



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

Title	Agenda Item Type
Family and Juvenile Law: Parentage	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, 5.790; revise Judicial Council forms FL-210, FL-240	January 1, 2015
	Date of Report
	October 15, 2014
Recommended by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Kimberly J. Nystrom-Geist, Cochair	

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending 11 rules of court and revising two mandatory Judicial Council forms to conform to recent legislation. Assembly Bill 1403 (Stats. 2013, ch. 510) updated California's version of the Uniform Parentage Act to clarify that a *natural parent* need not be biologically related to his or her child and to replace the terms *father* and *paternity* with the gender-neutral terms *parent* and *parentage* where appropriate. The amendments and revisions ensure that the rules and forms are consistent with statute and case law. They also make technical corrections and clarifications.

Recommendation

The committee recommends that the Judicial Council, effective January 1, 2015, amend 11 of the California Rules of Court and revise two mandatory Judicial Council forms, as follows:

- Amend rule 5.510(c) to replace “paternity” with “parentage” and delete references to repealed Family Code section 7631;
- Amend rule 5.635(a) to clarify that the juvenile court’s authority to enter a judgment of parentage rests on the Uniform Parentage Act and delete references to repealed Family Code section 7631;
- Amend rule 5.635(b) to clarify when the court’s duty to inquire about a youth’s parentage begins;
- Amend rule 5.635(c)–(g) to make technical corrections;
- Amend rule 5.650(i) to clarify that this section also applies to a person who holds educational decision-making rights by virtue of his or her status as a child’s legal guardian;
- Amend rule 5.668(b) to replace “paternity” with “parentage” and delete “a man.”
- Amend rule 5.695(a)(7) to make a technical correction;
- Amend rule 5.695(f)–(g) to clarify that the juvenile court is still required to determine on the record whether the agency has exercised due diligence in conducting the family-finding investigation required by section 309(e);
- Amend rule 5.695(h) to change “father” to “parent” where appropriate and to make technical corrections;
- Amend rule 5.695(i) to clarify the dates on which the respective time limits begin to run;
- Amend rule 5.708(n) to clarify that it applies to any parent who has relinquished the child for adoption, regardless of that parent’s legal status;
- Amend rules 5.710(c) and 5.720(b) to clarify that they also apply to a legal guardian;
- Amend rule 5.725(d) and (g) to make technical corrections;
- Amend rule 5.725(e) to clarify that a petition for adoption in juvenile court may not be granted until the appellate rights of all parents have been exhausted;
- Amend rule 5.725(g) to clarify that the rights of all parents must be terminated to free a child for adoption;
- Amend rule 5.740(a) to make a technical correction;
- Amend rule 5.790(f)–(g) to clarify that the juvenile court is required to determine on the record whether the agency has exercised due diligence in conducting the family-finding investigation required by section 628(d);
- Revise *Summons—Uniform Parentage—Petition for Custody and Support* (form FL-210) to replace “mother and father” with “each parent” and to replace other language, including the form’s name, and formatting to be appropriately consistent with *Summons (Family Law)* (form FL-110); and
- Revise *Stipulation for Entry of Judgment Re: Establishment of Parental Relationship* (form FL-240) so that item 2 can accommodate same-sex parentage.¹

¹ The committee also recommends minor revisions to forms FL-210 and FL-240 to accommodate the possibility that a court might now, in rare cases, find that a child has more than two parents. (See Sen. Bill 274; Stats. 2013, ch. 564.) The committee will consider revising additional forms to accommodate this possibility in future cycles as needed.

The text of the amended rules is attached at pages 12–22. The revised forms are attached at pages 23–25.

Previous Council Action

The Judicial Council adopted:

- Rule 5.510 as rule 1403, effective January 1, 1991. The rule has been amended twice since then.
- Rule 5.635 as rule 1413, effective January 1, 1995. The rule has been amended five times since then, most recently in 2007.
- Rule 5.650 as rule 1499, effective July 1, 2002. The rule has been amended four times since then, most recently in 2014 in response to statutory amendments.
- Rule 5.668 as rule 1441, effective January 1, 1998. The rule has been amended five times since then, most recently in 2008.
- Rule 5.695 as rule 1456, effective January 1, 1991. The rule has been amended 19 times since then, most recently in 2014. In particular, the Judicial Council amended rule 5.695(f)–(g) in 2011 in response to Assembly Bill 938 (Stats. 2009, ch. 261) to add a requirement that the juvenile court determine, with a finding on the record, whether the agency had fulfilled its statutory duty to exercise due diligence in conducting an investigation to identify, locate, and notify a child’s relatives that the child had been removed from his or her home. The council further amended these subdivisions in 2014, intending to streamline the rule’s language without changing its substantive requirements.
- Rule 5.708, effective January 1, 2010. The rule has been amended twice since then, most recently in 2014.
- Rule 5.710 as rule 1460, effective January 1, 1990. The rule has been amended 17 times since then, most recently in 2014.
- Rule 5.720 as rule 1462, effective January 1, 1990. The rule has been amended 18 times since then, most recently in 2014.
- Rule 5.725 as rule 1463, effective January 1, 1991. The rule has been amended 16 times since then, most recently in 2010.
- Rule 5.740 as rule 1465, effective January 1, 1991. The rule has been amended 13 times since then, most recently in 2012.

- Rule 5.790 as rule 1441, effective January 1, 1998. The rule has been amended seven times since then, most recently in 2014. In particular, the Judicial Council amended rule 5.790(f)–(g) in 2014 in response to AB 938 to add a requirement that the juvenile court determine, with a finding on the record, whether the probation department had fulfilled its statutory duty to exercise due diligence in conducting an investigation to identify, locate, and notify a child’s relatives that the child had been detained and was at risk of entering foster care.

All juvenile court rules were renumbered and placed in title 5, effective January 1, 2007.

Summons—Uniform Parentage—Petition for Custody and Support (form FL-210) was adopted as rule 1296.605 for mandatory use, effective January 1, 1999. It was last revised effective January 1, 2007.

Stipulation for Entry of Judgment Re: Establishment of Parental Relationship (form FL-240) was adopted as rule 1296.74 for mandatory use, effective January 1, 1999. It was last revised effective January 1, 2003.

Rationale for Recommendation

Assembly Bill 1403 (Stats. 2013, ch. 510) codified a decade’s worth of case law construing the Uniform Parentage Act (UPA)² to allow a man or a woman without a biological relationship to a child to be the child’s presumed natural parent,³ a man or a woman who “receives [a] child into his or her home and openly holds out the child as his or her natural child” to qualify as the child’s presumed father or mother under section 7611(d) of the Family Code,⁴ and two women or two men to be a child’s natural parents.⁵ Although the statutory language had not, until now, kept pace with the case law, many of the California Rules of Court and Judicial Council forms have already been amended or revised to replace gender-specific terms with gender-neutral language where appropriate. The committee recommends further amendments and revisions to bring remaining rules and forms up to date, as appropriate.

AB 1403 updated the language of the UPA to conform to the judicial recognition that the act applies neutrally to a man or a woman. In particular, the bill replaced “presumed father” with “presumed parent”; replaced “mother” and “father,” when appropriate, with “parent”; and replaced “paternity,” when appropriate, with “parentage.” In some instances, for example, with respect to the voluntary declaration of paternity, the bill retained the gender-specific terms.

² Fam. Code, §§ 7600–7730.

³ *In re Nicholas H.* (2002) 28 Cal.4th 56; *In re Karen C.* (2002) 101 Cal.App.4th 932, 938.

⁴ *Elisa B. v. Super. Ct.* (2005) 37 Cal.4th 108, 119–121; *In re Karen C.*, *supra*, 101 Cal.App.4th at p. 938; *In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357.

⁵ *Elisa B.*, *supra*, 37 Cal.4th at p. 119–121.

In light of the fact that AB 1403 is declarative of existing law and that many of the family and juvenile rules and forms have been updated in previous cycles to reflect law, the committee proposes only limited amendments and technical corrections. In particular, the committee proposes revising only two mandatory forms for use in parentage actions. These forms have not been revised for several years and are, therefore, out of date in this respect and several others. They also use language inconsistent with the language in other Judicial Council forms mandated for use in parentage actions. To avoid confusion, the committee recommends revising the forms to update them and to use the same terminology as is used in other family law forms.

The committee recommends amending rules 5.695(f)–(g) and 5.790(f)–(g) to clarify the committee’s consistent intent that the juvenile court determine and make a finding on the record whether the agency exercised due diligence in conducting the family-finding investigation required by sections 309(e) and 628(d), respectively. This amendment did not circulate for comment in the spring 2014 cycle, but the committee recommends it as “a minor substantive change that is unlikely to create controversy” under rule 10.22(d)(2). Staff proposes adding to this proposal amendments to rule 5.695(f)–(g) (other subdivisions of which did circulate for comment) and rule 5.790(f)–(g) to clarify that the juvenile court needs to make a finding at the conclusion of its inquiry into whether the agency or department complied with its duties under section 309(e), section 628(d), and rule 5.637.

The committee developed rule 5.695(f) in 2010 to implement AB 938, which amended sections 309(e) and 628(d) of the Welfare and Institutions Code to require social workers and probation officers to exercise due diligence in conducting an investigation to identify, locate, and notify a child’s relatives of the child’s removal or detention. The rule amendment was intended to require the juvenile court, at each dependency dispositional hearing, to consider whether the social worker had actually conducted the investigation with due diligence and to make a finding that the social worker either had or had not done so. No commentator who addressed rule 5.695(f) opposed the finding requirement, though it was noted without further comment by the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees.

As adopted, effective January 1, 2011, subdivision (f) read:

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

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

- (2) The court must make one of the following findings:
 - (A) The social worker has used due diligence in conducting its investigation to identify, locate, and notify the child's relatives; or
 - (B) The social worker has not used due diligence in conducting its investigation to identify, locate, and notify the child's relatives. If the court makes this finding, the court may order the social worker to use due diligence in conducting an investigation to identify, locate, and notify the child's relatives—except for any individual the social worker identifies who is inappropriate to notify under rule 5.637(b)—and may require a written or oral report to the court at a later time.

In 2013, statutory changes required the committee to amend rules 5.695 and 5.790 for reasons unrelated to family finding. At that time, the committee chose to extend the requirement for an inquiry and finding to dispositional hearings in delinquency cases under rule 5.790(f) consistent with section 628(d). The committee also elected to streamline the subdivision's language with no intention of changing the substance. No substantive comments were received on these amendments.

Amended subdivision (f) now reads as follows in both rules 5.695 and 5.790:

- (1) If the child is removed [detained and at risk of entering foster care], the court must consider whether the social worker [probation officer] has exercised due diligence in conducting the investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in (g) as examples of due diligence.

If the disposition hearing is continued, the court may set a hearing to be held 30 days from the date of removal [detention] or as soon as possible thereafter to consider whether the social worker [probation officer] has exercised due diligence in conducting the investigation to identify, locate, and notify the child's relatives.

- (2) If the court finds that the social worker [probation officer] has not exercised due diligence, the court may order the social worker [probation officer] to exercise due diligence in conducting an investigation to identify, locate, and notify the child's relatives—except for any individual the social worker [probation officer] identifies as [who is] inappropriate to notify under rule 5.637(b)—and may require a written or oral report to the court.

Some courts have interpreted the new language as absolving them of the duty to make a finding regarding the social worker's or probation officer's exercise of due diligence in the family-finding investigation. This was not the committee's intent. Acknowledging that the amendment to rule 5.790 would require the delinquency court to make an additional finding, the committee's report to the Judicial Council noted that "[r]ule 5.695 already require[d] the court to make these

findings at dispositional hearings in dependency proceedings.”⁶ The council report does not reveal any intent to relieve the court of that duty. Rather, it extends the duty to delinquency courts.

To clarify that the court must still make a finding as to the result of its inquiry, the committee now recommends the following additions:

- (1) If the child is removed [detained and at risk of entering foster care], the court must consider and determine whether the social worker [probation officer] has exercised due diligence in conducting the required investigation to identify, locate, and notify the child’s relatives. The court may consider the activities listed in (g) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal [detention] or as soon as possible thereafter to consider and determine whether the social worker [probation officer] has exercised due diligence in conducting the required investigation to identify, locate, and notify the child’s relatives.

- (2) * * *

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2014 invitation to comment cycle, from April 18 to June 18, 2014, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, other juvenile law professionals, and the National Center for Lesbian Rights.

The committee received nine comments on this proposal.⁷ Two commentators agreed with the proposal as circulated, and seven commentators agreed while suggesting modifications. No commentators disagreed with the proposal. Many of the commentators suggested minor or technical changes. The committee agreed with almost all of them without debate. The following suggestions generated the most committee discussion.

More than two parents under Senate Bill 274

The committee proposed inserting an additional line in item 2 on *Stipulation for Entry of Judgment Re: Establishment of Parental Relationship* (form FL-240) to account for the

⁶ Judicial Council of Cal., Family and Juvenile Law Advisory Com. Rep., *Juvenile Law: Access to Services for Children, Nonminors, and Nonminor Dependents* (Oct. 11, 2013), www.courts.ca.gov/documents/jc-20131025-itemA21.pdf.

⁷ A chart providing the full text of the comments and the committee responses is attached at pages 26–65.

possibility that a court might find more than two persons to be parents of a child under section 7612(c) of the Family Code, as amended by SB 274, § 6). Three of the commentators who addressed this issue suggested that, because the Legislature intended for a court to find that a child had more than two parents only in rare cases, the addition of another line would be inappropriate. The other commentator who addressed this issue was concerned that the inclusion of a third line would imply that a court was limited to finding that a child had no more than three parents.

The committee also considered removing the proposed third line from item 2 on the revised form, reverting to two lines, and inserting a check box to indicate that additional parents may be listed on an attachment, if necessary, as well as recommending the adoption of the circulated revision with three lines in item 2.

Because of the intended rarity of cases requiring more than two parents, the committee recommends reverting to two lines in item 2 for identifying the parents without indicating that additional parents may be listed. If the use of the form reveals a need for a clearer way to indicate the existence of more than two parents, the committee will consider proposing revisions at that time.

Voluntary declarations of paternity

Several commentators suggested that using the gender-neutral term “parentage” in rule 5.635(c), which addresses the effect of a voluntary declaration of paternity in a juvenile court proceeding, would be premature. They pointed out that AB 1403 did not amend sections 7570–7577 of the Family Code, which govern voluntary declarations of paternity, to use gender-neutral language. These sections continue to apply only to men and outline a procedure for establishing biological paternity. The committee agrees with these commentators and therefore recommends withdrawing the proposed amendment and retaining the use of “paternity” in rule 5.635(c).

Commentators also raised issues with the last sentence of rule 5.635(c). As circulated for comment, that sentence read: “A man is presumed to be the father of the child under Family Code section 7611, subject to rebuttal under section 7612, if the voluntary declaration has been properly executed and filed.”

One commentator suggested that this sentence was an inaccurate statement of law because “a voluntary declaration of paternity does not create a presumption of paternity; rather, a valid and properly executed and filed declaration is treated as the equivalent of a court determination of parentage.” Section 7611 does, however, expressly state that “a person is presumed to be the natural parent of a child if the person meets the conditions” in sections 7570–7577 of the Family Code, which provide for the execution and filing of voluntary declarations of paternity (VDOPs).

Another commentator suggested that the sentence be stricken because it conflicts with *In re Brianna M.* (2013) 220 Cal.App.4th 1025, which arguably held that the references to the effect of a VDOP in sections 7611–7612 of the Family Code do not apply to dependency proceedings

and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. The exclusive application of rule 5.635 to juvenile proceedings, and not to family proceedings, might seem to counsel deletion of this sentence. However, in February the Supreme Court unanimously granted review in *Brianna M.*, superseding the appellate opinion. (See *In re Brianna M.* (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.) Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted, resulting in continuing uncertainty about the effects of a VDOP.

Two commentators pointed out that a VDOP may be rescinded or set aside under sections 7575 and 7577, but argued that the presumption it creates is not rebuttable under section 7612. Although the matter might not be as clear as suggested, the commentator's point is well taken to the extent that a VDOP has the same effect as a judgment of paternity and section 7612(d) provides that a presumption under section 7611 is rebutted by such a judgment.

Because of the ongoing lack of agreement regarding the effect of a VDOP on the presumptions under the UPA and in juvenile court proceedings, the committee withdraws its proposed amendment and recommends retaining the last sentence of current rule 5.635(c) to await legislative or judicial clarification of those effects. The only amendment now recommended in subdivision (c) is to replace "Department of Social Services" with "Department of Child Support Services."

County welfare department

One commentator suggested using the term "county child welfare department" in place of "county welfare department" in the rules that were circulated for comment. The commentator did not state a reason for the suggested change. Presumably, the commentator believed the longer term would provide a clearer, more specific reference to the appropriate county agency.

The committee considered inserting "child" in the rules to increase the specificity of the references, but does not recommend that amendment. First, the amendment is beyond the scope of this proposal. Second, the current term is consistent with terminology used pervasively in the Welfare and Institutions Code. See, e.g., §§ 215, 303, 306, 358.1, 11400, 11403(e)–(f), 11404. Although the code does use a wide variety of other terms—see, e.g., § 204 ("child protective services"); § 11364 ("county child welfare agency"); § 11403(c) ("county child welfare department"); § 16002 ("responsible local agency"); § 16004.5 ("child welfare agencies"); § 16010 ("child protective agency")—the committee is unaware of any confusion caused by the use of "county welfare department" in the rules of court. Third, the term is used consistently throughout the juvenile court rules. Amending the rules included in this proposal would render them inconsistent with the remainder of the juvenile court rules that use the term. Fourth, the juvenile court rules also refer to the "probation department" without specifying that they are addressed, for the most part, to the juvenile division. The use of the generic term "county welfare department" is consistent with the use of "probation department." The consistent, comprehensive

terms also allow for differences in departmental structure and organization from county to county.

Maternal cohabitation

One commentator disagreed with the proposal to amend rule 5.668(b)(3) to inquire whether the mother was cohabiting with “an adult” rather than with “a man” at the time of conception. The commentator pointed out that, “[a]lthough illegal, it *is* feasible for a mother to conceive with a cohabitant under 18 years of age” and suggested that the committee replace “an adult” with “anyone” to account for that possibility.

The committee agrees with the commentator’s premise, but does not recommend the suggested change to rule 5.668(b)(3). The purpose of the inquiry in rule 5.668(b)(3) is not entirely clear. If it is intended to identify a candidate for paternity testing, then an amendment taking age into account might be appropriate. To the extent that the question in (b)(3) is calculated to elicit information relevant to the establishment of a presumption of parentage, age seems less relevant. The resolution of this issue is beyond the scope of the legislation and this proposal and would require circulation for comment. In the meantime, the committee recommends using “cohabiting” without a referent, given that cohabitation implicitly requires another person as a cohabitant.

Minor additional revisions to form FL-210

Finally, after the comment period had ended, a committee member noticed that the proposed revisions to *Summons (Parentage—Custody and Support)* (form FL-210), did not conform to recent revisions to *Summons (Family Law)* (form FL-110). The committee recommends making additional revisions to form FL-210 to render these forms consistent insofar as that is appropriate. First, the committee recommends deleting service-of-process requirements that apply to actions against corporations or associations, but do not apply in family law proceedings. The Judicial Council adopted identical revisions to form FL-110, effective January 1, 2014, based on the same reasoning.⁸ Second, the committee recommends inserting a notice to litigants about the possibility of seeking a fee waiver. Form FL-110 contains an identical notice. Although these proposed revisions did not circulate for comment, they are consistent with law and technical in nature.

Alternatives Considered

The committee considered several alternatives to the recommended amendments and revisions before circulation. First, the committee examined existing rules and forms to determine whether they could continue to serve the courts and the public without any amendment or revision. However, because one of the purposes of AB 1403 was to promote understanding of the law and legal processes by parties, the committee elected to recommend limited changes to those rules and mandatory forms that showed both lingering inconsistencies with statute and case law and

⁸ See Judicial Council of Cal., Family and Juvenile Law Advisory Com. Rep., *Family Law: Revisions to Family Law Summons* (Oct. 1, 2013), www.courts.ca.gov/documents/jc-20131025-itemA19.pdf.

inconsistencies with other rules and forms. A consistent set of rules and forms will help court users avoid unnecessary confusion.

The committee also considered eliminating all instances of gender-specific language in title 5 of the rules and in the family and juvenile forms. As the Legislature recognized, though, many provisions exist in which gender-specific language continues to be appropriate or even necessary. Furthermore, the sheer volume of forms—particularly optional forms—that use gender-specific terminology is daunting. The committee determined that the benefit to the public from updating those forms would almost certainly be outweighed by the cost to the trial courts of reproducing and providing these revised forms to the public. Because those forms are optional, courts may, if they wish, develop local forms that use gender-neutral language if they identify a pressing local need for such forms.

Some mandatory forms—for example, *Custody Order—Juvenile—Final Judgment* (form JV-200) and *Juvenile Court Transfer Orders* (form JV-550)—would benefit from revisions using gender-neutral language. However, the committee anticipates that these forms will require additional, substantive revisions within the next year and has elected to defer proposing any revisions at this time.

Implementation Requirements, Costs, and Operational Impacts

Under the authority of the relevant case law and earlier rule amendments and form revisions, the family and juvenile courts are already largely proceeding under the law as articulated in the recommended rule amendments. If anything, the amendments should lead to more timely and efficient judicial proceedings by promoting parties’ understanding of current law. Courts will incur some costs to reproduce and distribute the two revised forms and to integrate them into existing case management systems, but these costs may be offset by improved court operations if parties need less assistance from clerks or self-help centers.

Attachments and Links

1. Cal. Rules of Court, rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790, at pages 12–22
2. Forms FL-210 and FL-240, at pages 23–25
3. Chart of comments, at pages 26–65
4. Assembly Bill 1403 (Stats. 2013, ch. 510),
leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1403

Rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790 of the California Rules of Court are amended, effective January 1, 2015, to read:

1 **Rule 5.510. Proper court; determination of child’s residence; exclusive jurisdiction**

2
3 (a)–(b) * * *

4
5 (c) **Exclusive jurisdiction (§§ 304, 316.2, 726.4)**

6
7 (1) Once a petition has been filed under section 300, the juvenile court has
8 exclusive jurisdiction of the following:

9
10 (A) * * *

11
12 (B) All issues and actions regarding ~~paternity~~ the parentage of the child
13 under rule 5.635 and Family Code section 7630 ~~or 7631~~.

14
15 (2) Once a petition has been filed under section 601 or 602, the juvenile court has
16 exclusive jurisdiction to hear an action filed under Family Code section 7630
17 ~~or 7631~~.

18
19
20 **Rule 5.635. Parentage**

21
22 (a) **Authority to declare; duty to inquire (§ 316.2, 726.4)**

23
24 The juvenile court has a duty to inquire about and, ~~if not otherwise determined,~~ to
25 attempt to determine the parentage of each child who is the subject of a petition
26 filed under section 300, 601, or 602. The court may establish and enter a judgment
27 of parentage ~~under the Uniform Parentage Act. (Fam. Code, § 7600 et seq.)~~ Once a
28 petition has been filed to declare a child a dependent or ward, and until the petition
29 is dismissed or dependency or wardship is terminated, the juvenile court with
30 jurisdiction over the action has exclusive jurisdiction to hear an action filed under
31 Family Code section 7630 ~~or 7631~~.

32
33 (b) **Parentage inquiry (§§ 316.2, 726.4)**

34
35 At the initial hearing on a petition filed under section 300 or at the dispositional
36 hearing on a petition filed under section, 601, or 602, and at hearings thereafter
37 until or unless parentage has been established, the court must inquire of the child’s
38 parents present at the hearing and of any other appropriate person present as to the
39 identity and address of any and all presumed or alleged parents of the child.
40 Questions, at the discretion of the court, may include the following and others that
41 may provide information regarding parentage:
42

1 (1)–(8) * * *

2

3 (c) **Voluntary declaration**

4

5 If a voluntary declaration as described in Family Code section 7570 et seq. has
6 been executed and filed with the California Department of ~~Social~~ Child Support
7 Services, the declaration establishes the paternity of a child and has the same force
8 and effect as a judgment of paternity by a court. A man is presumed to be the father
9 of the child under Family Code section 7611 if the voluntary declaration has been
10 properly executed and filed.

11

12 (d) **Issue raised; inquiry**

13

14 If, at any proceeding regarding the child, the issue of parentage is addressed by the
15 court:

16

17 (1) * * *

18

19 (2) The court must direct the court clerk to prepare and transmit *Parentage*
20 *Inquiry—Juvenile* (form JV-500) to the local child support agency requesting
21 an inquiry regarding whether ~~or not~~ parentage has been established through
22 any superior court order or judgment or through the execution and filing of a
23 voluntary declaration under the Family Code;

24

25 (3) The office of child support enforcement must prepare and return the
26 completed *Parentage Inquiry—Juvenile* (form JV-500) within 25 judicial
27 days, with certified copies of any such order or judgment or proof of the
28 filing of any voluntary declaration attached; and

29

30 (4) * * *

31

32 (e) **No prior determination**

33

34 * * *

35

36 (1) ~~The~~ Any alleged father and his counsel must complete and submit *Statement*
37 *Regarding Paternity Parentage (Juvenile-Dependency)* (form JV-505). Form
38 JV-505 must be made available in the courtroom.

39

40 (2) * * *

41

42 (3) The court may make its determination of parentage or nonparentage based on
43 the testimony, declarations, or statements of the alleged parents. The court

1 must advise any alleged parent ~~indicating a wish to be declared the parent of~~
2 ~~the child~~ that if parentage is ~~declared~~ determined, the ~~declared~~ parent will
3 have responsibility for the financial support of the child, and, if the child
4 receives welfare benefits, the ~~declared~~ parent may be subject to an action to
5 obtain support payments.
6

7 **(f) Notice to office of child support enforcement**
8

9 If the court establishes parentage of the child, the court must sign ~~and then direct~~
10 ~~the clerk to transmit~~ Parentage—Finding and Judgment (Juvenile) (form JV-501)
11 and direct the clerk to transmit the signed form to the local child support agency.
12

13 **(g) Dependency and delinquency; notice to alleged parents**
14

15 If, after inquiry by the court or through other information obtained by the county
16 welfare department or probation department, one or more persons are identified as
17 alleged parents of a child for whom a petition under section 300, 601, or 602 has
18 been filed, the clerk must provide to each named alleged parent, at the last known
19 address, by certified mail, return receipt requested, a copy of the petition, notice of
20 the next scheduled hearing, and Statement Regarding Parentage—(Juvenile) (form
21 JV-505) unless:
22

23 (1)–(2) * * *

24
25 (3) The alleged parent has previously filed a form JV-505 denying parentage and
26 waiving further notice; or
27

28 (4) The alleged parent has relinquished custody of the child to the county welfare
29 department.
30

31 **(h) * * ***
32
33

34 **Rule 5.650. Appointed Educational Rights Holder**
35

36 **(a)–(h) * * ***
37

38 **(i) Education and training of educational rights holder**
39

40 If the educational rights holder, including a ~~biological or adoptive parent or~~
41 guardian, asks for assistance in obtaining education and training in the laws
42 incorporated in rule 5.651(a), the court must direct the clerk, social worker, or
43 probation officer to inform the educational rights holder of all available resources,

1 including resources available through the California Department of Education, the
2 California Department of Developmental Services, the local educational agency,
3 and the local regional center.

4
5 (j) * * *

6
7
8 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**

9
10 (a) * * *

11
12 (b) **Paternity Parentage inquiry**

13
14 The court must also inquire of the child’s mother and of any other appropriate
15 person present as to the identity and address of any and all presumed or alleged
16 parents ~~and alleged fathers~~ of the child. Questions, at the discretion of the court,
17 may include:

18
19 (1) Has there been a judgment of paternity parentage?

20
21 (2) * * *

22
23 (3) Was the mother cohabiting ~~with a man~~ at the time of conception?

24
25 (4) * * *

26
27 (5) Has ~~a man~~ anyone formally or informally acknowledged paternity parentage,
28 including through the execution of a voluntary declaration of ~~paternity~~
29 Family Code section 7571?

30
31 (6) Have paternity tests to determine biological parentage been administered and,
32 if so, what were the results?

33
34 (c) * * *

35
36
37 **Rule 5.695. Findings and orders of the court—disposition**

38
39 (a) **Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)**

40
41 At the disposition hearing, the court may:

42
43 (1)–(6) * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(7) Declare dependency, remove physical custody from the parent or guardian, and:

(A) After stating on the record or in writing the factual basis for the order, order custody to ~~the~~ a noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700;

(B) After stating on the record or in writing the factual basis for the order, order custody to ~~the~~ a noncustodial parent with services to one or both parents; or

(C) * * *

(b)–(e) * * *

(f) Family-finding determination (§ 309)

(1) If the child is removed, the court must consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child’s relatives. The court may consider the activities listed in (g) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child’s relatives.

(2) * * *

(g) Due diligence (§ 309)

When making the ~~inquiry~~ determination required in (f), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:

(1)–(7) * * *

(h) Provision of reunification services (§ 361.5)

- 1 (1) Except as provided in (6), if a child is removed from the custody of a parent
2 or legal guardian, the court must order the county welfare department to
3 provide reunification services to the child and the child’s mother and
4 statutorily presumed ~~father~~ parent, or the child’s legal guardian, to facilitate
5 reunification of the family. [* * *]
6
7 (2)–(5) * * *
8
9 (6) Reunification services must not be provided when the parent has voluntarily
10 relinquished the child and the relinquishment has been filed with the State
11 Department of Social Services, or if the court has appointed a guardian under
12 section 360. Reunification services need not be provided to a ~~mother,~~
13 ~~statutorily presumed father,~~ parent or guardian if the court finds, by clear and
14 convincing evidence, any of the following:
15
16 (A)–(O) * * *
17
18 (7)–(12) * * *
19
20 (13) If the ~~mother, statutorily presumed father~~ parent, or guardian is
21 institutionalized, incarcerated, or detained by the United States Department of
22 Homeland Security, or has been deported to his or her country of origin, the
23 court must order reunification services unless it finds by clear and convincing
24 evidence that the services would be detrimental to the child, with
25 consideration of the factors in section 361.5(e). [* * *]
26
27 (14) * * *
28
29 (15) A judgment, order, or decree setting a hearing under section 366.26 is not an
30 immediately appealable order. Review may be sought only by filing *Petition*
31 *for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form
32 JV-825) or other petition for extraordinary writ. If a party wishes to preserve
33 any right to review on appeal of the findings and orders made under this rule,
34 the party must seek an extraordinary writ under rules 8.450, and 8.452, ~~and~~
35 ~~5.600~~.
36
37 (16)–(17) * * *
38
39 (18) Failure to file a petition for extraordinary writ review within the period
40 specified by rules 8.450, and 8.452, ~~and 5.600~~ to substantively address the
41 issues challenged, or to support the challenge by an adequate record,
42 precludes subsequent review on appeal of the findings and orders made under
43 this rule.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(19) * * *

(i) Information regarding termination of parent-child relationship (§§ 361, 361.5)

If a child is removed from the physical custody of the parent or guardian under either section 361 or 361.5, the court must:

(1) * * *

(2) Notify the parents that their parental rights may be terminated if custody is not returned within 6 months of the dispositional hearing or within 12 months of the ~~specific~~-date the child is ~~determined to have~~ entered foster care, whichever time limit is applicable.

~~(j)-(l)~~ * * *

Rule 5.708. General review hearing requirements

~~(a)-(m)~~ * * *

(n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

* * *

(1)-(4) * * *

(5) * * *

(A) * * *

(B) The court must order that notice of the hearing under section 366.26 not be provided to any of the following:

(i) ~~A parent, presumed parent, or alleged~~ Any parent—whether natural, presumed, biological, or alleged—who has relinquished the child for adoption and whose relinquishment has been accepted and filed with notice under Family Code section 8700; or

(ii) * * *

1 (6) * * *

2

3 (o) * * *

4

5

6 **Rule 5.710 Six-month review hearing**

7

8 (a)–(b) * * *

9

10 (c) **Setting a section 366.26 hearing (§§ 366.21, 366.215)**

11

12 (1) * * *

13

14 (A)–(C) * * *

15

16 (D) * * *

17

18 (i) * * *

19

20 (ii) The court, in determining whether court-ordered services may be
21 extended to the 12-month point, must take into account any
22 particular barriers to a parent’s or guardian’s ability to maintain
23 contact with his or her child due to the parent’s or guardian’s
24 incarceration, institutionalization, detention by the United States
25 Department of Homeland Security, or deportation. The court may
26 also consider, among other factors, whether the incarcerated,
27 institutionalized, detained, or deported parent or guardian has
28 made good faith efforts to maintain contact with the child and
29 whether there are any other barriers to the parent’s or guardian’s
30 access to services.

31

32 (2) * * *

33

34 (d) * * *

35

36

37 **Rule 5.720. Eighteen-month permanency review hearing**

38

39 (a) * * *

40

41 (b) **Determinations and conduct of hearing (§§ 361.5, 366.22)**

42

43 * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(1)–(2) * * *

(3) * * *

(A) [* * *] To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making significant and consistent progress in a substance abuse treatment program, or a parent or legal guardian has ~~is~~ recently been discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security, and is making significant and consistent progress in establishing a safe home for the child’s return. [* * *]

(B)–(C) * * *

(4) * * *

Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)

(a)–(c) * * *

(d) Conduct of hearing

* * *

(1)–(3) * * *

(4) The party claiming that termination of parental rights would be detrimental to the child ~~must have~~ has the burden of proving the detriment.

(5)–(10) * * *

(e) Procedures—adoption

(1)–(2) * * *

(3) If the court declares the child free from custody and control of the parents, the court must at the same time order the child referred to a licensed county adoption agency for adoptive placement. A petition for adoption of the child

1 may be filed and heard in the juvenile court but may not be granted until the
2 appellate rights of ~~the natural~~ all parents have been exhausted.

3
4 (4) * * *

5
6 (f) * * *

7
8 (g) **Purpose of termination of parental rights**

9
10 The purpose of termination of parental rights is to free the ~~dependent~~ child for
11 adoption. Therefore, the court must not terminate the rights of only one parent
12 unless that parent is the only surviving parent, or the rights of the other parent have
13 been terminated by a California court of competent jurisdiction or by a court of
14 competent jurisdiction of another state under the statutes of that state, or the other
15 parent has relinquished custody of the child to the county welfare department. The
16 rights of all parents—whether natural, presumed, biological, alleged, or unknown—
17 ~~the mother, any presumed father, any alleged father, and any unknown father or~~
18 ~~fathers~~ must be terminated in order to free the child for adoption.

19
20 (h) * * *

21
22
23 **Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)**

24
25 (a) **Review hearings—adoption and guardianship**

26 * * *

27
28
29 (1) At the review hearing, the court must consider the report of the petitioner, ~~as~~
30 required by section 366.3(fg), the report of any CASA volunteer, the case
31 plan submitted for this hearing, and any report submitted by the child’s
32 caregiver under section 366.21(d); inquire about the progress being made to
33 provide a permanent home for the child; consider the safety of the child; and
34 enter findings as required by section 366.3(e).

35
36 (2)–(4) * * *

37
38 (b)–(c) * * *

39
40
41 **Rule 5.790. Orders of the court**

1 (a)–(e) * * *

2
3 (f) **Family-finding determination (§ 628(d))**

4
5 (1) If the child is detained or at risk of entering foster care, the court must
6 consider and determine whether the probation officer has exercised due
7 diligence in conducting the required investigation to identify, locate, and
8 notify the child’s relatives. The court may consider the activities listed in (g)
9 as examples of due diligence. The court must document its determination by
10 making a finding on the record.

11
12 If the dispositional hearing is continued, the court may set a hearing to be
13 held 30 days from the date of detention or as soon as possible thereafter to
14 consider and determine whether the probation officer has exercised due
15 diligence in conducting the required investigation to identify, locate, and
16 notify the child’s relatives.

17
18 (2) * * *

19
20 (g) **Due diligence**

21
22 When making the ~~inquiry-determination~~ required ~~under~~ in (f), the court may
23 consider, among other examples of due diligence, whether the probation officer has
24 done any of the following:

25
26 (1)–(7) * * *

27
28 (h)–(j) * * *

CITACIÓN (Paternidad—Custodia y Manutención)

SUMMONS

(Parentage—Custody and Support)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO RESPONDENT (Name):

AVISO AL DEMANDADO (Nombre):

You have been sued. Read the information below and on the next page.
Lo han demandado. Lea la información a continuación y en la página siguiente.

DRAFT

**NOT APPROVED BY THE
JUDICIAL COUNCIL**

Petitioner's name:

El nombre del demandante:

CASE NUMBER: (Número de caso)

<p>You have 30 calendar days after this <i>Summons</i> and <i>Petition</i> are served on you to file a <i>Response</i> (form FL-220 or FL-270) at the court and have a copy served on the petitioner. A letter, phone call, or court appearance will not protect you.</p>	<p><i>Tiene 30 días de calendario</i> después de haber recibido la entrega legal de esta Citación y Petición para presentar una Respuesta (formulario FL-220 o FL-270) ante la corte y efectuar la entrega legal de una copia al demandante. Una carta o llamada telefónica o una audiencia de la corte no basta para protegerlo.</p>
<p>If you do not file your <i>Response</i> on time, the court may make orders affecting your right to custody of your children. You may also be ordered to pay child support and attorney fees and costs.</p>	<p><i>Si no presenta su Respuesta a tiempo, la corte puede dar órdenes que afecten la custodia de sus hijos. La corte también le puede ordenar que pague manutención de los hijos, y honorarios y costos legales.</i></p>
<p>For legal advice, contact a lawyer immediately. Get help finding a lawyer at the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), at the California Legal Services website (www.lawhelpca.org), or by contacting your local bar association.</p>	<p><i>Para asesoramiento legal, póngase en contacto de inmediato con un abogado. Puede obtener información para encontrar un abogado en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en el sitio web de los Servicios Legales de California (www.lawhelpca.org), o poniéndose en contacto con el colegio de abogados de su condado.</i></p>
<p>NOTICE: <i>The restraining order on page 2 remains in effect against each parent until the petition is dismissed, a judgment is entered, or the court makes further orders. This order is enforceable anywhere in California by any law enforcement officer who has received or seen a copy of it.</i></p>	<p>AVISO: <i>La orden de protección que aparecen en la pagina 2 continuará en vigencia en cuanto a cada parte hasta que se emita un fallo final, se despida la petición o la corte dé otras órdenes. Cualquier agencia del orden público que haya recibido o visto una copia de estas orden puede hacerla acatar en cualquier lugar de California.</i></p>
<p>FEE WAIVER: If you cannot pay the filing fee, ask the clerk for a fee waiver form. The court may order you to pay back all or part of the fees and costs that the court waived for you or the other party.</p>	<p>EXENCIÓN DE CUOTAS: <i>Si no puede pagar la cuota de presentación, pida al secretario un formulario de exención de cuotas. La corte puede ordenar que usted pague, ya sea en parte o por completo, las cuotas y costos de la corte previamente exentos a petición de usted o de la otra parte.</i></p>

[SEAL]

1. The name and address of the court are: *(El nombre y dirección de la corte son:)*
2. The name, address, and telephone number of petitioner's attorney, or petitioner without an attorney, are: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante si no tiene abogado, son:)*

Date (Fecha): _____ Clerk, by (Secretario, por) _____, Deputy (Asistente)

**STANDARD RESTRAINING ORDER
(Parentage—Custody and Support)**

**ORDEN DE RESTRICCIÓN ESTÁNDAR
(Paternidad—Custodia y Manutención)**

Starting immediately, you and every other party are restrained from removing from the state, or applying for a passport for, the minor child or children for whom this action seeks to establish a parent-child relationship or a custody order without the prior written consent of every other party or an order of the court.

This restraining order takes effect against the petitioner when he or she files the petition and against the respondent when he or she is personally served with the *Summons* and *Petition* OR when he or she waives and accepts service.

This restraining order remains in effect until the judgment is entered, the petition is dismissed, or the court makes other orders.

This order is enforceable anywhere in California by any law enforcement officer who has received or seen a copy of it.

En forma inmediata, usted y cada otra parte tienen prohibido llevarse del estado a los hijos menores para quienes esta acción judicial procura establecer una relación entre hijos y padres o una orden de custodia, ni pueden solicitar un pasaporte para los mismos, sin el consentimiento previo por escrito de cada otra parte o sin una orden de la corte.

Esta orden de restricción entrará en vigencia para el demandante una vez presentada la petición, y para el demandado una vez que éste reciba la notificación personal de la Citación y Petición, o una vez que renuncie su derecho a recibir dicha notificación y se dé por notificado.

Esta orden de restricción continuará en vigencia hasta que se emita un fallo final, se despida la petición o la corte dé otras órdenes.

Cualquier agencia del orden público que haya recibido o visto una copia de esta orden puede hacerla acatar en cualquier lugar de California.

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality, affordable health care. For more information, visit www.coveredca.com. Or call Covered California at 1-800-300-1506.

AVISO—ACCESO A SEGURA DE SALUD MÁS ECONOMICO Necesita seguro de salud a un costo asequible, ya sea para usted o alguien en su hogar? Si es así, puede presentar una solicitud con Covered California. Covered California lo puede ayudar a reducir al costo que paga por seguro de salud asequible y de alta calidad. Para obtener más información, visite www.coveredca.com. O llame a Covered California al 1-800-300-0213.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. : _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: _____ RESPONDENT: _____ OTHER PARENT/PARTY: _____	
STIPULATION FOR ENTRY OF JUDGMENT RE: ESTABLISHMENT OF PARENTAL RELATIONSHIP	CASE NUMBER: _____

THE PARTIES STIPULATE THAT

1. The parties have read and understand the *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235), which is submitted with this *Stipulation for Entry of Judgment*. The parties give up those rights and freely agree that a judgment may be entered in accordance with this stipulation.
2. Name: _____ Mother Father
 Name: _____ Mother Father

are the parents of the following children:
Name _____ Date of Birth _____

3. Child custody and visitation shall be ordered as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
4. Child support shall be ordered as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
5. Attorney fees shall be ordered as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
6. Names of the children shall be changed as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
7. Reasonable costs of pregnancy and birth shall be paid as ordered in the proposed *Judgment (Uniform Parentage)* (form FL-250).
8. Other orders shall be as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
9. The parties further agree that the court make the following orders:

See attachment 9.

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PETITIONER)

 (SIGNATURE OF RESPONDENT)

 (SIGNATURE OF ATTORNEY FOR PETITIONER)

 (SIGNATURE OF ATTORNEY FOR RESPONDENT)

 (SIGNATURE OF OTHER PARTY OR ATTORNEY)

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
1.	California CASA Association by Phil Ladew, Associate and Legal Director Oakland	AM	<p>1. Cal Rule of Court 5.725(g) – last sentence. “The rights of the mother, any presumed father <i>parent</i>, any alleged father, and any unknown father or fathers must be terminated in order to free the child for adoption.”</p> <p>The proposed amendment does not take into account the gender-neutral parentage intended by law. For example, under current law, a child can have no mother and two fathers. Thus, to list mother and change father to parent does not fit.</p> <p>Family Code 7601(b) states that the “parent and child relationship” is a term that “includes the mother and child relationship and the father and child relationship. The law does not exclude others, and there are more than mothers and fathers.</p> <p>Suggestion: Change the last sentence to read: “The rights of <i>any parent, including any mother or father, whether biological, presumed, alleged, or unknown</i>, must be terminated in order to free the child for adoption.”</p> <p>2. Form FL-240 See Number 2 on the form – it forces a choice of Mother or Father. That language is gender specific, and perhaps does not take into account issues such as undefined gender, gender that is in transition, or transgender, etc. issues. Perhaps it is outdated to think that “mother and</p>	<p>The committee agrees that the circulated language was too narrow and has incorporated broader language consistent with the suggestion into its recommendation.</p> <p>The committee does not recommend making the suggested change. AB 1403 does not eliminate gender-based categories or recognize genders other than male or female. It simply recognizes, as case law had already done, that contemporary families are not necessarily composed of the</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>father” are the only labels that can fit a parent.</p> <p>Suggestion: There is no reason to ask whether someone classifies themselves as mother or father. Just have them fill in <i>Name</i> and <i>Relationship to Child</i> columns that correspond with <i>Name</i> and <i>Date of Birth</i> for the children category. That way the individual can assign themselves to their relationship.</p> <p>3. Form FL-240 See Number 2 on the form – why limit the list to three parents, but leave it blank for multiple children? Doesn’t this imply that three parents are the limit? What if there are 4 parents? – then the form is unfillable, and a family might feel that the court process does not include them.</p> <p>The complexity of familial structure is that there will be occasions where there will be more than one, two, or three parents. It is fundamental to government service that those families that do not fit into the “box” feel as though they have just as much access as others. The code does not prescribe a maximum number of parents; for example, the code states, “This part does not preclude a finding that a child has a parent and child relationship with more than two parents.” Fam Code 7601(c). Also, “a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child.” Fam Code 7612(c)</p>	<p>combination of genders that the statutes presumed before amendment. If it appears that the categories “mother” and “father” are insufficient to meet the ongoing needs of courts and litigants, the committee may consider further amendments, consistent with law, in a future rulemaking cycle.</p> <p>The committee agrees that providing three lines for parents’ names could be misleading. Consistent with the Legislature’s intent that a court find that more than two persons are a child’s parents only in rare cases, the committee has chosen to retain two lines for parents’ names. If it is necessary, in those rare cases contemplated by the Legislature, to identify more than two parents, the party completing the form may list additional names on an attachment.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			Suggestion: Do not limit the list to three, but perhaps leave a blank space as it is with the children heading, (i.e. the section under ...are the parents of the following children:). Just have them fill in <i>Name</i> and <i>Relationship to Child</i> columns that correspond with <i>Name</i> and <i>Date of Birth</i> for the children category.	
2.	California Court of Appeal, Second Appellate District Los Angeles	A	Comment This appears to be a timely change which we support and with which we should be familiar.	No response required.
3.	Stacy Larson Family Law Facilitator Superior Court of Shasta County	AM	<p>§ CRC 5.510(c)(1)(B): I agree that the proposed revision is needed.</p> <p>§ CRC 5.635(a), first sentence: The proposed rewording of the first sentence is cumbersome and unnecessary. The existing CRC reads, “The juvenile court has a duty to inquire about and, if not otherwise determined, to attempt to determine . . .” The proposed revision is as follows: “The juvenile court has a duty to inquire about and, if it has not otherwise been determined, to attempt to determine. . .” Although the proposed revision is consistent with the meaning of the statute, it adds unnecessary verbiage and does not enhance its meaning.</p> <p>§ CRC 5.635(a), second sentence “under the Uniform Parentage Act.”: I agree that the proposed revision is needed.</p> <p>§ CRC 5.635(a), last sentence: I agree that the</p>	<p>No response required.</p> <p>The committee agrees that the proposed amendment did not adequately address the lack of clarity in the rule. The committee recommends a different amendment that it hopes will promote both clarity and economy.</p> <p>No response required.</p> <p>No response required.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>proposed revision is needed.</p> <p>§ CRC 5.635(c), “If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of Child Support Services,”: I agree that the proposed revision is needed.</p> <p>§ CRC 5.635(c), “the declaration establishes the paternity-parentage of a child and has the same force and effect as a judgment of paternity parentage by a court.” This revision appears to be premature. Currently, Family Code §7570 falls within Chapter 3, Establishment of Paternity by Voluntary Declaration.” The entire chapter concerns establishment of paternity of a child by signing of the voluntary declaration of paternity (VDOP). The legislative intent was, in large part, “knowledge of medical history” and the recognition that “knowing one’s father is important to a child’s development.” Fam. Code §7570(a). The VDOP is to be provided “at the place of birth, to the man identified by the natural mother as the natural father . . .” Fam. Code §7571(a). The VDOP form is to be signed by the mother and the father. Fam. Code §7574(b)(1-2). It can be signed by the unmarried mother and father only if they acknowledge that he “is the only possible father.” There is nothing within this statutory scheme pertaining to VDOPs that applies to parentage, in general. It is solely designed to establish paternity. The proposed revision to</p>	<p>No response required.</p> <p>The committee agrees with the suggestion and has incorporated the change into its recommendation.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			CRC 5.635(c) is politically correct but not legally correct. The VDOP process is not currently applicable to circumstances involving two dads or two moms, etc., and the proposed revision to CRC should not occur until the VDOP can be used to establish the broad definition of parentage rather than the more specific definition of paternity.	
4.	National Center for Lesbian Rights by Catherine Sakimura, Family Law Director San Francisco	AM	<p>The National Center of Lesbian Rights (NCLR) thanks the Committee for its prompt action to make necessary alterations to Family Law Judicial Council forms to implement AB 1403, which codified case law requiring that the Uniform Parentage Act be applied gender neutrally and recognizing non-biological parents. We are grateful for the thoughtful consideration this Committee has given to the needs of mothers and non-biological parents who are accessing the Family Courts.</p> <p>NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. We are based in California and have litigated numerous cases involving the rights of same-sex couples in California. NCLR submits the following comments for consideration by the Committee on the changes related to AB 1403, as well as changes related to SB 274, which changed California's parentage code to allow courts to recognize that a child may have more</p>	<p>No response required.</p> <p>No response required.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>of the man who signed the voluntary declaration of paternity,” or changing the title of the section to “Voluntary Declaration of Paternity.”</p> <p>Second, the last sentence of Rule 5.635, subdivision (c) inaccurately describes the effect of a voluntary declaration of paternity, stating that a man who has properly executed and filed a voluntary declaration of paternity is presumed to be a father under Family Code section 7611. The proposed amendments also add that this presumption may be rebutted under section 7612. A voluntary declaration of paternity does not create a presumption of paternity; rather, a valid and properly executed and filed declaration is treated as the equivalent of a court determination of parentage. (Fam. Code, § 7573 [“a completed voluntary declaration of paternity . . . shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction”].) A voluntary declaration of paternity cannot be rebutted under Family Code section 7612; it may only be rescinded or set aside under Family Code sections 7575–7577 and 7612. We recommend that the Committee delete this last sentence of Rule 5.635, subdivision (c).</p>	<p>The committee recommends retaining the last sentence of current rule 5.635(c) without amendment. The legal effect of a voluntary declaration of paternity (VDOP), both on a presumption of parentage under the Uniform Parentage Act and presumed parent status in juvenile court proceedings, appears to be in a state of flux. A narrow reading of its effect could extinguish a legitimate parental interest. A broad reading could result in the establishment of a parent-child relationship where none exists. Indeed, the Supreme Court voted unanimously in February to review <i>In re Brianna M.</i> (2013) 220 Cal.App.4th 1025, which held that the references in sections 7611–7612 of the Family Code to the effect of a VDOP do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. (See <i>In re Brianna M.</i> (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.) Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted. Given the ongoing uncertainty and the likelihood that the Legislature or the Supreme Court will act to resolve it, the committee has elected to defer action on this element of the rule.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>2) Remove the lines for a third parent in FL-240</p> <p>The proposed changes to FL-240, Stipulation for Entry of Judgment Re: Establishment of Parental Relationship, include an additional line for a third parent to be named, and the signature lines for parties and their counsel includes one additional line for “other required signature.” We recommend against including additional lines on this form because the intent of SB 274, which allows courts to find that a child may have more than two parents in limited circumstances, was that the law would only apply in “rare” cases. (See Senate Bill No. 274 (2012-2013 Reg. Sess.), § 1, subd. (d) [“It is the intent of the Legislature that this bill will <i>only apply in the rare case</i> where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents,” italics added].) We believe that including a line for a third parent will unnecessarily create confusion that the establishment of more than two parents is a typical result and an inference that parentage can be stipulated for more than two parents in a typical case. Regardless of how parentage is established, the court must find that “recognizing only two parents would be detrimental to the child,” (Fam. Code, § 7612, subd. (c)), which is a standard that should rarely be met. Additionally, under the new law, there</p>	<p>The committee agrees that providing three lines for parents’ names could be misleading. Consistent with the Legislature’s intent that a court find that more than two persons are a child’s parents only in rare cases, the committee has chosen to retain two lines for parents’ names. If it is necessary, in those rare cases contemplated by the Legislature, to identify more than two parents, the party completing the form may list additional names on an attachment.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>is no specific limitation on the number of parents, so a child could conceivably have four parents – such as where a child is intentionally conceived and raised by a gay male couple and a lesbian couple – and such a family would still need to include an attachment to FL-240 to name all parents and provide signature lines for these parents and their counsel. We recommend that the stipulation only include lines for two parents, which may each be designated as “mother” or “father.” In the rare cases where parentage for more than two parents is stipulated, parties may include the names and signatures of the additional parent(s) and counsel in an attachment.</p>	
5.	Office of the County Counsel by Dawyn Harrison, Assistant County Counsel—Chief Deputy, Dependency Los Angeles	AM	<p>The Office of the Los Angeles County Counsel agrees with the proposal. Changing the Rules of Court to reflect that there may be more than two parents is appropriate given the recent changes in the law. The proposal does appropriately address its stated purpose.</p> <p>However, one of the proposed changes to Rule 5.725. Selection of Permanent Plan, stated at line 40 of page 10 of the proposal, is problematic. The recommendation is to change "natural" parents to "current" parents. The reference to "current" is unclear and vague. In order to free a child for adoption, the juvenile court must terminate the rights of all persons with a parentage claim as to the child. The adoption cannot be finalized until all parents have exhausted their respective appellate rights.</p>	<p>No response required.</p> <p>The committee agrees with the suggestion and has incorporated it, with minor alterations, into its recommendation.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			It is requested that the word "current" be changed to "all" to provide clarity.	
6.	State Bar of California, Executive Committee of the Family Law Section (FLEXCOM) San Francisco	AM	<p>The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modifications.</p> <p>First, there appears to be a drafting oversight. The Invitation to Comment notes: “AB 1403 updated the language of the UPA to conform to the judicial recognition that the act applies neutrally to a man or a woman. In particular, the bill replaced ‘presumed father’ with ‘presumed parent’; replaced ‘mother’ and ‘father,’ when appropriate, with ‘parent’; and replaced ‘paternity,’ when appropriate, with ‘parentage.’ In some instances, for example, with respect to the voluntary declaration of paternity, the bill retained the gender-specific terms.” The Invitation to Comment also notes that the following amendment is proposed: “Amend rule 5.635(c) to clarify that a man who has properly executed a voluntary declaration of paternity of a child is a presumed father of the child subject to the limits in section 7612 of the Family Code.”</p> <p>Rule 5.635(c) contains a proposal to change “paternity” to “parentage.” This appears to be inadvertent. Changing “paternity” to “parentage” in this particular Rule of Court would create an impression of gender neutrality in an area of law that – as noted – is not gender neutral. This proposed change should therefore</p>	<p>No response required.</p> <p>The committee agrees with the suggested change and has incorporated it into its recommendation.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>not be made in rule 5.635(c).</p> <p>Second, FLEXCOM does not agree with the proposed addition of the following language to rule 5.635(c): “subject to rebuttal under section 7612.” A properly executed voluntary declaration of paternity does not create a presumption of paternity subject to rebuttal under Family Code section 7612; rather, it establishes paternity to the same effect as a court order (i.e., it is subject to set-aside if invalid, but is not rebuttable under section 7612). Therefore, the proposed language should not be added to this rule.</p> <p>Finally, this proposal would change the “Stipulation for Entry of Judgment re:</p>	<p>The committee recommends retaining the last sentence of current rule 5.635(c) without amendment. The legal effect of a voluntary declaration of paternity (VDOP), both on a presumption of parentage under the Uniform Parentage Act and presumed parent status in juvenile court proceedings, appears to be in a state of flux. A narrow reading of its effect could extinguish a legitimate parental interest. A broad reading could result in the establishment of a parent-child relationship where none exists. Indeed, the Supreme Court voted unanimously in February to review <i>In re Brianna M.</i> (2013) 220 Cal.App.4th 1025, which held that the references in sections 7611–7612 of the Family Code to the effect of a VDOP do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. (See <i>In re Brianna M.</i> (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.). Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted. Given the ongoing uncertainty and the likelihood that the Legislature or the Supreme Court will act to resolve it, the committee has elected to defer action on this element of the rule.</p> <p>The committee agrees that providing three lines for parents’ names could be misleading.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>Establishment of Parental Relationship” form to include three lines to designate a child’s parents (rather than the current two) in every case where parentage is being established through the courts. This would be a mandatory form.</p> <p>To add a third “parent” line to the mandatory form raises the question of whether each and every child whose parentage is being established in court may have more than two parents. This was not the intent of SB 274, which included the following language:</p> <p>“The Legislature finds and declares all of the following: (a) Most children have two parents, but in rare cases, children have more than two people who are that child’s parent in every way.... (d) It is the intent of the Legislature that this bill will only apply in the rare case where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents.”</p>	<p>Consistent with the Legislature’s intent that a court find that more than two persons are a child’s parents only in rare cases, the committee has chosen to retain two lines for parents’ names. If it is necessary, in those rare cases contemplated by the Legislature, to identify more than two parents, the party completing the form may list additional names on an attachment.</p>
7.	Superior Court of Los Angeles County	AM	<p>No direct cost savings to court.</p> <p>Training for staff will be required. JA training will be required. At this time no modification of CMS in Juvenile dependency. At this time a minimal change to CMS in Juvenile delinquency.</p>	<p>No response required.</p> <p>No response required.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>Sufficient time for implementation would be more than the two months from Judicial Council approval of this proposal until its effective date.</p> <p>[P]roposed modifications:</p> <p>Rule 5.510. Proper court; determination of child’s residence; exclusive jurisdiction Agree with proposed changes.</p> <p>Rule 5.635. Parentage Agree with proposed changes.</p> <p>Rule 5.668. Commencement of hearing – explanation of proceedings Agree with proposed changes.</p> <p>Rule 5.695. Findings and orders of the court – disposition Agree with proposed changes.</p> <p>Rule 5.725. Selection of permanent plan Agree with proposed changes.</p> <p>JUDICIAL COUNCIL FORMS</p> <p>FL-210. Summons We have concerns about whether the Summons</p>	<p>The committee intends the recommended rule amendments and form revisions to conform to AB 1403, which, in turn, codified case law dating from 2005. Although the committee regrets the short time available to implement the changes, it hopes that the amount of time will not prove to be an insurmountable obstacle to implementation. The committee does not recommend extending the time to comply with the amendments and revisions.</p> <p>No response required.</p> <p>The committee agrees to add the advisement</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>should include ADVISEMENT about the Affordable Care Act (ACA).</p> <p>We have concerns about whether each Respondent/Co-Respondent receives a separate Summons OR whether to provide spacing to include all Respondents on the same Summons.</p> <p>FL-240. Stipulation for Entry of Judgment re: Establishment of Parental Relationship</p> <p>The following suggestions are being made to this form:</p> <p>Captions: Please remove the word “PLAINTIFF”</p> <p>Please remove the word “DEFENDANT”</p>	<p>regarding the ACA to form FL-210 so that this form is consistent with <i>Summons (Family Law)</i> (form FL-110).</p> <p>The committee does not recommend revising the form to add an option for multiple respondents. The current form is consistent with sections 412.10–412.20 of the Code of Civil Procedure, which apply to family law proceedings under section 210 of the Family Code and rule 5.50(a). These sections are intended to permit a plaintiff to secure the issuance of either a single summons for all defendants or a separate summons for one or more defendants. (See Judicial Council Comment to Code Civ. Proc. § 412.10.) This intent is consistent with section 10 of the Family Code and section 17 of the Code of Civil Procedure, which provide that words used in the singular include the plural. This form is also consistent with the format used in <i>Summons</i> (form SUM-100), which uses the singular “defendant.”</p> <p>The committee agrees with the suggested change and has incorporated it into its recommendation.</p> <p>The committee agrees with the suggested change</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>Please change “RESPONDENT” to “RESPONDENTS”</p> <p>Stipulation: Section 9: Should there be language to disestablish paternity in the Stipulation for Entry of Judgment Re Establishment of Parental Relationship and Judgment of Paternity forms? If so, then we propose the following language to be included in Section 9 of FL 240:</p> <p>“The Court finds Petitioner Respondent Other Party (name): is/are disestablished as a parent of the minor child listed in the Petition.”</p> <p>Signature Lines: Please remove the word “PLAINTIFF”</p> <p>Please remove the word “DEFENDANT”</p> <p>Please add a line for Attorney for Other Parent as follows: “Date: _____”</p> <p>Print Name Attorney for Other”</p> <p>OTHER JUDICIAL COUNCIL FORMS TO</p>	<p>and has incorporated it into its recommendation.</p> <p>The committee does not recommend making the suggested change. See response to comment re: form FL-210, above.</p> <p>The committee does not recommend adding language to permit disestablishment of paternity using this form. The suggestion is beyond the scope of the current proposal. If the committee learns of a need to add language similar to that suggested, it may consider such a revision in a future rulemaking cycle.</p> <p>The committee agrees with the suggested change and has incorporated it into its recommendation.</p> <p>The committee agrees with the suggested change and has incorporated it into its recommendation.</p> <p>In light of the Legislature’s intent that a court find that a child has more than two parents only in rare cases, the committee does not recommend making the suggested change at this time.</p> <p>The suggested changes to other forms, while</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>CONFORM TO NEW RULES</p> <p>1) FL-105. We suggest no changes to the form at this time.</p> <p>2) FL-150. Captions: Please remove Plaintiff and Defendant from all captions. Section 4: Other Party’s Income: We suggest providing adequate space to describe the estimate gross monthly income (before taxes) of the other party to include both Respondent and Other Parent in this case. Section 16 b: Number of Children: We suggest providing adequate space to describe the percentage of time each parent (if minor children have more than two parents) spends with the minor children.</p> <p>3) FL-155. Captions: Please remove Plaintiff and Defendant from captions. Section 10: Other Party’s Income: We suggest providing adequate space to describe the estimate gross monthly income (before taxes) of the other party to include both Respondent and Other Parent in this case.</p> <p>4) FL-158. Captions: Please remove Plaintiff and Defendant from captions.</p> <p>5) FL-195. We suggest no changes to the form at this time.</p> <p>6) FL-191. Captions: We suggest removing the words “Plaintiff and “Defendant” from the</p>	<p>worthy of consideration, are beyond the scope of the current proposal. The committee does not recommend making them in this context. Some of the suggested changes have already been made. Others are the subject of other pending rules and forms proposals. To the extent that suggested changes respond to SB 274, the committee has taken the possibility of changes in response to that bill under advisement and will, if necessary, address them in a future rulemaking cycle. If appropriate, the committee may consider the remaining suggested changes when formulating proposals for revisions in future rulemaking cycles.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>captions page. Child Support Case Registry Form: We suggest adding a box to select “Other Party in the captions area. Other Party’s Name: We suggest to adding Section 7 to include the same sub-sections information under Father’s Name and Mother’s name Section 7: We suggest changing the already printed Section 7 making it Section 8. We suggest adding Other Parent to already printed sections 7a, 7b and 7c.</p> <p>7) FL-192. We suggest no changes at this time.</p> <p>8) FL-200. Captions: Please add an additional line for “Other Party”. Number 2 on the form should include not only identification of more than one mother or father but also identification of more than two children. Section 3: We suggest duplicating the information in Section 3 a-c and creating Section 4. Section 4 would use the words “Other Party” instead of Respondent. Renumbering Subsequent Printed Sections: If the suggestion in Section 3 herein is accepted, then all subsequent printed sections need to be renumbered accordingly. Section 5c: We suggest adding another line to include “Other Party” is the child’s parent” as an option.</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>Section 5d: We suggest adding another line to include “Other Party” is child’s parent who has failed to support the child” as an option.</p> <p>Section 8 Child Custody and Visitation: We suggest adding a column to include ‘Other Party” between columns for Respondent and Joint</p> <p>Section 8c (3): Please add language so litigants may select “Other Party” should have the right to visit the children as follows:</p> <p>Section 9: Reasonable Expenses of Pregnancy and Birth: Please add a column between Respondent and Joint that says “Other P arty”</p> <p>Section 10: Fees and Costs of Litigation: Please add a column between Respondent and Joint that says “Other Party”</p> <p>9) FL-235. Captions: Please add an additional line for “Other Party”.</p> <p>Section re Interpreter’s Declaration: Please include a designation for more than two parents. We are suggesting the following change: “Petitioner Respondent Other Party (name):”</p> <p>10) FL-250. Caption: Please add an additional line for “Other Party”.</p> <p>Section 2e: Please add an additional line for “Other Party”.</p> <p>Renumbering Sections 2f – 2h: If suggestion in Section 2e herein is accepted, then Section s 2f – 2h need to be renumbered accordingly in sequential order.</p> <p>Section 2g: Please duplicate the language found</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>in Section 2(g: 1-5) except replace Respondent with “Other Party” . The new section should be identified as Section 2h (1-5). Section 2h: If the suggestion in 2g (above herein) is accepted, then 2h needs to be renumbered to 2i. Section 3 needs to add an additional line for a 3rd name and identify 3rd name as Other Party. Additional Section to Disestablish: Should there be language to disestablish paternity in the Stipulation and Judgment of Paternity forms? If so, then we propose the following language: “The Court finds Petitioner Respondent Other Party (name): is/are disestablished as a parent of the minor child listed in the Petition.”</p> <p>11) FL-260. Captions: Please add “Other Party” to captions area. Section 1- Jurisdiction for Bringing Action: Please add an additional line after (b) to state, “The Other party is the Mother Father of the minor children. ” Section 2: The language may need to be revised to include “Other Party” for each sentence under this section. By example: the Petitioner is married to the Respondent / Other Party, and no action is pending in any court for dissolution, legal separation, or nullity. Section 6a: Fees and Costs of Litigation: Please add the following: “Other Party” after the word respondent.</p> <p>12) FL-270. Captions: Please add “Other Party”</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>to captions area.</p> <p>Section 1- Jurisdiction for brining action: Please add an additional line after (b) Respondent to state, “The other party is the Mother Father of the minor children.</p> <p>Section 2: The language may need to be revised to include “Other Party” for each sentence under this section. By example: the Petitioner is married to the Respondent /Other Party, and no action is pending in any court for dissolution, legal separation, or nullity.</p> <p>Signature Line, Page 2: Please add language to include both Respondent and Other Party. By way of example: “ _____ ”</p> <p>Respondent Other Party</p> <p>Section 6a: Fees and Costs of Litigation: Please add the following: “Other Party.” after the word respondent.</p> <p>13) FL-272. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>14) FL-273. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>15) FL-274. We suggest no changes at this time.</p> <p>16) FL-276. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>17) FL-278. Captions: Please remove Plaintiff</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>and Defendant from all captions.</p> <p>18) FL-280. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>19) FL-281. We suggest no changes at this time.</p> <p>20) FL-290. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>21) FL-300. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>22) FL-300I. We suggest no changes at this time.</p> <p>23) FL-305. Captions: Please remove Plaintiff and Defendant from all captions Section 2a: We suggest adding space to include an additional box followed by the words “Other Parent”. By way of example, the section should be changed as follows: “Petitioner Respondent Other Party (name): will have temporary physical custody care and control of the minor children of the parties subject to the other party’s rights of visitation as follows: ” Section 2b: We suggest adding space to include an additional box followed by the words “Other Parent”. By way of example, the section should be changed as follows: “Petitioner Respondent Other Party (name): must not remove the minor child or children of the parties.... ”</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>24) FL-311. Captions: Please remove Plaintiff and Defendant from all captions. Section 2e: We suggest adding a box followed by the words “Other Parent to this section. By way of example, the section should state, “Visitation for “ Petitioner Respondent Other Party (name): will be as follows:”</p> <p>25) FL-312. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>26) FL-313. We suggest no changes at this time.</p> <p>27) FL-314I. We suggest no changes at this time.</p> <p>28) FL-320. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>29) FL-330. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>30) FL-334. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>31) FL-335. Captions: Please remove Plaintiff and Defendant from all captions.</p> <p>32) FL-341. Captions: We suggest removing the words “Plaintiff and “Defendant” and adding “Other Party” to the caption page.</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>Section 7c: We are suggesting the form to include a designation for each party. By way of example, we suggest the section to state, “Reasonable right of visitation to the party without physical custody for the Petitioner Respondent Other Party (name): (not appropriate in cases involving domestic violence)”</p> <p>Section 7d: Please change to include a designation for more than two parents. We are suggesting the following: “No visitation for the Petitioner Respondent Other Party (name): ”</p> <p>33) FL-341(A). Captions: We suggest the Council to remove the words “Plaintiff and Defendant” and add “Other Party to the caption page.</p> <p>Global Change: A global change should include the following whenever a selection is offered between Petitioner and Respondent as in Sections 1, 2, 8, and 9. We recommend the following language to be included in this section: “ Petitioner Respondent Other Party (name): ”</p> <p>34) FL-341(B). Captions: We suggest adding “Other Party” to caption area.</p> <p>35) FL-341(C). Captions: We suggest adding “Other Party” to caption area.</p> <p>Section 1: The sentence should be changed as follows:” The following table shows the holiday</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>parenting schedules. Write “Pet” or “Resp” or “Other Party” to specify each parent’s years-odd, even, or both.....</p> <p>Section 1 Cont.: The Columns labeled “Every Year”, “Even Years” and “Odd Years’ should include in each column the following: “Petitioner/Respondent/Other Parent”. “Other Parent’s Birthday” should be included in list of Holidays in Column 1 after Father’s Birthday.</p> <p>36) FL-341(D) . Captions: We suggest adding “Other Party” to caption area. Section 9: Please include a designation for more than two parents. We are suggesting the following change: “ Petitioner Respondent Other Party (name): ”</p> <p>37) FL-341(E). Section 9: Please include a designation for more than two parents. We are suggesting the following change: “ Petitioner Respondent Other Party (name): ” Section 4: Please include a designation for more than two parents. We are suggesting the following change: “ Petitioner Respondent Other Party (name): ”</p> <p>38) FL-342. Captions: We suggest removing the words “Plaintiff and “Defendant” and add “Other Party for consistency purposes. Global Change: We suggest redacting the words “Plaintiff and Defendant” from Section 2a, Section 3b, Section 4, Section 6a, Section</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>6b(1)(a), Section 6b (1)(b), Section 6c (2)(a); Section 6c(2)(b), Section 6d(1)(a), Section 6d(1)(b), Section 6d(2)(a), Section 6d(2)(b), Section 7(a), Section 7(b), and Section 10.</p> <p>39) FL-342(A) . Captions: We suggest removing the words “Plaintiff and “Defendant” and add “Other Party for consistency purposes Section 2a: We suggest adding a box and words. By way of example, please see the following: “ Other Party (name): ” Section 2d (3): We suggest adding a box and words. By way of example please see the following: “ Other Party (name): ”</p> <p>40) FL-350. Captions: We suggest removing the words “Plaintiff and “Defendant”. Section 1a: We suggest adding an additional line after Father’s net monthly disposable income to include “ Other Party (name): net monthly income.” Section 2: We are suggesting the following language be added: “Other Party %” Section 3: We suggest adding an additional section 3c to include the following language: “A hardship is being experienced by the Other Party \$ per month because.....” Section 8c: We are suggesting the following language be added: “Other Party %” Section 11: We are suggesting the following language be added: “Other Party %” Signature Lines: We suggest adding an additional line for Other Party to Date, Print and</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

Commentator	Position	Comment	Committee Response
		<p>If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of Social <u>Child Support Services</u>, the declaration establishes the paternity <u>parentage</u> of a child and has the same force and effect as a judgment of paternity <u>parentage</u> by a court. <u>A man is presumed to be the father of the child under Family Code section 7611, subject to rebuttal under section 7612, if the voluntary declaration has been properly executed and filed.</u></p> <p>The highlighted text is in <u>direct conflict</u> with <i>In re Jovanni B.</i> (2013) 221 Cal.App.4th 1482, 1491-1495 [holding that completed voluntary declaration “is not dispositive of presumed father status in a dependency proceeding”], citing <i>In re Brianna</i> (2013) 220 Cal.App.4th 1025, <i>In re E.O.</i> (2010) 182 Cal.App.4th 722.</p> <p>(g) Dependency and delinquency; notice to alleged parents If, after inquiry by the court or through other</p>	<p>sentence of current rule 5.635(c) without amendment. The legal effect of a voluntary declaration of paternity (VDOP), both on a presumption of parentage under the Uniform Parentage Act and presumed parent status in juvenile court proceedings, appears to be in a state of flux. A narrow reading of its effect could extinguish a legitimate parental interest. A broad reading could result in the establishment of a parent-child relationship where none exists. Indeed, the Supreme Court voted unanimously in February to review <i>In re Brianna M.</i> (2013) 220 Cal.App.4th 1025, which held that the references in sections 7611–7612 of the Family Code to the effect of a VDOP do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. (See <i>In re Brianna M.</i> (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.). Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted. Given the ongoing uncertainty and the likelihood that the Legislature or the Supreme Court will act to resolve it, the committee has elected to defer action on this element of the rule.</p> <p>The committee does not recommend making the suggested changes to rule 5.635(g) at this time. The suggested changes are outside the scope of</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

Commentator	Position	Comment	Committee Response
		<p>information obtained by the county child welfare department or probation department, one or more persons are identified as alleged parents ...</p> <p>...</p> <p>(4) The alleged parent has relinquished custody of the child to the county child welfare department.</p> <p>Rule 5.668. Commencement of hearing— explanation of proceedings (§§ 316, 316.2)</p> <p>(b) Paternity Parentage inquiry</p> <p>The court must also inquire of the child’s mother and of any other appropriate person present as to the identity and address of any and all presumed parents and alleged fathers parents of the child. Questions, at the discretion of the court, may include:</p> <p>...</p> <p>(3) Was the mother cohabiting with a man an adult anyone at the time of conception? <i>Although illegal, it is feasible for a mother to conceive with a cohabitant under 18 years of age.</i></p>	<p>the proposal circulated for comment. Moreover, the current language in the rule is consistent with terminology used frequently in the Welfare and Institutions Code to refer to the welfare department. See, e.g., §§ 215, 11400, 11403(e)–(f), 11404. Although the code does use a wide variety of terms—see, e.g., § 204 (“child protective services”); § 11364 (“county child welfare agency”); § 11403(c) (“county child welfare department”); § 16002 (“responsible local agency”) § 16004.5 (“child welfare agencies”); § 16010 (“child protective agency—the committee is not aware of any confusion caused by the consistent use of “county welfare department” in the rules of court.</p> <p>The committee agrees with the suggestion and has incorporated the change into its recommendation.</p> <p>The committee agrees with that the use of “adult” is too restrictive. Rather than substitute the term “anyone,” however, the committee recommends deleting all reference to another cohabitant based on its understanding that the verb “cohabit”</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>Rule 5.695. Findings and orders of the court—disposition (h) Provision of reunification services (§ 361.5)</p> <p>(1) Except as provided in (6), if a child is removed from the custody of a parent or legal guardian, the court must order the county child welfare department [<i>or change “county welfare department” to “social worker” for consistency with § 361.5(a)</i>] to provide reunification services to the child and the child's mother and statutorily presumed father-parents, or the child's legal guardian, to facilitate reunification of the family. For a child who was three years of age or older on the date of initial removal, services must be provided during the time period beginning with the dispositional hearing and ending 12 months after the date the child entered foster care, as defined by section 361.49. For a child who was under three years of age on the date of initial removal, services must be provided for a period of 6 months from the dispositional hearing, but no longer than 12 months from the date the child entered foster care, as defined by section 361.49. The time period for the provision of family reunification services must be calculated consistent with section</p>	<p>necessarily implies that person’s existence.</p> <p>The committee does not recommend making the first suggested change to rule 5.695(h)(1) at this time. It is outside the scope of the proposal circulated for comment. See response to comment on rule 5.635(g), above. The committee also does not recommend making the second suggested change at this time. The mother-child relationship is conclusively established by proof of birth under section 7610(a). The suggested amendment risks eliminating a birth mother’s entitlement to reunification services.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

Commentator	Position	Comment	Committee Response
		<p>361.5(a). The court must inform the parent or legal guardian of a child who was under three when initially removed that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification efforts after 6 months from the date of the dispositional hearing.</p> <p>(2) ...</p> <p>(3) On a finding and declaration of paternity parentage by the juvenile court or proof of a prior declaration of paternity parentage by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that such services will benefit the child.</p> <p>(4) ...</p> <p>(5) ...</p> <p>(6) ... Reunification services need not be provided to a mother, statutorily presumed father, parent or guardian if the court finds, by clear and convincing evidence, any of the following:</p> <p>(7) ...</p> <p>(8) ...</p> <p>(9) ... If the parent or guardian is located prior to the 6-month review and requests reunification services, the child welfare department must seek a modification of the disposition orders. The time limits for reunification services must be calculated from the date of the initial removal, and not</p>	<p>The committee does not recommend making the suggested change to rule 5.695(h)(3). The suggested change occurs in the context of a discussion of biological paternity. AB 1403 retained gender-specific terminology in that context. If the Legislature acts to express a contrary intent, the committee will consider any necessary rule amendments at that time.</p> <p>The committee agrees with the suggested change and has incorporated it into its recommendation.</p> <p>The committee does not recommend making the suggested changes to rule 5.695(h)(9) at this time. The suggested changes are outside the scope of the proposal circulated for comment. See response to comment on rule 5.635(g), above.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

Commentator	Position	Comment	Committee Response
		<p>party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party must seek an extraordinary writ under rules 8.450, and 8.452, and 5.600.</p> <p>(16) ... (17) ... (18) Failure to file a petition for extraordinary writ review within the period specified by rules 8.450, and 8.452, and 5.600 to substantively address the issues challenged, or to support the challenge by an adequate record, precludes subsequent review on appeal of the findings and orders made under this rule. (19) ...</p> <p>(i) Information regarding termination of parent-child relationship (§§ 361, 361.5) If a child is removed from the physical custody of the parent or guardian under either section 361 or 361.5, the court must:</p> <p>(1) State the facts on which the decision is based; and (2) Notify the parents that their parental rights may be terminated if custody is not returned within 6 months from the disposition hearing or 12 months of after the specific date the child is determined to have entered foster care, as defined by section 361.49, whichever time limit is applicable.</p> <p>See CRC 5.695(h)(1.)</p>	<p>The committee reads the highlighted text as identical to the amendment circulated for comment.</p> <p>The committee agrees that rule 5.695(i)(2) is confusing as currently drafted, but does not recommend amending it to the extent suggested. The committee does recommend a less comprehensive amendment to clarify that the six-month time frame does not run from the date the child entered foster care.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>(k) Fifteen-day reviews (§ 367) If a child is detained pending the execution of the disposition order, the court must review the case at least every 15 calendar days to determine whether the delay is reasonable. During each review the court must inquire about the action taken by the probation or child welfare department to carry out the court's order, the reasons for the delay, and the effect of the delay on the child.</p> <p>(l) Setting a hearing under section 366.26 At the disposition hearing, the court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county child welfare department.</p> <p>Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31) (a) Application of rule This rule applies to children who have been declared dependents or wards of the juvenile court.</p>	<p>The committee does not recommend making the suggested change to rule 5.695(k), as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above.</p> <p>The committee does not recommend making the suggested change to rule 5.695(l), as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above.</p> <p>The committee does not recommend making the suggested changes to rule 5.725, as they are beyond the scope of the current proposal. See response to comment on rule 5.635(g), above.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>(1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with section 7660) of the Family Code or Family Code sections 8604, 8605, 8606, and 8700 apply for the termination of parental rights. Part 4 (commencing with section 7800) of division 12 of the Family Code does not apply.</p> <p>(2) The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent; or unless the rights of the other parent have been terminated under division 12, part 3, chapter 5 (commencing with section 7660), or division 12, part 4 (commencing with section 7800) of the Family Code, or Family Code sections 8604, 8605, or 8606; or unless the other parent has relinquished custody of the child to the <u>child</u> welfare department.</p> <p>(g) Purpose of termination of parental rights The purpose of termination of parental rights is to free the dependent child for adoption. Therefore, the court must not terminate the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has</p>	

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>relinquished custody of the child to the county child welfare department. The rights of the mother, any presumed father parent, any alleged father, and any unknown father or fathers must be terminated in order to free the child for adoption.</p> <p>Q: “Are there any other mandatory Judicial Council forms in the FL or JV series that use gender-specific language and urgently require revision to prevent confusion?”</p> <p>A: No, but there are several additional CRC provisions that need revision: Rules 5.610, 5.614, 5.650, 5.678, 5.695, 5.705, 5.708, 5.710, 5.720, 5.725, and 5.740. Please see below; suggested revisions are highlighted in yellow.</p> <p>Rule 5.610. Transfer-out hearing (a) Determination of residence-special rule on intercounty transfers (§§ 375, 750) (1) ... (2) ... (3) The juvenile court may make a finding of paternity parentage under rule 5.635. If there is no finding of paternity parentage, the mother is deemed to have physical custody.</p> <p>Rule 5.614. Courtesy supervision (§§ 380, 755) The court may authorize a child placed on</p>	<p>The committee does not recommend the suggested change to rule 5.610 at this time. The committee anticipates proposing comprehensive modifications to the rules and forms associated with procedures for transferring juvenile cases in a future rulemaking cycle. The committee will consider the suggested change in the context of that proposal.</p> <p>The committee does not recommend making the suggested change, as it is beyond the scope of the current proposal. See response to comment on rule</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

Commentator	Position	Comment	Committee Response
		<p>probation, a ward, or a dependent child to live in another county and to be placed under the supervision of the other county's county child welfare agency or probation department with the consent of the agency or department. The court in the county ordering placement retains jurisdiction over the child.</p> <p>Rule 5.650. Appointed educational rights holder (i) Education and training of educational rights holder If the educational rights holder, including a biological, presumed, or adoptive parent, asks for assistance in obtaining education and training in the laws incorporated in rule 5.651(a), the court must direct the clerk, social worker, or probation officer to inform the educational rights holder of all available resources, including resources available through the California Department of Education, the California Department of Developmental Services, the local educational agency, and the local regional center.</p> <p>Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives (d) Order of the court (§ 319, 42 U.S.C., § 600 et seq.) If the court orders the child detained, the court must order that temporary care and</p>	<p>5.635(g), above.</p> <p>The committee agrees that the terminology in rule 5.650(i) is overly restrictive and has incorporated changes consistent with this suggestion into its recommendation.</p> <p>The committee does not recommend making the suggested change, as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>custody of the child be vested with the county child welfare department pending disposition or further order of the court.</p> <p>Rule 5.705. Setting a hearing under section 366.26 At a disposition hearing, a review hearing, or at any other hearing regarding a dependent child, the court must not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county child welfare department.</p> <p>Rule 5.708. General review hearing requirements (b) Notice of hearing (§ 293) The petitioner or the clerk must serve written notice of review hearings on <i>Notice of Review Hearing</i> (form JV-280), in the manner provided in section 293, to all persons or entities entitled to notice under section 293 and to any CASA volunteer, educational rights holder, or surrogate parent appointed on the case.</p> <p>(I) Setting a hearing under section 366.26 for one parent</p>	<p>The committee does not recommend making the suggested change to rule 5.705, as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above.</p> <p>The committee agrees with the suggested technical change and has incorporated it into its recommendation.</p> <p>The committee does not recommend making the suggested change, as it is beyond the scope of the</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>The court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:</p> <p>...</p> <p>(3) The other parent has relinquished custody of the child to the county child welfare department.</p> <p>(n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)</p> <p>...</p> <p>(5) The court must ensure that notice is provided as follows:</p> <p>(A) ...</p> <p>(B) The court must order that notice of the hearing under section 366.26 not be provided to any of the following:</p> <p>(i) A parent, presumed-parent, biological, or alleged parent who has relinquished the child for adoption and whose relinquishment has been accepted and filed with notice under Family Code section 8700; or</p> <p>Rule 5.710. Six-month review hearing</p> <p>(c) Setting a section 366.26 hearing (§§ 366.21, 366.215)</p> <p>(1) ...</p> <p>(D) ...</p> <p>(ii) The court, in determining whether</p>	<p>current proposal. See response to comment on rule 5.635(g), above.</p> <p>The committee agrees with the suggested change and has incorporated it, with minor alterations, into its recommendation.</p> <p>The committee agrees with the suggested technical changes and has incorporated them into its recommendation.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>court-ordered services may be extended to the 12-month point, must take into account any particular barriers to a parent's or guardian's ability to maintain contact with his or her child due to the parent's or guardian's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. The court may also consider, among other factors, whether the incarcerated, institutionalized, detained, or deported parent or guardian has made good faith efforts to maintain contact with the child and whether there are any other barriers to the parent's or guardian's access to services.</p> <p>See WIC § 361.5(e)(1); CRC 5.715(b)(4)(A)(ii) ["parent or legal guardian"].</p> <p>Rule 5.720. Eighteen-month permanency review hearing (b) Determinations and conduct of hearing (§§ 361.5, 366.22) (3) ... (A) ... To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making</p>	<p>The committee agrees with the suggested technical change and has incorporated it, with minor alterations, into its recommendation.</p>

SPR14-11

Family and Juvenile Law: Parentage (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

	Commentator	Position	Comment	Committee Response
			<p>significant and consistent progress in a substance abuse treatment program, or a parent or guardian is recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security, and making significant and consistent progress in establishing a safe home for the child's return. ...</p> <p>Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3) (a) Review hearings-adoption and guardianship (1) At the review hearing, the court must consider the report of the petitioner, as required by section 366.3(fg), the report of any CASA volunteer, the case plan submitted for this hearing, and any report . . .</p>	<p>The committee agrees with the suggested technical change to rule 5.740(a)(1) and has incorporated it, with minor alterations, into its recommendation.</p>