

**Subject:** RUPRO: Request for action by email  
**Date:** Monday, February 09, 2015 9:50 AM  
**Attachments:** FamJuv\_request.pdf; Memo to RUPRO – Approval for CLAC Subcommittee.docx

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Members of the Rules and Projects Committee,

Thank you for your prompt replies recommending approval of the proposal to amend fee waiver rules and forms. With Justice Hull's approval, we are sending additional items for your approval and asking that you reply by email. The first is a request by the Family and Juvenile Law Advisory Committee (Fam/Juv) to amend its annual agenda and the second is a request from the Criminal Law Advisory Committee (CLAC) to create a new limited-duration subcommittee.

#### **Family and Juvenile Law Advisory Committee Request**

Attached are three memos from Fam/Juv requesting RUPRO's approval to amend the Fam/Juv annual agenda to include three new projects, which it considers to be priorities that should be worked on this year. The three items and the rules and forms affected are:

- Juvenile Law: Proceedings Before a Referee (rule 5.538)
- Juvenile Law: Juvenile Delinquency: Documenting Wobbler Determination (JV-665)
- Family Law/Domestic Violence: Amendments to Domestic Violence Form, "Get Ready for the Court Hearing" (DV-520-INFO)

Please note that you are not being asked to approve the substance of these proposals or to approve them to circulate for comment at this time. If RUPRO approves adding them to the Fam/Juv annual agenda, the proposals, including invitations to comment, will come before RUPRO at a meeting on April 15 meeting.

#### **Criminal Law Advisory Committee Request**

Attached is a memo from CLAC requesting permission for establish a new limited-duration subcommittee. The memo explains that, as provided in its Annual Agenda for 2015, CLAC will be developing a standard of judicial administration to provide courts guidance on the use of risk/needs assessment information in criminal proceedings, including sentencing. To facilitate this effort, CLAC requests approval to form a new subcommittee of its members to study relevant issues and develop a draft proposal for the committee as a whole to consider recommending for Judicial Council approval.

\* \* \* \* \*

Justice Hull has concluded that these actions may be taken by email between meetings because prompt action is needed (rule 10.75(o)(1)): Fam/Juv needs to be promptly informed of whether it can allocate resources to working on these proposals to have them ready for the April 15 RUPRO meeting and CLAC needs to form the subcommittee very soon, if approved. Public notice of this email action will be posted under rule 10.75(o)(2). Would you please respond by **5:00 on Friday, February 13, 2015**, indicating whether you approve the addition of these projects to the Fam/Juv annual agenda? Thank you.



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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**Date**

January 28, 2015

**Action Requested**

Approve Addition to Annual Agenda

**To**

Judicial Council Rules and Projects  
Committee

**Deadline**

March 19, 2015

**From**

Family and Juvenile Law Advisory  
Committee

**Contact**

Audrey Fancy  
415-865-7706 phone  
audrey.fancy@jud.ca.gov

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

**Subject**

Addition of Project to Annual Agenda:  
Juvenile Law: Proceedings Before a Referee

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**Executive Summary**

Rule 5.538(b)(3) is inconsistent with Welfare and Institutions Code section 248, subdivision (b)(1) and must be amended to conform to existing law and to prevent unnecessary appellate delays. Welfare and Institutions Code section 248(b)(1) was amended by Senate Bill 179 effective January 1, 2011, to provide that if the parent, guardian, or child is present in court at the time the referee's findings and orders are made, then the orders and rehearing rights may be personally served. Otherwise, under subdivision (b)(2), service must be by mail to the last known or designated address.

**Action Requested**

The Family and Juvenile Law Advisory Committee asks that the Rules and Projects Committee approve adding to the 2015 Annual Agenda of the Family and Juvenile Law Advisory Committee:

New item 24 **Juvenile Law: Proceedings Before a Referee:**

Propose changes to rule 5.538 required by recent legislative changes as a result of Senate Bill 179 (Stats. 2010, ch. 66).

## **Basis for Request**

### **Background**

Under California Rules of Court, rule 10.43 the Family and Juvenile Law Advisory Committee “makes recommendations to the Judicial Council for improving the administration of justice in all cases involving marriage, family, or children.” Welfare and Institutions Code section 248(b)(1) was amended by Senate Bill 179 effective January 1, 2011, to provide that if the parent, guardian, or child is present in court at the time the referee’s findings and orders are made, then the orders and rehearing rights may be personally served. Otherwise, under subdivision (b)(2), service must be by mail to the last known or designated address. Rule 5.538(b)(3) is now inconsistent with this statute. Subdivision (b)(1) and (b)(3) of the rule currently read:

Serve the parent and guardian, and counsel for the child, parent, and guardian, a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. Service must be by mail to the last known address and is deemed complete at the time of mailing.

The committee proposes amending subdivision (b)(3) in the Spring 2015 cycle to conform to existing law and to prevent unnecessary appellate delays.

### **Annual Agenda**

The Family and Juvenile Law Advisory Committee proposes that new item 24 Juvenile Law: Proceedings Before a Referee be added to its Annual Agenda. The Priority of the item is 1(b); the Specifications for the items would be:

- Judicial Council Direction: Committee charge under rule 10.43
- Origin of Project: Legislative mandate.
- Resources:
- Key Objective Supported:
  - Provide recommendations to the Judicial Council to enable the Judicial Council to fulfill legislative mandates for changes to or new statewide rules and forms.
  - Coordinate with related advisory groups to fulfill council directives in the area of domestic violence, family law, and juvenile law

The proposed Completion Date would be January 1, 2016.



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# MEMORANDUM

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**Date**

January 28, 2015

**Action Requested**

Approve Addition to Annual Agenda

**To**

Judicial Council Rules and Projects  
Committee

**Deadline**

March 19, 2015

**From**

Family and Juvenile Law Advisory  
Committee

**Contact**

Audrey Fancy  
415-865-7706 phone  
audrey.fancy@jud.ca.gov

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

**Subject**

Addition of Project to Annual Agenda:  
Juvenile Law: Juvenile Delinquency:  
Documenting Wobbler Determination (JV-  
665)

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**Executive Summary**

Form JV-665 is an optional disposition form used in delinquency cases which sets forth required findings and orders. At item 3, the form provides space to designate an offense as a felony or misdemeanor as required by Welfare and Institutions Code section 702.<sup>1</sup> In the recent unpublished case, *In re S.J.* (H040997) the court noted that the language on the form is unclear with regards to the court determining whether an offense is a felony or misdemeanor and in a footnote suggested that the Judicial Council consider modifying the form.

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<sup>1</sup> “Welf. & Inst § 702: If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.

### **Action Requested**

The Family and Juvenile Law Advisory Committee asks that Judicial Council Rules and Projects Committee approve adding to the 2015 Annual Agenda of the Family and Juvenile Law Advisory Committee:

New item 25 **Juvenile Delinquency: Documenting Wobbler Determination (JV-665):**

Provide subject matter expertise to the council by providing recommendations for change to form JV-665 suggested by the recent unpublished appellate decision *In re S.J.* (H040997).

### **Basis for Request**

#### **Background**

Under California Rules of Court, rule 10.43 the Family and Juvenile Law Advisory Committee “makes recommendations to the Judicial Council for improving the administration of justice in all cases involving marriage, family, or children.” At the recommendation of the Family and Juvenile Law Advisory Committee, the Judicial Council adopted form JV-665 effective January 1, 2006 and subsequently, effective January 1, 2012, made modifications to the form including changing JV-665 from a mandatory form to an optional form.

Form JV-665 is an optional disposition form used in delinquency cases which sets forth required findings and orders. At item 3, the form provides space to designate an offense as a felony or misdemeanor as required by Welfare and Institutions Code section 702.<sup>2</sup> Item 3 currently reads: “The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows:”.

In the case, *In re Manzy W.* (1997) 14 Cal. 4th 1199, the California Supreme Court concluded that section 702 is unambiguous and “requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult.” (*Id.* at p. 1204.) But further noted that “the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler.” (*Id.* at p. 1209.) The current language at item 3 was drafted to comply with *Manzy W.*; however, a recent unpublished case noted that the language on the form is unclear with regards to the court determining whether an offense is a felony or misdemeanor and in a footnote suggested that the Judicial Council consider modifying the form. See *In re S.J.* (H040997), footnote 6:

We take judicial notice of the existence and contents of the Judicial Council’s form order entitled JURISDICTION HEARING—JUVENILE DELIQUENCY (JV-644 [Rev. Jan. 1,

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<sup>2</sup> “Welf. & Inst § 702: If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.

2012]). (See Evid. Code, §§ 452, subd. (c), 459.) The form provides space for a court to list allegations that have been admitted and found true after the child's admission or no contest plea. By checking the appropriate box, the court may declare each listed statutory violation to be a misdemeanor or a felony or it may indicate the status of the statutory violation will be specified at disposition. It contains additional preprinted language with respect to those allegations: "The court has considered whether the above offense(s) should be felonies or misdemeanors." A juvenile court adopts this language by checking the adjacent box. The Judicial Council may wish to consider revising Judicial Council form JV-665 to provide for the identification or separately listing of each statutory violation that "would in the case of an adult be punishable alternatively as a felony or a misdemeanor" (§ 702) and to clearly reflect that the court is exercising its discretion pursuant to section 702 and explicitly declaring the status of each such offense. The rebuttable presumption that official duty is regularly performed (see Evid. Code, §§ 660, 664) would answer any concern that a clerk filled out the form and the judge signed it unthinkingly without exercising discretion. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 49 ["In the absence of any indication to the contrary we presume, as we must, that a judicial duty is regularly performed. [Citations.]"].) presumption that official duty is regularly performed (see Evid. Code, §§ 660, 664) would answer any concern that a clerk filled out the form and the judge signed it unthinkingly without exercising discretion. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 49 ["In the absence of any indication to the contrary we presume, as we must, that a judicial duty is regularly performed. [Citations.]"].)

### **Annual Agenda**

The Family and Juvenile Law Advisory Committee proposes that new item 25 Juvenile Delinquency: Documenting Wobbler Determination (JV-665) be added to its Annual Agenda. The Priority of the item is 1(a); the Specifications for the items would be:

- Judicial Council Direction: Committee charge under rule 10.43
- Origin of Project: Appellate Decision
- Resources:
- Key Objective Supported:
  - Provide recommendations to the Judicial Council to enable the Judicial Council to fulfill legislative mandates for changes to or new statewide rules and forms.
  - Coordinate with related advisory groups to fulfill council directives in the area of domestic violence, family law, and juvenile law.

The proposed Completion Date would be January 1, 2016.



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# MEMORANDUM

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**Date**

January 28, 2015

**Action Requested**

Approve Addition to Annual Agenda

**To**

Judicial Council Rules and Projects  
Committee

**Deadline**

March 19, 2015

**From**

Family and Juvenile Law Advisory  
Committee

**Contact**

Julia F. Weber  
415-865-7693 phone  
julia.weber@jud.ca.gov

Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

**Subject**

Addition of Project to Annual Agenda:  
Family Law/Domestic Violence:  
Amendments to Domestic Violence Form,  
“Get Ready for the Court Hearing” (DV-520-  
INFO)

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**Executive Summary**

DV-520-INFO is an informational form available for optional use by courts to provide information to litigants about preparing for a domestic violence restraining order hearing, hundreds of which are held each day in courts throughout the state. Courts report finding the form helpful, however, the current version includes information that can be confusing and, as a result, may cause unnecessary difficulties and delays at hearings. Rather than continuing to provide legally inaccurate information, some courts have chosen not to use the form and do not have a substitute readily available. Additionally, this form remains on the public website so litigants may be relying upon it to their detriment. The committee seeks to amend the form in this cycle so that is clearer, legally accurate, and as a result, accomplishes the original goal in adopting the form: to inform litigants and assist in making these complex and important hearings run more smoothly.

## **Action Requested**

The Family and Juvenile Law Advisory Committee asks that the Judicial Council Rules and Projects Committee approve adding to the 2015 Annual Agenda of the Family and Juvenile Law Advisory Committee:

### **New item 26 Family Law/Domestic Violence: Amend “Getting Reading for the Court Hearing” (DV-520-INFO):**

Propose amendments to correct information on the form and improve the availability of information for litigants, including self-represented litigants, on preparing for court hearings so as to reduce confusion and delay at court hearings.

## **Basis for Request**

### **Background**

Under California Rules of Court, rule 10.43 the Family and Juvenile Law Advisory Committee “makes recommendations to the Judicial Council for improving the administration of justice in all cases involving marriage, family, or children.” A trial court judge contacted the committee, commenting that the form can be incredibly helpful to litigants, especially self-represented litigants, who are often confused about how to prepare for domestic violence restraining order hearings. However, because some of the information on the form may be read to suggest that evidence offered by the litigants will always be accepted by the judge, this judge and others have chosen not to provide the form out of concern that it may be confusing and misleading. The committee agrees that given the value of the form and the need to provide litigants with helpful information so as to assist in hearings running more smoothly, it is important to propose amendments correcting these inaccuracies thereby improving the form and enabling courts to more routinely make it available.

### **Annual Agenda**

The Family and Juvenile Law Advisory Committee proposes that new item 26 Family Law/Domestic Violence: Amend “Getting Reading for the Court Hearing” (DV-520-INFO)

The Priority of the item is 1(a). The specifications for the items would be:

- Judicial Council Direction: Committee charge under rule 10.43
- Origin of Project: Request from trial courts
- Resources:
- Key Objective Supported:
  - Provide recommendations to the Judicial Council to enable the Judicial Council to fulfill legislative mandates for changes to or new statewide rules and forms.
  - Coordinate with related advisory groups to fulfill council directives in the area of domestic violence, family law, and juvenile law.

The proposed Completion Date would be January 1, 2016.



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### MEMORANDUM

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**Date**

February 5, 2015

**Action Requested**

Approve Formation of Limited Duration  
Subcommittee

**To**

Rules and Projects Committee  
Hon. Harry E. Hull, Jr., Chair

**Deadline**

Earliest Possible

**From**

Criminal Law Advisory Committee  
Hon. Tricia A. Bigelow, Chair

**Contact**

Arturo Castro, Supervising Attorney  
415-865-7702  
[Arturo.castro@jud.ca.gov](mailto:Arturo.castro@jud.ca.gov)

**Subject**

Notification and Request for Approval:  
Formation of Criminal Law Advisory  
Committee Limited Duration Subcommittee

Adrienne Toomey, Attorney  
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[Adrienne.toomey@jud.ca.gov](mailto:Adrienne.toomey@jud.ca.gov)

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**Executive Summary**

As part of its previously-approved annual agenda for 2015, the Criminal Law Advisory Committee (CLAC) will soon begin development of a standard of judicial administration to provide courts guidance on the use of risk/needs assessment information in criminal proceedings, including sentencing. To facilitate this process, CLAC requests approval to form a subcommittee of its members to study relevant issues and develop a draft proposal for the committee as a whole to consider recommending for Judicial Council approval.

**Action Requested**

Approve the formation of a limited duration subcommittee of CLAC members to study the legal and policy issues surrounding courts' use of risk/needs assessment information in criminal proceedings.

### **Basis for Request**

CLAC's development of rules or standards to govern the use of risk/needs assessment information by courts was approved by the Rules and Projects Committee as part of CLAC's 2015 annual agenda. This project was prioritized as "urgently needed to respond to a recent change in the law," including criminal justice realignment and earlier directives from the Legislature that require the Judicial Council to "consider the adoption of appropriate modifications to the Criminal Rules of Court . . . affecting felony probation services that would support implementation of the evidence-based probation supervision practices . . ." (S.B. 678, Chaptered 608, Oct. 11, 2009, Section 3.)

The Realignment Act, in particular, made significant changes to the sentencing and supervision of persons convicted of felony offenses. In enacting the realignment legislation, the Legislature directed reinvestment of criminal justice resources "to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system." (Pen. Code, § 17.5(a)(3)-(5).)

Use of risk/needs assessment instruments is commonly considered an evidence-based principle central to the goal of reducing recidivism in community corrections.<sup>1</sup> Risk/needs assessments have been traditionally used post-sentencing in criminal cases, largely by probation and parole officials outside the scope of judicial review. Risk/needs assessment information, however, has increasingly been incorporated into judicial sentencing proceedings, which has generated substantial commentary in the legal community, some raising potential policy and legal concerns with this practice.<sup>2</sup>

Given the complexity of legal and policy implications of courts' use of assessment information at various stages of criminal proceedings and particularly at sentencing, CLAC seeks to appoint a subcommittee of its members to closely analyze the issues and enhance the expertise needed to craft optimal recommendations to the Judicial Council.

### **Scope, Duration, and Composition of the Proposed Subcommittee**

The proposed subcommittee will be comprised of a minority of CLAC members, 6 out of 18 total. The chair does not seek appointment of non-CLAC members to the subcommittee. The Chair anticipates that the subcommittee will hold at least one in-person meeting and conduct follow up meetings by phone.

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<sup>1</sup> See e.g., [Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy](http://usf.usfca.edu/law/academic/journals/lawreview/printissues/v43i3/Warren.pdf), by Roger K. Warren [http://usf.usfca.edu/law/academic/journals/lawreview/printissues/v43i3/Warren.pdf]

<sup>2</sup> See e.g., [Office of the U.S. Assistant Attorney General Annual Letter the U.S. Federal Sentencing Commission](#), July 29, 2014, discussing "The Promise and Danger of Data Analytics in Sentencing and Corrections Policy" at pp. 6-8 [raising potential policy and constitutional concerns in using risk assessment data in front-end criminal sentencing determinations].

The Chair plans to invite approximately four non-CLAC subject matter experts, including two judges with judicial education experience and a chief probation officer, to attend the in-person meeting to make presentations and consult with the subcommittee. The subcommittee may determine the need to consult with one or more of these subject matter experts by phone on an ad hoc basis following the in-person meeting.

Expected costs are minimal, likely limited to travel expenses required for the sole in-person meeting. However, additional funding for the work of this subcommittee is not requested. Any costs will be absorbed by the Judicial Council's Criminal Justice Services office with existing funds made available for this purpose as part of the Legislature's directive to the Judicial Council under SB 678.

The subcommittee's work is expected to last approximately six months.

Because this subcommittee will be comprised of less than a majority of CLAC members and will be of limited duration and scope, it will not constitute an "advisory body" within the meaning of Rule 10.75 (b)(1).