.386, at page 8

Rule 5.118 of the California Rules of Court is amended, effective July 1, 2012, to read:

1 **Rule 5.118. Application for court order Declarations supporting and**
2 **responding to a request for court order**
3

4 ~~(a) — No memorandum of points and authorities need be filed with an application~~
5 ~~for a court order unless required by the court on a case-by-case basis.~~
6

7 ~~(b) — A completed *Income and Expense Declaration* (form FL-150) or *Financial*~~
8 ~~*Statement (Simplified)* (form FL-155), *Property Declaration* (form FL-160),~~
9 ~~and *Application for Order and Supporting Declaration* (form FL-310) must~~
10 ~~be attached to an application for an injunctive or other order when relevant to~~
11 ~~the relief requested.~~
12

13 ~~(c) — A copy of the *Application for Order and Supporting Declaration* with all~~
14 ~~attachments and a blank copy of the *Responsive Declaration* (form FL-320)~~
15 ~~must be served on the person against whom relief is requested. The original~~
16 ~~application and order must be retained in the court file.~~
17

18 ~~(d) — If relief is sought by an *Order to Show Cause*, a copy of the order endorsed~~
19 ~~by the clerk must be served.~~
20

21 ~~(e) — Blank copies of the *Income and Expense Declaration* or *Financial Statement*~~
22 ~~*(Simplified)* and the *Property Declaration* must be served when completed~~
23 ~~declarations are among the papers required to be served.~~
24

25 ~~(f) — **Declarations supporting and applications for orders**~~
26

27 **(a) (1) Length of declarations**
28

29 A declaration attached to ~~an order to show cause or notice of motion~~ a
30 request for order and responsive declaration must not exceed 10 pages in
31 length, and a reply declaration must not exceed 5 pages in length, unless:
32

33 (1) (A) The declaration is of an expert witness, or
34

35 (2) (B) The court grants permission to extend the length of a declaration. A
36 party may apply to the court ex parte with written notice of the
37 application to the other parties, at least 24 hours before the papers are
38 due, for permission to file a longer declaration. The application must
39 state reasons why the facts cannot be set forth within the declaration
40 page limit.
41

1 **(b) (2) Objections to declarations**

2
3 (1) ~~(A)~~ A declaration must be based on personal knowledge and explain how
4 the person has acquired that knowledge. The statements in the
5 declaration must be admissible in evidence.

6
7 (2) ~~(B)~~ If a party thinks that a declaration does not meet the requirements of
8 ~~(A)~~(1), the party must object to the declaration at the time of the
9 hearing, or any objection will be considered waived, and the
10 declaration may be considered as evidence.

11
12 (3) ~~(C)~~ If the court does not specifically rule on the objection raised by a
13 party, the objection is presumed overruled. If an appeal is filed, any
14 presumed overrulings can be challenged.
15

