Title 5. Family and Juvenile Rules

Rule 5.1. Title

Rule 5.1. Title

The rules in this title may be referred to as the Family and Juvenile Rules.

Rule 5.1 adopted effective January 1, 2007.

Division 1. Family Rules

Chapter 1. General Provisions

Article 1. General Provisions

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 1, General Provisions—Article 1, General Provisions; adopted January 1, 2013.

Rule 5.2. Division title; definitions; application of rules and laws
Rule 5.4. Preemption; local rules and forms

Rule 5.2. Division title; definitions; application of rules and laws

(a) Division title

The rules in this division may be referred to as the Family Rules.

(b) Definitions and use of terms

As used in this division, unless the context or subject matter otherwise requires, the following definitions apply:

(1) "Family Code" means that code enacted by chapter 162 of the Statutes of 1992 and any subsequent amendments to that code.

(2) "Action" is also known as a lawsuit, a case, or a demand brought in a court of law to defend or enforce a right, prevent or remedy a harm, or punish a crime. It includes all the proceedings in which a party requests orders that are available in the lawsuit.

(3) "Proceeding" is a court hearing in an action under the Family Code, including a hearing that relates to the dissolution or nullity of a marriage or domestic partnership, legal separation, custody and support of minor children, a parent and child relationship, adoptions, local child support agency actions under the Family Code, contempt proceedings relating to family law or local child support agency matters, and any action filed under the Domestic Violence Prevention Act, Uniform Parentage Act, Uniform Child Custody Jurisdiction and Enforcement Act, Indian Child Welfare Act, or Uniform Interstate Family Support Act.

(4) "Dissolution" is the legal term used for "divorce." "Divorce" commonly refers to a marriage that is legally ended.

(5) "Attorney" means a member of the State Bar of California. "Counsel" means an attorney.

(6) "Party" is a person appearing in an action. Parties include both self-represented persons and persons represented by an attorney of record. Any designation of a party encompasses the party's attorney of record, including "party," "petitioner," "plaintiff," "People of the State of California," "applicant," "defendant," "respondent," "other parent," "other parent/party," "protected person," and "restrained person."

(7) "Best interest of the child" is described in Family Code section 3011.

(8) "Parenting time," "visitation," and "visitation (parenting time)" refer to how parents share time with their children.

(9) "Property" includes assets and obligations.

(10) "Local rule" means every rule, regulation, order, policy, form, or standard of general application adopted by a court to govern practice and procedure in that court.

(c) Application of rules

The rules in this division apply to every action and proceeding to which the Family Code applies and, unless these rules elsewhere explicitly make them applicable, do not apply to any other action or proceeding that is not found in the Family Code.

(d) General law applicable

Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply to a proceeding under the Family Code if they would otherwise apply to such proceeding without reference to this rule. To the extent that these rules conflict with provisions in other statutes or rules, these rules prevail.

(e) Law applicable to other proceedings

In any action under the Family Code that is not considered a "proceeding" as defined in (b), all provisions of law applicable to civil actions generally apply. Such an action must be commenced by filing an appropriate petition, and the respondent must file an appropriate response within 30 days after service of the summons and a copy of the petition.

(f) Extensions of time

The time within which any act is permitted or required to be done by a party under these rules may be extended by the court upon such terms as may be just.

(g) Implied procedures

In the exercise of the court's jurisdiction under the Family Code, if the course of proceeding is not specifically indicated by statute or these rules, any suitable process or mode of proceeding may be adopted by the court that is consistent with the spirit of the Family Code and these rules.

Rule 5.2 adopted effective January 1, 2013.

Rule 5.4. Preemption; local rules and forms

Each local court may adopt local rules and forms regarding family law actions and proceedings that are not in conflict with or inconsistent with California law or the California Rules of Court. Effective January 1, 2013, local court rules and forms must comply with the Family Rules.

Rule 5.4 adopted effective January 1, 2013.

Advisory Committee Comment

The Family and Juvenile Law Advisory Committee agrees with the *Elkins Family Law Task Force: Final Report and Recommendations* (final report) regarding local rules of court (see final report at pages 31–32). The final report is available at *www.courts.ca.gov/elkins-finalreport.pdf.*

The advisory committee encourages local courts to continue piloting innovative family law programs and practices using local rules that are consistent with California law and the California Rules of Court.

Courts must not adopt local rules that create barriers for self-represented litigants or parties represented by counsel in getting their day in court. Further, courts should not adopt general rules for a courtroom as they pose substantial barriers to a party's access to justice.

Article 2: Use of Forms

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 1, General Provisions—Article 2, Use of Forms; adopted January 1, 2013.

Rule 5.7. Use of forms

Rule 5.7. Use of forms

(a) Status of family law and domestic violence forms

All forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL, ADOPT, DV, and EJ series, are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution; and other applicable law.

(b) Forms in nonfamily law proceedings

The forms specified by this division may be used, at the option of the party, in any proceeding involving a financial obligation growing out of the relationship of parent and child or husband and wife or domestic partners, to the extent they are appropriate to that proceeding.

(c) Interstate forms

Notwithstanding any other provision of these rules, all Uniform Interstate Family Support Act forms approved by either the National Conference of Commissioners on Uniform State Laws or the U.S. Department of Health and Human Services are adopted for use in family law and other support actions in California.

Rule 5.7 adopted effective January 1, 2013.

Article 3. Appearance by Telephone

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 1, General Provisions—Article 3, Appearance by Telephone; adopted January 1, 2013.

Rule 5.9. Appearance by telephone

Rule 5.9. Appearance by telephone

(a) Application

This rule applies to all family law cases, except for actions for child support involving a local child support agency. Rule 5.324 governs telephone appearances in governmental child support cases.

(b) Telephone appearance

The court may permit a party to appear by telephone at a hearing, conference, or proceeding if the court determines that a telephone appearance is appropriate.

(c) Need for personal appearance

(1) At its discretion, the court may require a party to appear in person at a hearing, conference, or proceeding if the court determines that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(2) If, at any time during a hearing, conference, or proceeding conducted by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

(d) Local rules

Courts may develop local rules to specify procedures regarding appearances by telephone.

Rule 5.9 adopted effective January 1, 2013.

Article 4. Discovery

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 1, General Provisions—Article 4, Discovery; adopted January 1, 2013.

Rule 5.12. Request for order regarding discovery

Rule 5.12. Discovery motions

Rule 5.12. Request for order regarding discovery

(a) Use of terms

In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

(Subd (a) adopted effective July 1, 2016.)

(b) Applicable law

A request for order regarding discovery in family court is subject to the provisions for discovery motions under Code of Civil Procedure sections 2016.010 through 2036.050 and Family Code sections 2100 through 2113 regarding disclosure of assets and liabilities.

(Subd (b) amended and relettered effective July 1, 2016; adopted as subd (a).)

(c) Applicable rules

Discovery proceedings brought in a case under the Family Code must comply with applicable civil rules for motions, including:

(1) The format of supplemental and further discovery (rule 3.1000);

(2) Oral deposition by telephone, videoconference, or other remote electronic means (rule 3.1010);

(3) Separate statement requirements (rule 3.1345);

(4) Service of motion papers on nonparty deponent (rule 3.1346); and

(5) Sanctions for failure to provide discovery (rule 3.1348).

(Subd (c) amended and relettered effective July 1, 2016; adopted as subd (b).)

Rule 5.12 amended effective July 1, 2016; adopted effective January 1, 2013.

Article 5: Sanctions

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 1, General Provisions—Article 5, Sanctions; adopted January 1, 2013.

Rule 5.14. Sanctions for violations of rules of court in family law cases

Rule 5.14. Sanctions for violations of rules of court in family law cases

(a) Application

This sanctions rule applies to any action or proceeding brought under the Family Code.

(b) Definition

For purposes of the rules in this division:

(1) "Sanctions" means a monetary fine or penalty ordered by the court.

(2) "Person" means a party, a party's attorney, a law firm, a witness, or any other individual or entity whose consent is necessary for the disposition of the case.

(c) Sanctions imposed on a person

In addition to any other sanctions permitted by law, the court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or to an aggrieved person, or both, for failure without good cause to comply with the applicable rules. The sanction must not put an unreasonable financial burden on the person ordered to pay.

(d) Notice and procedure

Sanctions must not be imposed under this rule except on a request for order by the person seeking sanctions or on the court's own motion after the court has provided notice and an opportunity to be heard.

(1) A party's request for sanctions must:

(A) State the applicable rule of court that has been violated;

(B) Describe the specific conduct that is alleged to have violated the rule; and

(C) Identify the party, attorney, law firm, witness, or other person against whom sanctions are sought.

(2) The court on its own motion may issue an order to show cause that must:

(A) State the applicable rule of court that has been violated;

(B) Describe the specific conduct that appears to have violated the rule; and

(C) Direct the attorney, law firm, party, witness, or other person to show cause why sanctions should not be imposed for violation of the rule.

(e) Award of expenses

In addition to the sanctions awardable under this rule, the court may order the person who has violated an applicable rule of court to pay to the party aggrieved by the violation that party's reasonable expenses, including reasonable attorney's fees and costs, incurred in connection with the motion or request for order for sanctions.

(f) Order

A court order awarding sanctions must be in writing and must recite in detail the conduct or circumstances justifying the order.

Rule 5.14 adopted effective January 1, 2013.

Chapter 2. Parties and Joinder of Parties

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 2, Parties and Joinder of Parties; adopted January 1, 2013.

Article 1. Parties to Proceedings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 2, Parties and Joinder of Parties—Article 1, Parties to Proceedings; adopted January 1, 2013.

Rule 5.16. Designation of parties
Rule 5.17. Other causes of action
Rule 5.18. Injunctive relief and reservation of jurisdiction

Rule 5.16. Designation of parties

(a) Designation of parties

(1) In cases filed under the Family Code, the party starting the case is referred to as the "petitioner," and the other party is the "respondent."

(2) In local child support agency actions, the local child support agency starts the case and is the petitioner or plaintiff in the case. The parent sued by the child support agency is the "respondent" or "defendant," and the parent who is not the defendant is referred to as the "Other Parent." Every other proceeding must be prosecuted and defended in the names of the real parties in interest.

(b) Parties to proceeding

(1) The only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of marriage are the spouses, except as provided in (3), a third party who is joined in the case under rule 5.24, or a local child support agency that intervenes in the case.

(2) The only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of domestic partnership are the domestic partners, except as provided in (3), a third party who is joined in the case under rule 5.24, or a local child support agency that intervenes in the case.

(3) In a nullity proceeding, the case can be started by the spouses or domestic partners. The case may also be started by a parent or guardian, conservator, or other person specified in Family Code section 2211. For this type of case, the person starting the case is a party and the caption on all papers must be appropriately changed to reflect that fact.

(4) The only persons permitted to be parties to a proceeding under the Domestic Violence Prevention Act are those identified in Family Code section 6211.

(5) The only persons permitted to be parties to a family law proceeding to establish parentage are the presumed or putative parents of the minor child, the minor child, a third party who is joined in the case under rule 5.24, or a local child support agency that intervenes in the case.

Rule 5.16 adopted effective January 1, 2013.

Rule 5.17. Other causes of action

A party in a family law proceeding may only ask that the court make orders against or involving the other party, or any other person, that are available to the party in these rules, Family Code sections 17400, 17402, and 17404, or other sections of the California Family Code.

Rule 5.17 adopted effective January 1, 2013.

Rule 5.18. Injunctive relief and reservation of jurisdiction

(a) Injunctive relief

When a party in a family law case applies for a court order under rule 5.92, the court may grant injunctive or other relief against or for the following persons to protect the rights of either or both parties:

(1) A person who has or claims an interest in the case;

(2) A person who would be a necessary party to a complete disposition of the issues in the case, but is not permitted to be a party under rule 5.16; or

(3) A person who is acting as a trustee, agent, custodian, or similar fiduciary with respect to any property subject to disposition by the court in the proceeding, or other matter subject to the jurisdiction of the court in the proceeding.

(b) Reservation of jurisdiction

If the court is unable to resolve the issue in the proceeding under the Family Code, the court may reserve jurisdiction over the particular issue until such time as the rights of such person and the parties to the proceeding under the Family Code have been determined in a separate action or proceeding.

Rule 5.18 adopted effective January 1, 2013.

Article 2. Joinder of Parties

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 2, Parties and Joinder of Parties—Article 2, Joinder of Parties; adopted January 1, 2013.

Rule 5.24. Joinder of persons claiming interest

Rule 5.24. Joinder of persons claiming interest

A person who claims or controls an interest in any matter subject to disposition in the proceeding may be joined as a party to the family law case only as provided in this chapter

(a) Applicable rules

(1) All provisions of law relating to joinder of parties in civil actions generally apply to the joinder of a person as a party to a family law case, except as otherwise provided in this chapter.

(2) The law applicable to civil actions generally governs all pleadings, motions, and other matters pertaining to that portion of the proceeding as to which a claimant has been joined as a party to the proceeding in the same manner as if a separate action or proceeding not subject to these rules had been filed, except as otherwise provided in this chapter or by the court in which the proceeding is pending.

(b) "Claimant" defined

For purposes of this rule, a "claimant" is an individual or an entity joined or sought or seeking to be joined as a party to the family law proceeding.

(c) Persons who may seek joinder

(1) The petitioner or the respondent may apply to the court for an order joining a person as a party to the case who has or claims custody or physical control of any of the minor children subject to the action, or visitation rights with respect to such children, or who has in his or her possession or control or claims to own any property subject to the jurisdiction of the court in the proceeding.

(2) A person who has or claims custody or physical control of any of the minor children subject to the action, or visitation rights with respect to such children, may apply to the court for an order joining himself or herself as a party to the proceeding.

(3) A person served with an order temporarily restraining the use of property that is in his or her possession or control or that he or she claims to own, or affecting the custody of minor children subject to the action, or visitation rights with respect to such children, may apply to the court for an order joining himself or herself as a party to the proceeding.

(d) Form of joinder application

(1) All applications for joinder other than for an employee pension benefit plan must be made by serving and filing form a *Notice of Motion and Declaration for Joinder* (form FL-371). The hearing date must be less than 30 days from the date of filing the notice. The completed form must state with particularity the claimant's interest in the proceeding and the relief sought by the

applicant, and it must be accompanied by an appropriate pleading setting forth the claim as if it were asserted in a separate action or proceeding.

(2) A blank copy of *Responsive Declaration to Motion for Joinder and Consent Order for Joinder* (form FL-373) must be served with the *Notice of Motion* and accompanying pleading.

(e) Court order on joinder

(1) *Mandatory joinder*

(A) The court must order that a person be joined as a party to the proceeding if the court discovers that person has physical custody or claims custody or visitation rights with respect to any minor child of the marriage, domestic partnership, or to any minor child of the relationship.

(B) Before ordering the joinder of a grandparent of a minor child in the proceeding under Family Code section 3104, the court must take the actions described in section 3104(a).

(2) *Permissive joinder*

The court may order that a person be joined as a party to the proceeding if the court finds that it would be appropriate to determine the particular issue in the proceeding and that the person to be joined as a party is either indispensable for the court to make an order about that issue or is necessary to the enforcement of any judgment rendered on that issue.

In deciding whether it is appropriate to determine the particular issue in the proceeding, the court must consider its effect upon the proceeding, including:

(A) Whether resolving that issue will unduly delay the disposition of the proceeding;

(B) Whether other parties would need to be joined to make an effective judgment between the parties;

(C) Whether resolving that issue will confuse other issues in the proceeding; and

(D) Whether the joinder of a party to determine the particular issue will complicate, delay, or otherwise interfere with the effective disposition of the proceeding.

(3) *Procedure upon joinder*

If the court orders that a person be joined as a party to the proceeding under this rule, the court must direct that a summons be issued on *Summons (Joinder)* (form FL-375) and that the claimant be served with a copy of *Notice of Motion and Declaration for Joinder* (form FL-371), the pleading attached thereto, the order of joinder, and the summons. The claimant has 30 days after service to file an appropriate response.

(Subd (e) amended effective January 1, 2017.)

Rule 5.24 amended effective January 1, 2017; adopted effective January 1, 2013.

Article 3. Employee Pension Benefit Plan

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 2, Parties and Joinder of Parties—Article 3, Employee Pension Benefit Plan; adopted January 1, 2013.

Rule 5.29. Joinder of employee pension benefit plan

Rule 5.29. Joinder of employee pension benefit plan

(a) Request for joinder

Every request for joinder of employee pension benefit plan and order and every pleading on joinder must be submitted on *Request for Joinder of Employee Benefit Plan and Order* (form FL-372) and *Pleading on Joinder—Employee Benefit Plan* (form FL-370).

(b) Summons

Every summons issued on the joinder of employee pension benefit plan must be on *Summons (Joinder)* (form FL-375).

(c) Notice of Appearance

Every notice of appearance of employee pension benefit plan and responsive pleading filed under Family Code section 2063(b) must be given on *Notice of Appearance and Response of Employee Benefit Plan* (form FL-374).

Rule 5.29 adopted effective January 1, 2013.

Chapter 3. Filing Fees and Fee Waivers

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 3, Filing Fees and Fee Waivers; adopted January 1, 2013.

Article 1. Filing Fees and Fee Waivers

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 3, Filing Fees and Fee Waivers—Article 1, Filing Fees and Fee Waivers; adopted January 1, 2013.

Rule 5.40. Filing fees
Rule 5.41. Waiver of fees and costs

Rule 5.40. Filing fees

(a) Filing fees

Parties must pay filing fees to the clerk of the court at the time the parties file papers with the court.

(b) Authority

The amount of money required to pay filing fees in family court is established by the Uniform Civil Fees and Standard Fee Schedule Act of 2005 under Government Code section 70670 et seq. and is subject to change. The act covers fees the court may charge parties to file the first papers in a family law proceeding, motions, or other papers requiring a hearing. It also covers filing fees that courts may charge in proceedings relating to child custody or visitation (parenting time) to cover the costs of maintaining mediation services under Family Code section 3160 et seq.

(c) Other fees

(1) The court must not charge filing fees that are inconsistent with law or with the California Rules of Court and may not impose any tax, charge, or penalty upon a proceeding, or the filing of any pleading allowed by law, as provided by Government Code section 68070.

(2) In the absence of a statute or rule authorizing or prohibiting a fee by the superior court for a particular service or product, the court may charge a reasonable fee not to exceed the costs of providing the service or product, if the Judicial Council approves the fee, as provided by Government Code

section 70631. Approved fees must be clearly posted and accessible to the public.

Rule 5.40 adopted effective January 1, 2013.

Rule 5.41. Waiver of fees and costs

If unable to afford the costs to file an action in family court, a party may request that the court waive fees and costs. The procedure and forms needed to request an initial fee waiver in a family law action are the same as for all other civil actions, unless otherwise provided by a statute or the California Rules of Court.

(a) Forms

The forms required to request a fee waiver may be obtained from the clerk of the court, the public law library, or online at the California Courts website.

(b) Rules

Rules 3.50–3.56 of the California Rules of Court (title 3, division 2) govern fee waivers in family law cases. Parties may refer to the civil rules for information about:

(1) Applying for a fee waiver (rule 3.51);

(2) Forms for requesting a fee waiver (rule 3.51);

(3) How the court makes an order on a fee waiver application (rule 3.52);

(4) The time required for the court to grant a fee waiver (rule 3.53);

(5) The confidentiality of fee waiver applications and hearings (rule 3.54);

(6) Court fees and costs included in an initial fee waiver (rule 3.55); and

(7) Additional court fees and costs that may be included in the fee waiver (rule 3.56).

Rule 5.41 adopted effective January 1, 2013.

Article 2. Special Procedures

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 3, Filing Fees and Fee Waivers—Article 2, Special Procedures; adopted January 1, 2013.

Rule 5.43. Fee waiver denials; voided actions; dismissal
Rule 5.45. Repayment of waived court fees and costs in family law support actions
Rule 5.46. Waiver of fees and costs—Supreme Court or Court of Appeal

Rule 5.43. Fee waiver denials; voided actions; dismissal

(a) Voided paperwork

The clerk of the court must void the papers that were filed with a petitioner's or respondent's fee waiver application if 10 days pass after notice of the fee waiver denial and petitioner or respondent has not:

(1) Paid the fees owed;

(2) Submitted a new *Request to Waive Court Fees* (form FW-001) if the fee waiver was denied because the first form was incomplete; or

(3) Requested a hearing using *Request for Hearing About Court Fee Waiver Order (Superior Court)* (form FW-006).

(b) Effect of voided petition or complaint; dismissal or continuation of case

(1) *No response or notice of appearance filed*

If a petition or complaint is voided under (a) and a response to the petition or complaint has not been filed, or respondent has not appeared in the action, the court may dismiss the case without prejudice. If the court dismisses the case, the clerk of the court must notify the parties.

(2) *Response or notice of appearance filed; case continuation or dismissal*

If a petition or complaint is voided and a response has been filed with the court, or respondent has appeared in the action, the court must:

(A) Review the response, or documents constituting respondent's appearance, to determine whether or how the case will proceed based on the relief requested;

(B) Notify the parties of the court's determination; and

(C) Refund filing fees paid by the respondent if the court dismisses the case.

Rule 5.43 adopted effective January 1, 2013.

Rule 5.45. Repayment of waived court fees and costs in family law support actions

(a) Determination of repayment required

When a judgment or support order is entered in a family law case, the court may order either party to pay all or part of the fees and costs that the court waived under Government Code section 68637. The court must consider and determine the repayment of waived fees as required by Government Code section 68637(d) and (e). The rule does not apply to actions initiated by a local child support agency.

(b) Required forms

(1) An order determining repayment of waived initial fees must be made on *Order to Pay Waived Court Fees and Costs (Superior Court)* (form FL-336). An order for payment of waived court fees must be accompanied by a blank *Application to Set Aside Order to Pay Waived Court Fees—Attachment* (form FL-337).

(2) An order granting or denying a request to set aside an order to pay waived court fees and costs must be made on *Order After Hearing on Motion to Set Aside Order to Pay Waived Court Fees (Superior Court)* (form FL-338).

Rule 5.45 adopted effective January 1, 2013.

Rule 5.46. Waiver of fees and costs—Supreme Court or Court of Appeal

(a) Application

Rule 8.26 of the appellate rules specifies the procedure and forms for applying for an initial waiver of court fees and costs in the Supreme Court or Court of Appeal.

(b) Information

Parties may refer to rule 8.26 for information about:

(1) Applying for a fee waiver in appeals, writ proceedings, and petitions for review;

(2) Required forms requesting a fee waiver;

(3) The confidentiality of fee waiver applications and hearings;

(4) Time required for the court to grant a fee waiver; and

(5) Denial of a fee waiver application.

Rule 5.46 adopted effective January 1, 2013.

Chapter 4. Starting and Responding to a Family Law Case; Service of Papers

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers; adopted January 1, 2013.

Article 1. Summonses, Notices, and Declarations

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers—Article 1, Summonses, Notices, and Declarations; adopted January 1, 2013.

Rule 5.50. Papers issued by the court
Rule 5.52. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Rule 5.50. Papers issued by the court

(a) Issuing the summons; form

If a summons is required to commence a family law case, the clerk of the court must issue the summons using the same procedure for issuing a summons in civil actions, generally.

(1) The clerk of the court must:

(A) Issue a *Summons (Family Law)* (form FL-110) for divorces, legal separations, or annulment cases involving married persons or domestic partnerships;

(B) Issue a *Summons (Uniform Parentage—Petition for Custody and Support)* (form FL-210) for parentage or custody and support cases;

(C) Issue a *Summons (UIFSA)* (form FL-510) when a party seeks to establish or enforce child support orders from other states; and

(D) Process a *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-600) as specified in rule 5.325.

(2) The clerk of the court must not give the original summons to the petitioner, but must maintain it in the court file, except for support cases initiated by a local child support agency.

(b) Automatic temporary family law restraining order in summons; handling by clerk

Under Family Code section 233, in proceedings for dissolution, legal separation, or nullity of a marriage or domestic partnership and in parentage proceedings, the clerk of the court must issue a summons that includes automatic temporary (standard) restraining orders.

(1) The summons and standard restraining orders must be issued and filed in the same manner as a summons in a civil action and must be served and enforced in the manner prescribed for any other restraining order.

(2) If service is by publication, the publication need not include the standard restraining orders.

(Subd (b) amended effective January 1, 2016.)

(c) Individual restraining order

(1) On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders in (b) included in the family law summons under Family Code section 233.

(2) Individual restraining orders supersede the standard family law restraining orders in the Family Law and Uniform Parentage Act summonses.

(Subd (b) amended effective January 1, 2016.)

Rule 5.50 amended effective January 1, 2016; adopted effective January 1, 2013.

Rule 5.52. Declaration under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

(a) Filing requirements; application

(1) Petitioner and respondent must each complete, serve, and file a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) if there are children of their relationship under the age of 18 years.

(2) The form is a required attachment to the petition and response in actions for divorce, to establish parentage, or actions for custody and support of minor children.

(b) Duty to update information

In any action or proceeding involving custody of a minor child, a party has a continuing duty to inform the court if he or she obtains further information about a custody proceeding in a California court or any other court concerning a child who is named in the petition, complaint, or response. To comply with this duty, a party must file an updated UCCJEA form with the court and have it served on the other party.

Rule 5.52 adopted effective January 1, 2013.

Article 2. Initial Pleadings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers—Article 2, Initial Pleadings; adopted January 1, 2013.

Rule 5.60. Petition or complaint; alternative relief
Rule 5.62. Appearance by respondent
Rule 5.63. Request for order to quash proceeding or responsive relief

Rule 5.60. Petition or complaint; alternative relief

(a) Format

A party starting a family law case must file an appropriate petition or complaint using a form approved by the Judicial Council. Where the Judicial Council has not approved a specific petition or complaint form, the party must submit the petition or complaint in an appropriate format under Trial Court Rules, rules 2.100 through 2.119.

(b) Request for alternative relief

The petitioner or respondent may request alternative relief when filing a family law action. The request for alternative relief must be indicated in the petition or response.

Rule 5.60 adopted effective January 1, 2013.

Rule 5.62. Appearance by respondent

(a) Use of terms

In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

(Subd (a) adopted effective July 1, 2016.)

(b) Appearance

Except as provided in Code of Civil Procedure section 418.10 and Family Code sections 2012 and 3409, a respondent is deemed to have made a general appearance in a proceeding when he or she files:

(1) A response or answer;

(2) A request for order to strike, under section 435 of the Code of Civil Procedure;

(3) A request for order to transfer the proceeding under section 395 of the Code of Civil Procedure; or

(4) A written notice of his or her appearance.

(Subd (b) amended and relettered effective July 1, 2016; adopted as subd (a).)

(c) Notice required after appearance

After appearance, the respondent or his or her attorney is entitled to notice of all subsequent proceedings of which notice is required to be given by these rules or in civil actions generally.

(Subd (c) amended and relettered effective July 1, 2016; adopted as subd (b).)

(d) No notice required

Where a respondent has not appeared, notice of subsequent proceedings need not be given to the respondent except as provided in these rules.

(Subd (d) amended and relettered effective January 1, 2016; adopted as subd (c).)

Rule 5.62 amended effective July 1, 2016; adopted effective January 1, 2013.

Rule 5.63. Request for order to quash proceeding or responsive relief

(a) Use of terms

In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

(Subd (a) adopted effective July 1, 2016.)

(b) Respondent's application

Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following reasons:

(1) Lack of legal capacity to sue;

(2) Prior judgment or another action pending between the same parties for the same cause;

(3) Failure to meet the residence requirement of Family Code section 2320; or

(4) Statute of limitations in Family Code section 2211.

(Subd (b) relettered effective July 1, 2016; adopted as subd (a).)

(c) Service of respondent's request for order to quash

The request for order to quash must be served in compliance with Code of Civil Procedure section 1005(b). If the respondent files a request for order to quash, no default may be entered, and the time to file a response will be extended until 15 days after service of the court's order denying the request for order to quash.

(Subd (c) amended and relettered effective July 1, 2016; adopted as subd (b).)

(d) Petitioner's application

Within 15 days after the filing of the response, the petitioner may move to quash, in whole or in part, any request for affirmative relief in the response for the grounds set forth in (a).

(Subd (d) relettered effective July 1, 2016; adopted as subd (c).)

(e) Waiver

The parties are deemed to have waived the grounds set forth in (b) if they do not file a request for order to quash within the time frame set forth.

(Subd (e) amended and relettered effective July 1, 2016; adopted as subd (d).)

(f) Relief

When a request for order to quash is granted, the court may grant leave to amend the petition or response and set a date for filing the amended pleadings. The court may also dismiss the action without leave to amend. The action may also be dismissed if the request for order has been sustained with leave to amend and the amendment is not made within the time permitted by the court.

(Subd (f) amended and relettered effective July 1, 2016; adopted as subd (e).)

Rule 5.63 amended effective July 1, 2016; adopted effective January 1, 2013.

Article 3. Service of Papers

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers—Article 3, Service of Papers; adopted January 1, 2013.

Rule 5.66. Proof of service

Rule 5.66. Proof of service

(a) Requirements to file proof of service

Parties must file with the court a completed form to prove that the other party received the petition or complaint or response to petition or complaint.

(Subd (a) amended and lettered effective January 1, 2017; adopted as unlettered subd.)

(b) Methods of proof of service

(1) The proof of service of summons may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service of Summons* (form FL-115).

(2) The proof of service of response to petition or complaint may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service by Mail* (form FL-335), *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service* (form POS-050/EFS-050).

(Subd (b) amended and lettered effective January 1, 2017; adopted as unlettered subd.)

Rule 5.66 amended effective January 1, 2017; adopted effective January 1, 2013.

Article 4. Manner of Service

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers—Article 4, Manner of Service; adopted January 1, 2013.

Rule 5.68. Manner of service of summons and petition; response; jurisdiction
Rule 5.72. Court order for service by publication or posting when respondent's address is unknown

Rule 5.68. Manner of service of summons and petition; response; jurisdiction

(a) Service of summons and petition

The petitioner must arrange to serve the other party with a summons, petition, and other papers as required by one of the following methods:

(1) Personal service (Code Civ. Proc., § 415.10);

(2) Substituted service (Code Civ. Proc., § 415.20);

(3) Service by mail with a notice and acknowledgment of receipt (Code Civ. Proc., § 415.30);

(4) Service on person outside of the state (Code Civ. Proc., § 415.40);

(5) Service on a person residing outside of the United States, which must be done in compliance with service rules of the following:

(A) Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; or

(B) Inter-American Convention on Letters Rogatory and the Additional Protocol to the Inter-American Convention on Letters Rogatory.

(6) Service by posting or publication (Code Civ. Proc., §§ 415.50 and 413.30).

(Subd (a) amended effective January 1, 2014.)

(b) Service of response to petition

A response to a family law petition may be served by the methods described in (a) but may also be served by mail without notice and acknowledgment of receipt.

(c) Continuing jurisdiction

The court has jurisdiction over the parties and control of all subsequent proceedings from the time of service of the summons and a copy of the petition. A general appearance of the respondent is equivalent to personal service within this state of the summons and a copy of the petition upon him or her.

Rule 5.68 amended effective January 1, 2014; adopted effective January 1, 2013.

Rule 5.72. Court order for service by publication or posting when respondent's address is unknown

If the respondent cannot be found to be served a summons by any method described in Code of Civil Procedure sections 415.10 through 415.40, the petitioner may request an order for service of the summons by publication or posting under Code of Civil Procedure sections 415.50 and 413.30, respectively.

(a) Service of summons by publication or posting; forms

To request service of summons by publication or posting, the petitioner must complete and submit to the court *Application for Order for Publication or Posting* (form FL-980) and *Order for Publication or Posting* (form FL-982). Alternatively, petitioner may complete and submit to the court pleadings containing the same information as forms FL-980 and FL-982. The petitioner must list all the reasonable diligent efforts that have been made to find and serve the respondent.

(b) Service of summons by posting; additional requirements

Service of summons by posting may be ordered only if the court finds that the petitioner is eligible for a waiver of court fees and costs.

(1) To request service by posting, the petitioner must have obtained an order waiving court fees and costs. If the petitioner's financial situation has improved since obtaining the approved order on court fee waiver, the petitioner must file a *Notice to Court of Improved Financial Situation or Settlemen*t (form FW-010). If the court finds that the petitioner no longer qualifies for a fee waiver, the court may order service by publication of the documents.

(2) *Proof of Service by Posting* (form FL-985) (or a pleading containing the same information as form FL-985) must be completed by the person who posted the documents and then filed with the court once posting is completed.

(Subd (b) amended effective January 1, 2014.)

Rule 5.72 amended effective January 1, 2014; adopted effective January 1, 2013.

Article 5. Pleadings and Amended Pleadings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers—Article 5, Pleadings and Amended Pleadings; adopted January 1, 2013.

Rule 5.74. Pleadings and amended pleadings

Rule 5.74. Pleadings and amended pleadings

(a) Definitions

(1) "Pleading" means a petition, complaint, application, objection, answer, response, notice, request for orders, statement of interest, report, or account filed in proceedings under the Family Code.

(2) "Amended pleading" means a pleading that completely restates and supersedes the pleading it amends for all purposes.

(3) "Amendment to a pleading" means a pleading that modifies another pleading and alleges facts or requests relief materially different from the facts alleged or the relief requested in the modified pleading. An amendment to a pleading

does not restate or supersede the modified pleading but must be read together with that pleading.

(4) "Supplement to a pleading" and "supplement" mean a pleading that modifies another pleading but does not allege facts or request relief materially different from the facts alleged or the relief requested in the supplemented pleading. A supplement to a pleading may add information to or may correct omissions in the modified pleading.

(b) Forms of pleading

(1) The forms of pleading and the rules by which the sufficiency of pleadings is to be determined are solely those prescribed in these rules.

(2) Demurrers, motions for summary adjudication, and motions for summary judgment must not be used in family law actions.

(Subd (b) amended effective January 1, 2014.)

(c) Amendment to pleadings

(1) Amendments to pleadings, amended pleadings, and supplemental pleadings may be served and filed in conformity with the provisions of law applicable to such matters in civil actions generally, but the petitioner is not required to file a reply if the respondent has filed a response.

(2) If both parties have filed initial pleadings (petition and response), there may be no default entered on an amended pleading of either party.

Rule 5.74 amended effective January 1, 2014; adopted effective January 1, 2013.

Article 6. Specific Proceedings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 4, Starting and Responding to a Family Law Case; Service of Papers—Article 6, Specific Proceedings; adopted January 1, 2013.

Rule 5.76. Domestic partnerships
Rule 5.77. Summary dissolution

Rule 5.76. Domestic partnerships

To obtain a dissolution, a legal separation, or an annulment of a domestic partnership:

(1) Persons who qualify for a summary dissolution as described in the booklet *Summary Dissolution Information* (form FL-810) may act to dissolve their partnership through the California Secretary of State using forms found at *www.sos.ca.gov* or in the superior court following the procedures described in form FL-810.

(2) For persons who do not qualify for a summary dissolution proceeding, all forms and procedures used for the dissolution, legal separation, or annulment of a domestic partnership are the same as those used for the dissolution, legal separation, or annulment of a marriage.

Rule 5.76 amended effective January 1, 2015; adopted effective January 1, 2013.

Rule 5.77. Summary dissolution

(a) Declaration of disclosure

To comply with the preliminary disclosure requirements of chapter 9 (beginning with section 2100) of part 1 of division 6 of the Family Code in proceedings for summary dissolution, each joint petitioner must complete and give each other copies of the following documents before signing a property settlement agreement or completing a divorce:

(1) An *Income and Expense Declaration* (form FL-150).

(2) Either of the following documents listing separate and community property assets and obligations:

(A) *Declaration of Disclosure* (form FL-140) and either a *Schedule of Assets and Debts* or a *Property Declaration* (form FL-160) with all attachments; or

(B) The completed worksheet pages indicated in *Summary Dissolution Information* (form FL-810).

(3) A written statement of all investment, business, or other income-producing opportunities that came up after the date of separation based on investments made or work done during the marriage or domestic partnership and before the date of separation.

(4) All tax returns filed by the spouse or domestic partner in the two year period before exchanging the worksheets or forms described in (2).

(Subd (a) amended effective July 1, 2013.)

(b) Fee for filing

The joint petitioners must pay one fee for filing a *Joint Petition for Summary Dissolution of Marriage* (form FL-800) unless both parties are eligible for a fee waiver order. The fee is the same as that charged for filing a *Petition—Marriage* (form FL-100). No additional fee may be charged for the filing of any form prescribed for use in a summary dissolution proceeding.

Rule 5.77 amended effective July 1, 2013; adopted effective January 1, 2013.

Chapter 5. Family Centered Case Resolution Plans

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 5, Family Centered Resolution Plans; adopted January 1, 2013.

Rule 5.83. Family Centered Case Resolution

Rule 5.83. Family centered case resolution

(a) Purpose

This rule establishes processes and procedures for courts to manage cases from initial filing to final disposition in an effective and timely manner. It is intended to advance the goals of Family Code section 2450(a) and Standards of Judicial Administration, standard 5.30.

(b) Definitions

(1) "Family centered case resolution process" refers to the process employed by the court to ensure that family law cases move through the court process from filing to final disposition in a timely, fair, and effective manner.

(2) "Disposition" refers to final judgment, dismissal, change of venue, or consolidation of the case into a lead case. Courts may continue a case in, or return a case to, the family centered case resolution process after disposition.

(3) "Status conference" refers to court events scheduled with the parties and attorneys for the purpose of identifying the current status of the case and determining the next steps required to reach disposition.

(4) "Family centered case resolution conference" refers to a conference scheduled with parties, attorneys, and a judicial officer to develop and

implement a family centered case resolution plan under Family Code section 2451.

(c) Family centered case resolution process

(1) Beginning January 1, 2012, courts must develop a family centered case resolution process which must be fully implemented by January 1, 2013. The family centered case resolution process must identify and assist all dissolution, legal separation, nullity, and parentage cases to progress through the court process toward disposition effectively in a timely manner. The court may identify other family law case types to include in the family centered case resolution process.

(2) For cases filed on or after January 1, 2013, the court must include as part of the family centered case resolution process a review of all dissolution, legal separation, nullity, and parentage cases within at least 180 days from the date of the initial filing and at a minimum, at least every 180 days thereafter until disposition in order to determine the most appropriate next steps to help ensure an effective, fair, and timely resolution. Unless the court determines that procedural milestones are being met, the review must include at least one of the following: (1) a status conference or (2) a family centered case resolution conference. Nothing in this section prohibits courts from setting more frequent review dates.

(3) If, after 18 months from the date the petition was filed, both parties have failed to participate in the case resolution process as determined by the court, the court's obligation for further review of the case is relieved until the case qualifies for dismissal under Code of Civil Procedure section 583.210 or 583.310, or until the parties reactivate participation in the case, and the case is not counted toward the goals for disposition set out in (c)(5).

(4) In deciding whether a case is progressing in an effective and timely manner, the court should consider procedural milestones including the following:

(A) A proof of service of summons and petition should be filed within 60 days of case initiation;

(B) If no response has been filed, and the parties have not agreed on an extension of time to respond, a request to enter default should be submitted within 60 days after the date the response was due;

(C) The petitioner's preliminary declaration of disclosure should be served within 60 days of the filing of the petition;

(D) When a default has been entered, a judgment should be submitted within 60 days of the entry of default;

(E) Whether a trial date has been requested or scheduled; and

(F) When the parties have notified the court that they are actively negotiating or mediating their case, a written agreement for judgment is submitted within six months of the date the petition was filed, or a request for trial date is submitted.

(5) For dissolution, legal separation, and nullity cases initially filed on or after January 1, 2014, the goals of any family centered case resolution process should be to finalize dispositions as follows:

(A) At least 20 percent are disposed within 6 months from the date the petition was filed;

(B) At least 75 percent are disposed within 12 months from the date the petition was filed; and

(C) At least 90 percent are disposed within 18 months from the date the petition was filed.

(6) The court may select various procedural milestones at which to assist cases in moving toward disposition in an effective and timely manner. Types of assistance that can be provided include the following:

(A) Notifying the parties and attorneys by mail, telephone, e-mail, or other electronic method of communication of the current status of the case and the next procedural steps required to reach disposition;

(B) Implementing a schedule of status conferences for cases to identify the status of the case and determine the next steps required to progress toward disposition;

(C) Providing assistance to the parties at the time scheduled for hearings on requests for orders to identify the status of the case and determine the next steps required to reach disposition;

(D) Providing financial and property settlement opportunities to the parties and their attorneys with judicial officers or qualified attorney settlement officers;

(E) Scheduling a family centered case resolution conference to develop and implement a family centered case resolution plan under Family Code section 2451.

(7) In deciding that a case requires a family centered case resolution conference, the court should consider, in addition to procedural milestones, factors including the following:

(A) Difficulty in locating and serving the respondent;

(B) Complexity of issues;

(C) Nature and extent of anticipated discovery;

(D) Number and locations of percipient and expert witnesses;

(E) Estimated length of trial;

(F) Statutory priority for issues such as custody and visitation of minor children;

(G) Extent of property and support issues in controversy;

(H) Existence of issues of domestic violence, child abuse, or substance abuse;

(I) Pendency of other actions or proceedings that may affect the case; and

(J) Any other factor that would affect the time for disposition.

(d) Family centered case resolution conferences

(1) The court may hold an initial family centered case resolution conference to develop a specific case resolution plan. The conference is not intended to be an evidentiary hearing.

(2) Family centered case resolution conferences must be heard by a judicial officer. On the court's initiative or at the request of the parties, to enhance access to the court, the conference may be held in person, by telephone, by videoconferencing, or by other appropriate means of communication.

(3) At the conference, counsel for each party and each self-represented litigant must be familiar with the case and must be prepared to discuss the party's positions on the issues.

(4) With the exception of mandatory child custody mediation and mandatory settlement conferences, before alternative dispute resolution (ADR) is included in a family centered case resolution plan under Family Code section 2451(a)(2), the court must inform the parties that their participation in any court recommended ADR services is voluntary and that ADR services can be part of a plan only if both parties voluntarily opt to use these services. Additionally, the court must:

(A) Inform the parties that ADR may not be appropriate in cases involving domestic violence and provide information about separate sessions; and

(B) Ensure that all court-connected providers of ADR services that are part of a family centered case resolution plan have been trained in assessing and handling cases that may involve domestic violence.

(5) Nothing in this rule prohibits an employee of the court from reviewing the file and notifying the parties of any deficiencies in their paperwork before the parties appear in front of a judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person, in writing, or by other means approved by the court, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or to create a barrier to litigants' access to a judicial officer.

(Subd (d) amended effective January 1, 2016.)

(e) Family centered case resolution plan order

(1) Family centered case resolution plans as ordered by the court must comply with Family Code sections 2450(b) and 2451.

(2) The family centered case resolution plan order should set a schedule for subsequent family centered case resolution conferences and otherwise provide for management of the case.

(f) Family centered case resolution order without appearance

If the court determines that appearances at a family centered case resolution conference are not necessary, the court may notify the parties and, if stipulated, issue a family centered case resolution order without an appearance at a conference.

(g) Family centered case resolution information

(1) Upon the filing of first papers in dissolution, legal separation, nullity, or parentage actions the court must provide the filing party with the following:

(A) Written information summarizing the process of a case through disposition;

(B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities, and domestic violence services;

(C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address;

(D) Information for self-represented parties about the opportunity to meet with court self-help center staff or a family law facilitator; and

(E) Information for litigants on how to request a status conference, or a family centered case resolution conference earlier than or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

Rule 5.83 amended effective January 1, 2016; adopted effective January 1, 2012.

Chapter 6. Request for Court Orders

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders; adopted January 1, 2013.

Article 1. General Provisions

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders—Article 1, General Provisions; adopted January 1, 2013.

Rule 5.90. Format of papers
Rule 5.91. Individual restraining order

Rule 5.90. Format of papers

The rules regarding the format of a request for order are the same as the rules for format of motions in civil rules 3.1100 through 3.1116, except as otherwise provided in these Family Rules.

Rule 5.90 adopted effective January 1, 2013.

Rule 5.91. Individual restraining order

On a party's request for order and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders included in the family law summons. Individual orders supersede the standard family law restraining orders in the Family Law and Uniform Parentage Act summonses.

Rule 5.91 amended effective January 1, 2016; adopted effective January 1, 2013.

Article 2. Filing and Service

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders—Article 2, Filing and Service; adopted January 1, 2013.

Rule 5.92. Request for court order; responsive declaration
Rule 5.94. Order shortening time; other filing requirements; request to continue hearing and extend temporary emergency (ex parte) orders
Rule 5.96. Place and manner of filing

Rule 5.92. Request for court order; responsive declaration

(a) Application

(1) In a family law proceeding under the Family Code:

(A) The term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure;

(B) A *Request for Order* (form FL-300) must be used to ask for court orders, unless another Judicial Council form has been adopted or approved for the specific request; and

(C) A *Responsive Declaration to Request for Order* (form FL-320) must be used to respond to the orders sought in form FL-300, unless another Judicial Council form has been adopted or approved for the specific purpose.

(2) In an action under the Domestic Violence Prevention Act, a *Request for Order* (form FL-300) must be used to request a modification or termination of all orders made after a hearing on *Restraining Order After Hearing* (form DV-130).

(3) In a local child support action under the Family Code, any party other than the local child support agency must use *Request for Order* (form FL-300) to ask for court orders.

(Subd (a) adopted effective July 1, 2016; previous subd (a) repealed effective July 1, 2016.)

(b) Request for order; required forms and filing procedure

(1) The *Request for Order* (form FL-300) must set forth facts sufficient to notify the other party of the moving party's contentions in support of the relief requested.

(2) When a party seeks orders for spousal or domestic partner support, attorney's fees and costs, or other orders relating to the parties' property or finances:

(A) The party must complete an *Income and Expense Declaration* (form FL-150) and file it with the *Request for Order* (form FL-300); and

(B) The *Income and Expense Declaration* (form FL-150) must be current, as described in rule 5.260 and include the documents specified in form FL-150 that demonstrate the party's income.

(3) When seeking child support orders:

(A) A party must complete an *Income and Expense Declaration* (form FL-150) and file it with the *Request for Order* (form FL-300);

(B) The *Income and Expense Declaration* (form FL-150) must be current, as described in rule 5.260 and include the documents specified in the form that demonstrate the party's income; and

(C) A party may complete a current *Financial Statement (Simplified)* (form FL-155) instead of a current *Income and Expense Declaration* (form FL-150) only if the party meets the requirements listed in form FL-155.

(4) The moving party may be required to complete, file, and have additional forms or attachments served along with a *Request for Order* (form FL-300)

when seeking court orders for child custody and visitation (parenting time), attorney's fees and costs, support, and other financial matters. For more information, see *Information Sheet for Request for Order* (form FL-300-INFO).

(5) The moving party must file the documents with the court clerk to obtain a court date and then have a filed copy served on all parties in the case within the timelines required by law.

(6) No memorandum of points and authorities need be filed with a *Request for Order* (form FL-300) unless required by the court on a case-by-case basis.

(Subd (b) adopted effective July 1, 2016; previous subd (b) repealed effective Julyy 1, 2016.)

(c) Request for temporary emergency (ex parte) orders

If the moving party seeks temporary emergency orders pending the hearing, the moving party must:

(1) Comply with rules 5.151 through 5.169 of the California Rules of Court;

(2) Complete and include a proposed *Temporary Emergency (Ex Parte) Orders* (form FL-305) with the *Request for Order* (form FL-300); and

(3) Comply with specified local court procedures and/or local court rules about reserving the day for the temporary emergency hearing, submitting the paperwork to the court, and use of local forms.

(Subd (c) adopted effective July 1, 2016; previous subd (c) repealed effective July 1, 2016.)

(d) Request for order shortening time (for service or time until the hearing)

If the moving party seeks an order for a shorter time to serve documents or a shorter time until the hearing:

(1) The moving party must submit the request as a temporary emergency order on form FL-300 and comply with the requirements of rules 5.151 through 5.169 of the California Rules of Court; and

(2) The moving party's request must be supported by a declaration or a statement of facts showing good cause for the court to prescribe shorter times for the

filing and service of the *Request for Order* (form FL-300) than the times specified in Code of Civil Procedure section 1005.

(3) The court may issue the order shortening time in the "Court Orders" section of the *Request for Order* (form FL-300).

(Subd (d) adopted effective July 1, 2016; previous subd (d) repealed effective July 1, 2016.)

(e) Issuance by court clerk

The court clerk's authority to issue a *Request for Order* (form FL-300) as a ministerial act is limited to those orders or notices:

(1) For the parties to attend orientation and confidential mediation or child custody recommending counseling; and

(2) That may be delegated by a judicial officer and do not require the use of judicial discretion.

(Subd (e) adopted effective July 1, 2016.)

(f) Request for order; service requirements

(1) The *Request for Order* (form FL-300) and appropriate documents or orders must be served in the manner specified for the service of a summons in Code of Civil Procedure sections 415.10 through 415.95, including personal service, if:

(A) The court granted temporary emergency orders pending the hearing;

(B) The responding party has not yet appeared in the case as described in rule 5.62; or

(C) The court ordered personal service on the other party.

(2) A *Request for Order* (form FL-300) must be served as specified in Family Code section 215 if filed after entry of a family law judgment or after a permanent order was made in any proceeding in which there was at issue the custody, visitation (parenting time), or support of a child.

(A) Requests to change a judgment or permanent order for custody, visitation (parenting time), or support of a child may be served by mail

on the other party or parties only if the moving party can verify the other parties' current address.

(B) *Declaration Regarding Address Verification* (form FL-334) may be used as the address verification required by Family Code section 215. The completed form, or a declaration that includes the same information, must be filed with the proof of service of the *Request for Order*.

(3) All other requests for orders and appropriate documents may be served as specified in Code of Civil Procedure section 1010 et seq., including service by mail.

(4) The following blank forms must be served with a *Request for Order* (form FL-300):

(A) *Responsive Declaration to Request for Order* (form FL-320); and

(B) *Income and Expense Declaration* (form FL-150), when the requesting party is serving a competed FL-150 or FL-155.

(Subd (f) adopted effective July 1, 2016.)

(g) Responsive declaration to request for order; procedures

To respond to the issues raised in the *Request for Order* (form FL-300) and accompanying papers, the responding party must complete, file, and have a *Responsive Declaration to Request for Order* (form FL-320) served on all parties in the case.

(1) The *Responsive Declaration to Request for Order* (form FL-320) must set forth facts sufficient to notify the other party of the declarant's contentions in response to the request for order and in support of any relief requested.

(2) The responding party may request relief related to the orders requested in the moving papers. However, unrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300) and following the filing and service requirements for a *Request for Order* described in this rule.

(3) A completed *Income and Expense Declaration* (form FL-150) must be filed with the *Responsive Declaration to Request for Order* (form FL-320) following the same requirements specified above in rule 5.92(b)(2) and (b)(3).

(4) The responding party may be required to complete, file, and serve additional forms or attachments along with a *Responsive Declaration to Request for Order* (form FL-320) when responding to a *Request for Order* (form FL-300) about child custody and visitation (parenting time), attorney fees and costs, support, and other financial matters. For more information, read *Information Sheet: Responsive Declaration to Request for Order* (form FL-320-INFO).

(5) No memorandum of points and authorities need be filed with a *Responsive Declaration to Request for Order* (form FL-320) unless required by the court on a case-by-case basis.

(6) A *Responsive Declaration to Request for Order* (form FL-320) may be served on the parties by mail, unless otherwise required by court order.

(Subd (g) adopted effective July 1, 2016.)

Rule 5.92 amended effective July 1, 2016; adopted effective July 1, 2012.

Advisory Committee Comment

The Family and Juvenile Law Advisory Committee and the Elkins Implementation Task Force developed rule 5.92 and *Request for Order* (form FL-300) in response to *Elkins Family Law Task Force: Final Report and Recommendations (April 2010)* for one comprehensive form and related procedures to replace the *Order to Show Cause* (form FL-300) and *Notice of Motion* (form FL-301). (See page 35 of the final report online at *www.courts.ca.gov/elkins-finalreport.pdf*.)

Rule 5.94. Order shortening time; other filing requirements; request to continue hearing and extend temporary emergency (ex parte) orders

(a) Order shortening time

The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005.

(b) Time for filing proof of service

Proof of service of the *Request for Order* (FL-300) and supporting papers should be filed five court days before the hearing date.

(c) Filing of late papers

No papers relating to a request for order or responsive declaration to the request may be rejected for filing on the ground that they were untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.

(Subd (c) amended and relettered effective July 1, 2016; adopted as subd (d).)

(d) Timely submission to court clerk

The papers requesting an order or responding to the request are deemed timely filed if they are submitted:

(1) Before the close of the court clerk's office to the public; and

(2) On or before the day the papers are due.

(Subd (d) amended and relettered effective July 1, 2016; adopted as subd (e).)

(e) Failure to timely serve request for order and temporary emergency (ex parte) orders

The *Request for Order* (form FL-300) and *Temporary Emergency (Ex Parte) Orders* (form FL-305) will expire on the date and time of the scheduled hearing if the requesting party fails to:

(1) Have the other party timely served before the hearing with the *Request for Order* (form FL-300), supporting documents, and any orders issued on *Temporary Emergency (Ex Parte) Orders* (form FL-305); or

(2) Obtain a court order to continue the hearing.

(Subd (e) amended and relettered effective July 1, 2016; adopted as subd (c).)

(f) Procedures to request continued hearing date and extension of temporary emergency (ex parte) orders

(1) If a *Request for Order* (form FL-300) that includes temporary emergency orders is not timely served on the other party before the date of the hearing, and the party granted the temporary emergency (ex parte) orders wishes to proceed with the request, he or she must ask the court to continue the hearing date. On a showing of good cause, or on its own motion, the court may:

(A) Continue the hearing and extend the expiration date of the temporary emergency orders until the end of the continued hearing or to another date ordered by the court.

(B) Modify the temporary emergency (ex parte) orders.

(C) Terminate the temporary emergency (ex parte) orders.

(2) The party served with a *Request for Order* (form FL-300) that includes temporary emergency (ex parte) orders:

(A) Is entitled to one continuance for a reasonable period of time to respond and, thereafter, to a continuance based on a showing of good cause.

(B) Must file and serve a *Responsive Declaration to Request for Order* (form FL-320) as required by the court order.

(3) The following procedures apply to either party's request to continue the hearing:

(A) The party asking for the continuance must complete and submit an original *Request and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders* (form FL-306) with two copies for the court to review, as follows:

(i) The form should be submitted to the court no later than five court days before the hearing date originally set on the *Request for Order*.

(ii) The party may present the form to the court at the hearing of the *Request for Order*.

(iii) The party who makes an oral request to the court on the date of the hearing is also required to complete and submit form FL-306 if the court grants the request.

(B) After the court signs and files form FL-306, a filed copy must be served on the other party, unless the court orders otherwise. If the continuance is granted:

(i) Before the other party is served with notice of the hearing and temporary emergency (ex parte) orders, then form FL-306 must

be attached as the cover page and served along with the *Request for Order* (form FL-300), the original or modified temporary emergency (ex parte) orders, and supporting documents.

(ii) To the responding party, and the party who asked for the temporary emergency order was absent when the continuance was granted, then form FL-306 must be attached as the cover page to any documents the court orders served on that party.

(iii) Service must be in the manner required by rule 5.92 or as ordered by the court.

(C) If the *Request and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders* (form FL-306), *Request for Order* (FL-300), original or modified temporary emergency order, and supporting documents are not timely served on the other party, and the requesting party wishes to proceed with the hearing, he or she must repeat the procedures in this rule.

(Subd (f) adopted effective July 1, 2016.)

Rule 5.94 amended effective July 1, 2016; adopted effective January 1, 2013.

Rule 5.96. Place and manner of filing

(a) Papers filed in clerk's office

All papers relating to a request for order proceeding must be filed in the clerk's office, unless otherwise provided by local rule or court order.

(b) General schedule

The clerk must post a general schedule showing the days and departments for hearing the matters indicated in the *Request for Order* (form FL-300).

(c) Duty to notify court of settlement

If the matter has been settled before the scheduled court hearing date, the moving party must immediately notify the court of the settlement.

Rule 5.96 adopted effective January 1, 2013.

Article 3. Meet-and-Confer Conferences

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders—Article 3, Meet-and-Confer Conferences; adopted January 1, 2013.

Rule 5.98. Meet-and-confer requirements; document exchange

Rule 5.98. Meet-and-confer requirements; document exchange

(a) Meet and confer

All parties and all attorneys are required to meet and confer in person, by telephone, or as ordered by the court, before the date of the hearing relating to a *Request for Order* (FL-300). During this time, parties must discuss and make a good faith attempt to settle all issues, even if a complete settlement is not possible and only conditional agreements are made. The requirement to meet and confer does not apply to cases involving domestic violence.

(b) Document exchange

Before or while conferring, parties must exchange all documentary evidence that is to be relied on for proof of any material fact at the hearing. At the hearing, the court may decline to consider documents that were not given to the other party before the hearing as required under this rule. The requirement to exchange documents does not relate to documents that are submitted primarily for rebuttal or impeachment purposes.

Rule 5.98 adopted effective January 1, 2013.

Article 4. Evidence at Hearings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders—Article 4, Evidence at Hearings; adopted January 1, 2013.

Rule 5.111. Declarations supporting and responding to a request for court order
Rule 5.112.1. Declaration page limitation; exemptions
Rule 5.113. Live testimony
Rule 5.115. Judicial notice

Rule 5.111. Declarations supporting and responding to a request for court order

Along with a *Request for Order* (form FL-300) or a *Responsive Declaration* (form FL-320), a party must file a supporting declaration with the court clerk and serve it on the other party. The declarations must comply with the following requirements:

(a) Length of declarations

A declaration included with a request for court order or a responsive declaration must not exceed 10 pages in length. A reply declaration must not exceed 5 pages in length, unless:

(1) The declaration is of an expert witness; or

(2) The court grants permission to extend the length of a declaration.

(b) Form, format, and content of declarations

(1) The form and format of each declaration submitted in a case filed under the Family Code must comply with the requirements set out in California Rules of Court, rule 2.100 et seq.

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

(c) Objections to declarations

(1) If a party thinks that a declaration does not meet the requirements of (b)(2) the party must file their objections in writing at least 2 court days before the time of the hearing, or any objection will be considered waived, and the declaration may be considered as evidence. Upon a finding of good cause, objections may be made in writing or orally at the time of the hearing.

(2) If the court does not specifically rule on the objection raised by a party, the objection is presumed overruled. If an appeal is filed, any presumed overrulings can be challenged.

Rule 5.111 adopted effective January 1, 2013.

Rule 5.112.1. Declaration page limitation; exemptions

The Judicial Council form portion of a declaration does not count toward the page limitation for declarations specified in rule 5.111. In addition, the following documents may be attached to a *Request for Order* (form FL-300) or *Responsive Declaration* (form FL-320) without being counted toward the page limitation for declarations:

(1) An *Income and Expense Declaration* (form FL-150) and its required attachments;

(2) A *Financial Statement (Simplified)* (form FL-155) and its required attachments;

(3) A *Property Declaration* (form FL-160) and required attachments;

(4) Exhibits attached to declarations; and

(5) A memorandum of points and authorities.

Rule 5.112.1 adopted effective January 1, 2013.

Rule 5.113. Live testimony

(a) Purpose

Under Family Code section 217, at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing.

(b) Factors

In addition to the rules of evidence, a court must consider the following factors in making a finding of good cause to refuse to receive live testimony under Family Code section 217:

(1) Whether a substantive matter is at issue—such as child custody, visitation (parenting time), parentage, child support, spousal support, requests for restraining orders, or the characterization, division, or temporary use and control of the property or debt of the parties;

(2) Whether material facts are in controversy;

(3) Whether live testimony is necessary for the court to assess the credibility of the parties or other witnesses;

(4) The right of the parties to question anyone submitting reports or other information to the court;

(5) Whether a party offering testimony from a non-party has complied with Family Code section 217(c); and

(6) Any other factor that is just and equitable.

(c) Findings

If the court makes a finding of good cause to exclude live testimony, it must state its reasons on the record or in writing. The court is required to state only those factors on which the finding of good cause is based.

(d) Minor children

When receiving or excluding testimony from minor children, in addition to fulfilling the requirements of Evidence Code section 765, the court must follow the procedures in Family Code section 3042 and rule 5.250 of the California Rules of Court governing children's testimony.

(e) Witness lists

Witness lists required by Family Code section 217(c) must be served along with the request for order or responsive papers in the manner required for the service of those documents (*Witness List* (form FL-321) may be used for this purpose). If no witness list has been served, the court may require an offer of proof before allowing any nonparty witness to testify.

(f) Continuance

The court must consider whether or not a brief continuance is necessary to allow a litigant adequate opportunity to prepare for questioning any witness for the other parties. When a brief continuance is granted to allow time to prepare for questioning witnesses, the court should make appropriate temporary orders.

(g) Questioning by court

Whenever the court receives live testimony from a party or any witness it may elicit testimony by directing questions to the parties and other witnesses.

Rule 5.113 adopted effective January 1, 2013.

Rule 5.115. Judicial notice

A party requesting judicial notice of material under Evidence Code section 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must specify in writing the part of the court file sought to be judicially noticed and make arrangements with the clerk to have the file in the courtroom at the time of the hearing.

Rule 5.115 adopted effective January 1, 2013.

Article 5. Reporting and Preparation of Order After Hearing

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders—Article 5, Reporting and Preparation of Order After Hearing; adopted January 1, 2013.

Rule 5.123. Reporting of hearing proceedings
Rule 5.125. Preparation, service, and submission of order after hearing

Rule 5.123. Reporting of hearing proceedings

A court that does not regularly provide for reporting of hearings on a request for order or motion must so state in its local rules. The rules must also provide a procedure by which a party may obtain a court reporter in order to provide the party with an official verbatim transcript.

Rule 5.123 adopted effective January 1, 2013.

Rule 5.125. Preparation, service, and submission of order after hearing

The court may prepare the order after hearing and serve copies on the parties or their attorneys. Alternatively, the court may order one of the parties or attorneys to prepare the proposed order as provided in these rules. The court may also modify the timelines and procedures in this rule when appropriate to the case.

(a) In general

The term "party" or "parties" includes both self-represented persons and persons represented by an attorney of record. The procedures in this rule requiring a party to perform action related to the preparation, service, and submission of an order after hearing include the party's attorney of record.

(b) Submission of proposed order after hearing to the court

Within 10 calendar days of the court hearing, the party ordered to prepare the proposed order must:

(1) Serve the proposed order to the other party for approval; or

(2) If the other party did not appear at the hearing or the matter was uncontested, submit the proposed order directly to the court without the other party's approval. A copy must also be served to the other party or attorney.

(c) Other party approves or rejects proposed order after hearing

(1) Within 20 calendar days from the court hearing, the other party must review the proposed order to determine if it accurately reflects the orders made by the court and take one of the following actions:

(A) Approve the proposed order by signing and serving it on the party or attorney who drafted the proposed order; or

(B) State any objections to the proposed order and prepare an alternate proposed order. Any alternate proposed order prepared by the objecting party must list the findings and orders in the same sequence as the proposed order. After serving any objections and the alternate proposed order to the party or attorney, both parties must follow the procedure in (e).

(2) If the other party does not respond to the proposed order within 20 calendar days of the court hearing, the party ordered to prepare the proposed order must submit the proposed order to the court without approval within 25 calendar days of the hearing date. The correspondence to the court and to the other party must include:

(A) The date the proposed order was served on the other party;

(B) The other party's reasons for not approving the proposed order, if known;

(C) The date and results of any attempts to meet and confer, if relevant; and

(D) A request that the court sign the proposed order.

(d) Failure to prepare proposed order after hearing

(1) If the party ordered by the court to prepare the proposed order fails to serve the proposed order to the other party within 10 calendar days from the court hearing, the other party may prepare the proposed order and serve it to the party or attorney whom the court ordered to prepare the proposed order.

(2) Within 5 calendar days from service of the proposed order, the party who had been ordered to prepare the order must review the proposed order to determine if it accurately reflects the orders made by the court and take one of the following actions:

(A) Approve the proposed order by signing and serving it to the party or attorney who drafted the proposed order; or

(B) State any objections to the proposed order and prepare an alternate proposed order. Any alternate proposed order by the objecting party must list the findings and orders in the same sequence as the proposed order. After serving any objections and the alternate proposed order to the other party or attorney, both parties must follow the procedure in (e).

(3) If the party does not respond as described in (2), the party who prepared the proposed order must submit the proposed order to the court without approval within 5 calendar days. The cover letter to the court and to the other party or attorney must include:

(A) The facts relating to the preparation of the order, including the date the proposed order was due and the date the proposed order was served to the party whom the court ordered to draft the proposed order;

(B) The party's reasons for not preparing or approving the proposed order, if known;

(C) The date and results of any attempts to meet and confer, if relevant; and

(D) A request that the court sign the proposed order.

(e) Objections to proposed order after hearing

(1) If a party objects to the proposed order after hearing, both parties have 10 calendar days following service of the objections and the alternate proposed order after hearing to meet and confer by telephone or in person to attempt to resolve the disputed language.

(2) If the parties reach an agreement, the proposed findings and order after hearing must be submitted to the court within 10 calendar days following the meeting.

(3) If the parties fail to resolve their disagreement after meeting and conferring, each party will have 10 calendar days following the date of the meeting to submit to the court and serve on each other the following documents:

(A) A proposed *Findings and Order After Hearing* (FL-340) (and any form attachments);

(B) A copy of the minute order or official transcript of the court hearing; and

(C) A cover letter that explains the objections, describes the differences in the two proposed orders, references the relevant sections of the transcript or minute order, and includes the date and results of the meet-and-confer conferences.

(f) Unapproved order signed by the court; requirements

Before signing a proposed order submitted to the court without the other party's approval, the court must first compare the proposed order after hearing to the minute order; official transcript, if available; or other court record.

(g) Service of order after hearing signed by the court

After the proposed order is signed by the court, the court clerk must file the order. The party who prepared the order must serve an endorsed-filed copy to the other party.

Rule 5.125 adopted effective January 1, 2013.

Article 6. Special Immigrant Juvenile Findings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Request for Court Orders—Article 6, Special Immigrant Juvenile Findings; adopted July 1, 2016.

Rule 5.130. Request for Special Immigrant Juvenile findings

Rule 5.130. Request for Special Immigrant Juvenile findings

(a) Application

This rule applies to a request by or on behalf of a minor child who is a party or the child of a party in a proceeding under the Family Code for the judicial findings needed as a basis for filing a federal petition for classification as a Special Immigrant Juvenile (SIJ). This rule also applies to an opposition to such a request, a hearing on such a request or opposition, and judicial findings in response to such a request.

(b) Request for findings

Unless otherwise required by law or this rule, the rules in this chapter governing a request for court orders in family law proceedings also apply to a request for SIJ findings in those proceedings.

(1) *Who may file*

Any person—including the child's parent, the child if authorized by statute, the child's guardian ad litem, or an attorney appointed to represent the child—authorized by the Family Code to file a petition, response, request for order, or responsive declaration to a request for order in a proceeding to determine custody of a child may file a request for SIJ findings with respect to that child.

(2) *Form of request*

A request for SIJ findings must be made using *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356). The completed form may be filed in any proceeding under the Family Code in which a party is requesting sole physical custody of the child who is the subject of the requested findings:

(A) At the same time as, or any time after, the petition or response;

(B) At the same time as, or any time after, a *Request for Order* (form FL-300) or a *Responsive Declaration to Request for Order* (form FL-320) requesting sole physical custody of the child; or

(C) In an initial action under the Domestic Violence Prevention Act, at the same time as, or any time after, a *Request for Domestic Violence Restraining Order (Domestic Violence Prevention)* (form DV-100) or *Response to Request for Domestic Violence Restraining Order (Domestic Violence Prevention)* (form DV-120) requesting sole physical custody of the child.

(3) *Separate filing*

A request on form FL-356 filed at the same time as any of the papers in (A), (B), or (C) must be filed separately from, and not as an attachment to, that paper.

(4) *Separate form for each child*

A separate form FL-356 must be filed for each child for whom SIJ findings are requested.

(c) Notice of hearing

Notice of a hearing on a request for SIJ findings must be served with a copy of the request and all supporting papers in the appropriate manner specified in rule 5.92(a)(6)(A)–(C) on the following persons:

(1) All parties to the underlying family law case;

(2) All alleged, biological, and presumed parents of the child who is the subject of the request; and

(3) Any other person who has physical custody or is likely to claim a right to physical custody of the child who is the subject of the request.

(d) Response to request

Any person entitled under (c) to notice of a request for SIJ findings with respect to a child may file and serve a response to such a request using *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358).

(e) Hearing on request

To obtain a hearing on a request for SIJ findings, a person must file and serve a *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) for each child who is the subject of such a request.

(1) A request for SIJ findings and a request for an order of sole physical custody of the same child may be heard and determined together.

(2) The court may consolidate into one hearing separate requests for SIJ findings for more than one sibling or half sibling named in the same family law case or in separate family law cases.

(3) If custody proceedings relating to siblings or half siblings are pending in multiple departments of a single court or in the courts of more than one California county, the departments or courts may communicate about consolidation consistent with the procedures and limits in Family Code section 3410(b)–(e).

(f) Separate findings for each child

The court must make separate SIJ findings with respect to each child for whom a request is made, and the clerk must issue a separate *Special Immigrant Juvenile Findings* (form FL-357) for each child with respect to whom the court makes SIJ findings.

(g) Confidentiality (Code Civ. Proc., § 155(c))

The forms *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form FL-357) must be kept in a confidential part of the case file or, alternatively, in a separate, confidential file. Any information regarding the child's immigration status contained in a record related to a request for SIJ findings kept in the public part of the file must be redacted to prevent its inspection by any person not authorized under Code of Civil Procedure section 155(c).

Rule 5.130 adopted effective July 1, 2016.

Chapter 7. Request for Emergency Orders (Ex parte Orders)

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 7, Request for Emergency Orders (Ex Parte Orders); adopted January 1, 2013.

Article 1. Request for Emergency Orders (Ex parte Orders)

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 7, Request for Emergency Orders (Ex Parte Orders)—Article 1, Request for Emergency Orders (Ex Parte Orders); adopted January 1, 2013.

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

(a) Application

The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule. These rules may be referred to as "the emergency orders rules." Unless specifically stated, these rules do not apply to ex parte applications for domestic violence restraining orders under the Domestic Violence Prevention Act.

(b) Purpose

The purpose of a request for emergency orders is to address matters that cannot be heard on the court's regular hearing calendar. In this type of proceeding, notice to the other party is shorter than in other proceedings. Notice to the other party can also be waived under exceptional and other circumstances as provided in these rules. The process is used to request that the court:

(1) Make orders to help prevent an immediate danger or irreparable harm to a party or to the children involved in the matter;

(2) Make orders to help prevent immediate loss or damage to property subject to disposition in the case; or

(3) Make orders about procedural matters, including the following:

(A) Setting a date for a hearing on the matter that is sooner than that of a regular hearing (granting an order shortening time for hearing);

(B) Shortening or extending the time required for the moving party to serve the other party with the notice of the hearing and supporting papers (grant an order shortening time for service); and

(C) Continuing a hearing or trial.

(c) Required documents

A request for emergency orders must be in writing and must include all of the following completed documents:

(1) *Request for Order* (form FL-300) that identifies the relief requested.

(2) When relevant to the relief requested, a current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160).

(3) *Temporary Emergency (Ex Parte) Orders* (form FL-305) to serve as the proposed temporary order.

(4) A written declaration regarding notice of application for emergency orders based on personal knowledge. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local

court form, or a declaration that contains the same information as form FL-303 may be used for this purpose.

(5) A memorandum of points and authorities only if required by the court.

(Subd (c) amended effective July 1, 2016.)

(d) Contents of application and declaration

(1) *Identification of attorney or party*

An application for emergency orders must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party, if known to the applicant.

(2) *Affirmative factual showing required in written declarations*

The declarations must contain facts within the personal knowledge of the declarant that demonstrate why the matter is appropriately handled as an emergency hearing, as opposed to being on the court's regular hearing calendar.

An applicant must make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief without notice or with shortened notice to the other party.

(3) *Disclosure of previous applications and orders*

An applicant should submit a declaration that fully discloses all previous applications made on the same issue and whether any orders were made on any of the applications, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

(4) *Disclosure of change in status quo*

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

(5) *Applications regarding child custody or visitation (parenting time)*

Applications for emergency orders granting or modifying child custody or visitation (parenting time) under Family Code section 3064 must:

(A) Provide a full, detailed description of the most recent incidents showing:

(i) Immediate harm to the child as defined in Family Code section 3064(b); or

(ii) Immediate risk that the child will be removed from the State of California.

(B) Specify the date of each incident described in (A);

(C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders;

(D) Include a copy of the current custody orders, if they are available. If no orders exist, explain where and with whom the child is currently living; and

(E) Include a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (FL-105) if the form was not already filed by a party or if the information has changed since it was filed.

(e) Contents of notice and declaration regarding notice of emergency hearing

(1) *Contents of notice*

When notice of a request for emergency orders is given, the person giving notice must:

(A) State with specificity the nature of the relief to be requested;

(B) State the date, time, and place for the presentation of the application;

(C) State the date, time, and place of the hearing, if applicable; and

(D) Attempt to determine whether the opposing party will appear to oppose the application (if the court requires a hearing) or whether he or she

will submit responsive pleadings before the court rules on the request for emergency orders.

(2) *Declaration regarding notice*

An application for emergency orders must be accompanied by a completed declaration regarding notice that includes one of the following statements:

(A) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 5.165, the applicant informed the opposing party where and when the application would be made;

(B) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or

(C) That, for reasons specified, the applicant should not be required to inform the opposing party.

Rule 5.151 amended effective July 1, 2016; adopted effective January 1, 2013.

Article 2. Notice, Service, Appearance

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 7, Request for Emergency Orders (Ex Parte Orders)—Article 2, Notice, Service, Appearance; adopted January 1, 2013.

Rule 5.165. Requirements for notice
Rule 5.167. Service of application; temporary restraining orders
Rule 5.169. Personal appearance at hearing for temporary emergency orders

Rule 5.165. Requirements for notice

(a) Method of notice

Notice of appearance at a hearing to request emergency orders may be given by telephone, in writing, or by voicemail message.

(b) Notice to parties

A party seeking emergency orders under this chapter must give notice to all parties or their attorneys so that it is received no later than 10:00 a.m. on the court day

before the matter is to be considered by the court. After providing notice, each party must be served with the documents requesting emergency orders as described in rule 5.167 or as required by local rule. This rule does not apply to a party seeking emergency orders under the Domestic Violence Prevention Act.

(1) *Explanation for shorter notice*

If a party provided notice of the request for emergency orders to all parties and their attorneys later than 10:00 a.m. the court day before the appearance, the party must request in a declaration regarding notice that the court approve the shortened notice. The party must provide facts in the declaration that show exceptional circumstances that justify the shorter notice.

(2) *Explanation for waiver of notice (no notice)*

A party may ask the court to waive notice to all parties and their attorneys of the request for emergency orders. To make the request, the party must file a written declaration signed under penalty of perjury that includes facts showing good cause not to give the notice. A judicial officer may approve a waiver of notice for good cause, which may include that:

(A) Giving notice would frustrate the purpose of the order;

(B) Giving notice would result in immediate and irreparable harm to the applicant or the children who may be affected by the order sought;

(C) Giving notice would result in immediate and irreparable damage to or loss of property subject to disposition in the case;

(D) The parties agreed in advance that notice will not be necessary with respect to the matter that is the subject of the request for emergency orders; and

(E) The party made reasonable and good faith efforts to give notice to the other party, and further efforts to give notice would probably be futile or unduly burdensome.

(c) Notice to the court

The court may adopt a local rule requiring that the party provide additional notice to the court that he or she will be requesting emergency orders the next court day. The local rule must include a method by which the party may give notice to the court by telephone.

Rule 5.165 adopted effective January 1, 2013.

Rule 5.167. Service of application; temporary restraining orders

(a) Service of documents requesting emergency orders

A party seeking emergency orders and a party providing written opposition must serve the papers on the other party or on the other party's attorney at the first reasonable opportunity before the hearing. Absent exceptional circumstances, no hearing may be conducted unless such service has been made. The court may waive this requirement in extraordinary circumstances if good cause is shown that imminent harm is likely if documents are provided to the other party before the hearing. This rule does not apply in cases filed under the Domestic Violence Prevention Act.

(b) Service of temporary emergency orders

If the judicial officer signs the applicant's proposed emergency orders, the applicant must obtain and have the conformed copy of the orders personally served on all parties.

Rule 5.167 adopted effective January 1, 2013.

Rule 5.169. Personal appearance at hearing for temporary emergency orders

Courts may require all parties to appear at a hearing before ruling on a request for emergency orders. Courts may also make emergency orders based on the documents submitted without requiring the parties to appear at a hearing.

Rule 5.169 adopted effective January 1, 2013.

Article 3. Procedural Matters Not Requiring Notice (Non-Emergency Orders)

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 7, Request for Emergency Orders (Ex Parte Orders)—Article 3, Procedural Matters Not Requiring Notice (Non-Emergency Orders); adopted January 1, 2013.

Rule 5.170. Matters not requiring notice to other parties

Rule 5.170. Matters not requiring notice to other parties

The courts may consider a party's request for order on the following issues without notice to the other parties or personal appearance at a hearing:

(1) Applications to restore a former name after judgment;

(2) Stipulations by the parties;

(3) An order or judgment after a default court hearing;

(4) An earnings assignment order based on an existing support order;

(5) An order for service of summons by publication or posting;

(6) An order or judgment that the other party or opposing counsel approved or agreed not to oppose; and

(7) Application for an order waiving filing fees.

Rule 5.170 adopted effective January 1, 2013.

Chapter 8. Child Custody and Visitation (Parenting Time) Proceedings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 8, Child Custody and Visitation (Parenting Time) Proceedings; adopted January 1, 2013.

Article 1. Child Custody Mediation

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 8, Child Custody and Visitation (Parenting Time) Proceedings—Article 1, Child Custody Mediation; adopted January 1, 2013.

Rule 5.210. Court-connected child custody mediation
Rule 5.215. Domestic violence protocol for Family Court Services

Rule 5.210. Court-connected child custody mediation

(a) Authority

This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211, 3160, and 3162(a).

(b) Purpose

This rule sets forth standards of practice and administration for court-connected child custody mediation services that are consistent with the requirements of Family Code section 3161.

(c) Definitions

(1) "Best interest of the child" is defined in Family Code section 3011.

(2) "Parenting plan" is a plan describing how parents or other appropriate parties will share and divide their decision making and caretaking responsibilities to protect the health, safety, welfare, and best interest of each child who is a subject of the proceedings.

(d) Responsibility for mediation services

(1) Each court must ensure that:

(A) Mediators are impartial, competent, and uphold the standards of practice contained in this rule of court.

(B) Mediation services and case management procedures implement state law and allow sufficient time for parties to receive orientation, participate fully in mediation, and develop a comprehensive parenting plan without unduly compromising each party's right to due process and a timely resolution of the issues.

(C) Mediation services demonstrate accountability by:

(i) Providing for acceptance of and response to complaints about a mediator's performance;

(ii) Participating in statewide data collection efforts; and

(iii) Disclosing the use of interns to provide mediation services.

(D) The mediation program uses a detailed intake process that screens for, and informs the mediator about, any restraining orders or safety-related issues affecting any party or child named in the proceedings to allow compliance with relevant law or court rules before mediation begins.

(E) Whenever possible, mediation is available from bilingual mediators or other interpreter services that meet the requirements of Evidence Code sections 754(f) and 755(a) and section 18 of the California Standards of Judicial Administration.

(F) Mediation services protect, in accordance with existing law, party confidentiality in:

(i) Storage and disposal of records and any personal information accumulated during the mediation process;

(ii) Interagency coordination or cooperation regarding a particular family or case; and

(iii) Management of child abuse reports and related documents.

(G) Mediation services provide a written description of limitations on the confidentiality of the process.

(H) Within one year of the adoption of this rule, the court adopts a local court rule regarding ex parte communications.

(2) Each court-connected mediator must:

(A) Maintain an overriding concern to integrate the child's best interest within the family context;

(B) Inform the parties and any counsel for a minor child if the mediator will make a recommendation to the court as provided under Family Code section 3184; and

(C) Use reasonable efforts and consider safety issues to:

(i) Facilitate the family's transition and reduce acrimony by helping the parties improve their communication skills, focus on the child's needs and areas of stability, identify the family's strengths, and locate counseling or other services;

(ii) Develop a comprehensive parenting agreement that addresses each child's current and future developmental needs; and

(iii) Control for potential power imbalances between the parties during mediation.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2002, and January 1, 2003.)

(e) Mediation process

All court-connected mediation processes must be conducted in accordance with state law and include:

(1) Review of the intake form and court file, if available, before the start of mediation;

(2) Oral or written orientation or parent education that facilitates the parties' informed and self-determined decision making about:

(A) The types of disputed issues generally discussed in mediation and the range of possible outcomes from the mediation process;

(B) The mediation process, including the mediator's role; the circumstances that may lead the mediator to make a particular recommendation to the court; limitations on the confidentiality of the process; and access to information communicated by the parties or included in the mediation file;

(C) How to make best use of information drawn from current research and professional experience to facilitate the mediation process, parties' communication, and co-parenting relationship; and

(D) How to address each child's current and future developmental needs;

(3) Interviews with children at the mediator's discretion and consistent with Family Code section 3180(a). The mediator may interview the child alone or together with other interested parties, including stepparents, siblings, new or step-siblings, or other family members significant to the child. If interviewing a child, the mediator must:

(A) Inform the child in an age-appropriate way of the mediator's obligation to disclose suspected child abuse and neglect and the local policies concerning disclosure of the child's statements to the court; and

(B) With parental consent, coordinate interview and information exchange among agency or private professionals to reduce the number of interviews a child might experience;

(4) Assistance to the parties, without undue influence or personal bias, in developing a parenting plan that protects the health, safety, welfare, and best interest of the child and that optimizes the child's relationship with each party

by including, as appropriate, provisions for supervised visitation in high-risk cases; designations for legal and physical custody; a description of each party's authority to make decisions that affect the child; language that minimizes legal, mental health, or other jargon; and a detailed schedule of the time a child is to spend with each party, including vacations, holidays, and special occasions, and times when the child's contact with a party may be interrupted;

(5) Extension of time to allow the parties to gather additional information if the mediator determines that such information will help the discussion proceed in a fair and orderly manner or facilitate an agreement;

(6) Suspension or discontinuance of mediation if allegations of child abuse or neglect are made until a designated agency performs an investigation and reports a case determination to the mediator;

(7) Termination of mediation if the mediator believes that he or she is unable to achieve a balanced discussion between the parties;

(8) Conclusion of mediation with:

(A) A written parenting plan summarizing the parties' agreement or mediator's recommendation that is given to counsel or the parties before the recommendation is presented to the court; and

(B) A written or oral description of any subsequent case management or court procedures for resolving one or more outstanding custody or visitation issues, including instructions for obtaining temporary orders;

(9) Return to mediation to resolve future custody or visitation disputes.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(f) Training, continuing education, and experience requirements for mediator, mediation supervisor, and family court services director

As specified in Family Code sections 1815 and 1816:

(1) All mediators, mediation supervisors, and family court service directors must:

(A) Complete a minimum of 40 hours of custody and visitation mediation training within the first six months of initial employment as a court-connected mediator;

(B) Annually complete 8 hours of related continuing education programs, conferences, and workshops. This requirement is in addition to the annual 4-hour domestic violence update training described in rule 5.215; and

(C) Participate in performance supervision and peer review.

(2) Each mediation supervisor and family court services director must complete at least 24 hours of additional training each calendar year. This requirement may be satisfied in part by the domestic violence training required by Family Code section 1816.

(Subd (f) amended effective January 1, 2005; previously amended effective January 1, 2003.)

(g) Education and training providers

Only education and training acquired from eligible providers meet the requirements of this rule. "Eligible providers" includes the Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) Eligible providers must:

(A) Ensure that the training instructors or consultants delivering the education and training programs either meet the requirements of this rule or are experts in the subject matter;

(B) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(C) Emphasize the importance of focusing child custody mediations on the health, safety, welfare, and best interest of the child;

(D) Develop a procedure to verify that participants complete the education and training program; and

(E) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider.

(2) Effective July 1, 2005, all education and training programs must be approved by Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee.

(Subd (g) amended effective January 1, 2016; adopted effective January 1, 2005.)

(h) Ethics

Mediation must be conducted in an atmosphere that encourages trust in the process and a perception of fairness. To that end, mediators must:

(1) Meet the practice and ethical standards of the Code of Ethics for the Court Employees of California and of related law;

(2) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(3) Protect the confidentiality of the parties and the child in making any collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(4) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(5) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(6) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;

(7) Operate within the limits of his or her training and experience and disclose any limitations or bias that would affect his or her ability to conduct the mediation;

(8) Not require children to state a custodial preference;

(9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;

(10) Disclose to the court, parties, attorneys for the parties, and attorney for the child conflicts of interest or dual relationships and not accept any appointment except by court order or the parties' stipulation;

(11) Be sensitive to the parties' socioeconomic status, gender, race, ethnicity, cultural values, religion, family structures, and developmental characteristics; and

(12) Disclose any actual or potential conflicts of interest. In the event of a conflict of interest, the mediator must suspend mediation and meet and confer in an effort to resolve the conflict of interest to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties alternatives. The mediator cannot continue unless the parties agree in writing to continue mediation despite the disclosed conflict of interest.

(Subd (h) amended effective January 1, 2007; adopted as subd (g); previously amended effective January 1, 2003; previously relettered effective January 1, 2005.)

Rule 5.210 amended effective January 1, 2016; adopted as rule 1257.1 effective July 1, 2001; amended and renumbered as rule 5.210 effective January 1, 2003; previously amended effective January 1, 2003, January 1, 2005, and January 1, 2007.

Rule 5.215. Domestic violence protocol for Family Court Services

(a) Authority

This rule of court is adopted under Family Code sections 211, 1850(a), and 3170(b).

(Subd (a) amended effective January 1, 2007.)

(b) Purpose

This rule sets forth the protocol for Family Court Services' handling of domestic violence cases consistent with the requirement of Family Code section 3170(b).

(c) Definitions

(1) "Domestic violence" is used as defined in Family Code sections 6203 and 6211.

(2) "Protective order" is used as defined in Family Code section 6215, "Emergency protective order"; Family Code section 6218, "Protective order"; and Penal Code section 136.2 (orders by court). "Domestic violence restraining order" is synonymous with "protective order."

(3) "Mediation" refers to proceedings described in Family Code section 3161.

(4) "Evaluation" and "investigation" are synonymous terms.

(5) "Family Court Services" refers to court-connected child custody services and child custody mediation made available by superior courts under Family Code section 3160.

(6) "Family Court Services staff" refers to contract and employee mediators, evaluators, investigators, and counselors who provide services on behalf of Family Court Services.

(7) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that Family Court Services may provide services in such a way as to protect any victim of domestic violence from intimidation, provide services for perpetrators, and correct for power imbalances created by past and prospective violence.

(Subd (c) amended effective January 1, 2003.)

(d) Family Court Services: Description and duties

(1) *Local protocols*

Family Court Services must handle domestic violence cases in accordance with pertinent state laws and all applicable rules of court and must develop local protocols in accordance with this rule.

(2) *Family Court Services duties relative to domestic violence cases*

Family Court Services is a court-connected service that must:

(A) Identify cases in Family Court Services that involve domestic violence, and code Family Court Services files to identify such cases;

(B) Make reasonable efforts to ensure the safety of victims, children, and other parties when they are participating in services provided by Family Court Services;

(C) Make appropriate referrals; and

(D) Conduct a differential domestic violence assessment in domestic violence cases and offer appropriate services as available, such as child custody evaluation, parent education, parent orientation, supervised visitation, child custody mediation, relevant education programs for children, and other services as determined by each superior court.

(3) *No negotiation of violence*

Family Court Services staff must not negotiate with the parties about using violence with each other, whether either party should or should not obtain or dismiss a restraining order, or whether either party should cooperate with criminal prosecution.

(4) *Domestic violence restraining orders*

Notwithstanding the above, to the extent permitted under Family Code section 3183(c), in appropriate cases, Family Court Services staff may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

(5) *Providing information*

Family Court Services staff must provide information to families accessing their services about the effects of domestic violence on adults and children. Family Court Services programs, including but not limited to orientation programs, must provide information and materials that describe Family Court Services policy and procedures with respect to domestic violence. Whenever possible, information delivered in video or audiovisual format should be closed-captioned.

(6) *Separate sessions*

In a Family Court Services case in which there has been a history of domestic violence between the parties or in which a protective order as defined in Family Code section 6218 is in effect, at the request of the party who is alleging domestic violence in a written declaration under penalty of perjury

or who is protected by the order, the Family Court Services mediator, counselor, evaluator, or investigator must meet with the parties separately and at separate times. When appropriate, arrangements for separate sessions must protect the confidentiality of each party's times of arrival, departure, and meeting with Family Court Services. Family Court Services must provide information to the parties regarding their options for separate sessions under Family Code sections 3113 and 3181. If domestic violence is discovered after mediation or evaluation has begun, the Family Court Services staff member assigned to the case must confer with the parties separately regarding safety-related issues and the option of continuing in separate sessions at separate times. Family Court Services staff, including support staff, must not respond to a party's request for separate sessions as though it were evidence of his or her lack of cooperation with the Family Court Services process.

(7) *Referrals*

Family Court Services staff, where applicable, must refer family members to appropriate services. Such services may include but are not limited to programs for perpetrators, counseling and education for children, parent education, services for victims, and legal resources, such as family law facilitators.

(8) *Community resources*

Family Court Services should maintain a liaison with community-based services offering domestic violence prevention assistance and support so that referrals can be made based on an understanding of available services and service providers.

(Subd (d) amended effective January 1, 2016; previously amended effective January 1, 2003.)

(e) Intake

(1) *Court responsibility*

Each court must ensure that Family Court Services programs use a detailed intake process that screens for, and informs staff about, any restraining orders, dependency petitions under Welfare and Institutions Code section 300, and other safety-related issues affecting any party or child named in the proceedings.

(2) *Intake form*

Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation or evaluation must state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the Family Court Services staff must meet with the parties separately and at separate times.

(3) *Review of intake form and case file*

All Family Court Services procedures must be conducted in accordance with state law and must include review of intake forms and court files, when available, by appropriate staff.

(f) Screening

(1) *Identification of domestic violence*

Screening for a history of domestic violence incidents must be done throughout the Family Court Services process. As early in the case as possible, Family Court Services staff should make every effort to identify cases in which incidents of domestic violence are present. The means by which Family Court Services elicits screening information may be determined by each program. Screening techniques may include but are not limited to questionnaires, telephone interviews, standardized screening devices, and face-to-face interviews.

(2) *Procedures for identification*

Procedures for identifying domestic violence may include, but are not limited to: (a) determination of an existing emergency protective order or domestic violence restraining order concerning the parties or minor; (b) review of court papers and declarations; (c) telephone interviews; (d) use of an intake form; (e) orientation; (f) information from attorneys, shelters, hospital reports, Child Protective Services, police reports, and criminal background checks; and (g) other collateral sources. Questions specific to incidents of domestic violence should request the following information: date of the parties' separation, frequency of domestic violence, most recent as well as past incidents of domestic violence, concerns about future domestic violence, identities of children and other individuals present at domestic violence incidents or otherwise exposed to the domestic violence, and severity of domestic violence.

(3) *Context for screening*

In domestic violence cases in which neither party has requested separate sessions at separate times, Family Court Services staff must confer with the parties separately and privately to determine whether joint or separate sessions are appropriate.

(g) Safety issues

(1) *Developing a safety plan*

When domestic violence is identified or alleged in a case, Family Court Services staff must consult with the party alleging domestic violence away from the presence of the party against whom such allegations are made and discuss the existence of or need for a safety plan. Safety planning may include but is not limited to discussion of safe housing, workplace safety, safety for other family members and children, access to financial resources, and information about local domestic violence agencies.

(2) *Safety procedures*

Each Family Court Services office should develop safety procedures for handling domestic violence cases.

(3) *Confidential addresses*

Where appropriate, Family Court Services staff must make reasonable efforts to keep residential addresses, work addresses, and contact information—including but not limited to telephone numbers and e-mail addresses—confidential in all cases and on all Family Court Services documents.

(Subd (g) amended effective January 1, 2007.)

(h) Support persons

(1) *Support person*

Family Court Services staff must advise the party protected by a protective order of the right to have a support person attend any mediation orientation or mediation sessions, including separate mediation sessions, under Family Code section 6303.

(2) *Excluding support person*

A Family Court Services staff person may exclude a domestic violence support person from a mediation session if the support person participates in the mediation session or acts as an advocate or the presence of a particular support person disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the process, and the support person is bound by the confidentiality of the process.

(Subd (h) amended effective January 1, 2003.)

(i) Accessibility of services

To effectively address domestic violence cases, the court must make reasonable efforts to ensure the availability of safe and accessible services that include, but are not limited to:

(1) *Language accessibility*

Whenever possible, Family Court Services programs should be conducted in the languages of all participants, including those who are deaf. When the participants use only a language other than spoken English and the Family Court Services staff person does not speak their language, an interpreter—certified whenever possible—should be assigned to interpret at the session. A minor child of the parties must not be used as an interpreter. An adult family member may act as an interpreter only when appropriate interpreters are not available. When a family member is acting as an interpreter, Family Court Services staff should attempt to establish, away from the presence of the potential interpreter and the other party, whether the person alleging domestic violence is comfortable with having that family member interpret for the parties.

(2) *Facilities design*

To minimize contact between the parties and promote safety in domestic violence cases, courts must give consideration to the design of facilities. Such considerations must include but are not limited to the following: separate and secure waiting areas, separate conference rooms for parent education and mediation, signs providing directions to Family Court Services, and secure parking for users of Family Court Services.

(j) Training and education

(1) *Training, continuing education, and experience requirements for Family Court Services staff*

All Family Court Services staff must participate in programs of continuing instruction in issues related to domestic violence, including child abuse, as may be arranged for and provided to them, under Family Code section 1816(a).

(2) *Advanced domestic violence training*

Family Court Services staff must complete 16 hours of advanced domestic violence training within the first 12 months of employment and 4 hours of domestic violence update training each year thereafter. The content of the 16 hours of advanced domestic violence training and 4 hours of domestic violence update training must be the same as that required for court-appointed child custody investigators and evaluators as stated in rule 5.230. Those staff members employed by Family Court Services on January 1, 2002, who have not already fulfilled the requirements of rule 5.230 must participate in the 16-hour training within one year of the rule's effective date.

(3) *Support staff*

Family Court Services programs should, where possible, enable support staff, including but not limited to clerical staff, to participate in training on domestic violence and in handling domestic violence cases appropriately.

(Subd (j) amended effective January 1, 2003.)

Rule 5.215 amended effective January 1, 2016; adopted as rule 1257.2 effective January 1, 2002; previously amended and renumbered as rule 5.215 effective January 1, 2003; previously amended effective January 1, 2007.

Article 2. Child Custody Investigations and Evaluations

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 8, Child Custody and Visitation (Parenting Time) Proceedings—Article 2, Child Custody Investigations and Evaluations; adopted January 1, 2013.

Rule 5.220. Court-ordered child custody evaluations

(a) Authority

This rule of court is adopted under Family Code sections 211 and 3117.

(Subd (a) amended effective January 1, 2007.)

(b) Purpose

Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues. This rule governs both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032.

(Subd (b) amended effective January 1, 2003.)

(c) Definitions

For purposes of this rule:

(1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.

(2) The "best interest of the child" is as defined in Family Code section 3011.

(3) A "child custody evaluation" is an expert investigation and analysis of the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues.

(4) A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

(5) A "partial evaluation, investigation, or assessment" is an examination of the health, safety, welfare, and best interest of the child that is limited by court order in either time or scope.

(6) "Evaluation," "investigation," and "assessment" are synonymous.

(Subd (c) amended effective January 1, 2003.)

(d) Responsibility for evaluation services

(1) Each court must:

(A) Adopt a local rule by January 1, 2000, to:

(i) Implement this rule of court;

(ii) Determine whether a peremptory challenge to a court-appointed evaluator is allowed and when the challenge must be exercised. The rules must specify whether a family court services staff member, other county employee, a mental health professional, or all of them may be challenged;

(iii) Allow evaluators to petition the court to withdraw from a case;

(iv) Provide for acceptance of and response to complaints about an evaluator's performance; and

(v) Address ex parte communications.

(B) Give the evaluator, before the evaluation begins, a copy of the court order that specifies:

(i) The appointment of the evaluator under Evidence Code section 730, Family Code section 3110, or Code of Civil Procedure 2032; and

(ii) The purpose and scope of the evaluation.

(C) Require child custody evaluators to adhere to the requirements of this rule.

(D) Determine and allocate between the parties any fees or costs of the evaluation.

(2) The child custody evaluator must:

(A) Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;

(B) Strive to minimize the potential for psychological trauma to children during the evaluation process; and

(C) Include in the initial meeting with each child an age-appropriate explanation of the evaluation process, including limitations on the confidentiality of the process.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(e) Scope of evaluations

All evaluations must include:

(1) A written explanation of the process that clearly describes the:

(A) Purpose of the evaluation;

(B) Procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) Scope and distribution of the evaluation report;

(D) Limitations on the confidentiality of the process; and

(E) Cost and payment responsibility for the evaluation.

(2) Data collection and analysis that are consistent with the requirements of Family Code section 3118; that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include:

(A) Reviewing pertinent documents related to custody, including local police records;

(B) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(C) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(i) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(ii) History of involvement in caring for the child;

(iii) Methods for working toward resolution of the child custody conflict;

(iv) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(v) Psychological and social functioning;

(D) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(E) Collecting relevant corroborating information or documents as permitted by law; and

(F) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:

(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and

(D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2003, and July 1, 2003.)

(f) Cooperation with professionals in another jurisdiction

When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information. In order to ensure a thorough and comparably reliable out-of-jurisdiction evaluation, the evaluator must:

(1) Make a written request that includes, as appropriate:

(A) A copy of all relevant court orders;

(B) An outline of issues to be explored;

(C) A list of the individuals who must or may be contacted;

(D) A description of the necessary structure and setting for interviews;

(E) A statement as to whether a home visit is required;

(F) A request for relevant documents such as police records, school reports, or other document review; and

(G) A request that a written report be returned only to the evaluator and that no copies of the report be distributed to parties or attorneys.

(2) Provide instructions that limit the out-of-jurisdiction report to factual matters and behavioral observations rather than recommendations regarding the overall custody plan; and

(3) Attach and discuss the report provided by the professional in another jurisdiction in the evaluator's final report.

(Subd (f) amended effective January 1, 2003.)

(g) Requirements for evaluator qualifications, training, continuing education, and experience

All child custody evaluators must meet the qualifications, training, and continuing education requirements specified in Family Code sections 1815, 1816, and 3111, and rules 5.225 and 5.230.

(Subd (g) amended effective January 1, 2004; previously amended effective July 1, 1999, and January 1, 2003.)

(h) Ethics

In performing an evaluation, the child custody evaluator must:

(1) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(2) Protect the confidentiality of the parties and children in collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(3) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(4) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(5) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;

(6) Operate within the limits of the evaluator's training and experience and disclose any limitations or bias that would affect the evaluator's ability to conduct the evaluation;

(7) Not pressure children to state a custodial preference;

(8) Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse and neglect and threats to harm one's self or another person;

(9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;

(10) Disclose to the court, parties, attorney for a party, and attorney for the child conflicts of interest or dual relationships; and not accept any appointment except by court order or the parties' stipulation; and

(11) Be sensitive to the socioeconomic status, gender, race, ethnicity, cultural values, religion, family structures, and developmental characteristics of the parties.

(Subd (h) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(i) Service of the evaluation report

A *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) must be attached as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

(Subd (i) adopted effective January 1, 2010.)

(j) Cost-effective procedures for cross-examination of evaluators

Each local court must develop procedures for expeditious and cost-effective cross-examination of evaluators, including, but not limited to, consideration of the following:

(1) Videoconferences;

(2) Telephone conferences;

(3) Audio or video examination; and

(4) Scheduling of appearances.

(Subd (j) relettered effective January 1, 2010; adopted as subd (i); previously amended effective January 1, 2003.)

Rule 5.220 amended effective January 1, 2010; adopted as rule 1257.3 effective January 1, 1999; previously amended and renumbered effective January 1, 2003; previously amended effective July 1, 1999, July 1, 2003, January 1, 2004, and January 1, 2007.

Rule 5.225. Appointment requirements for child custody evaluators

(a) Purpose

This rule provides the licensing, education and training, and experience requirements for child custody evaluators who are appointed to conduct full or partial child custody evaluations under Family Code sections 3111 and 3118, Evidence Code section 730, or chapter 15 (commencing with section 2032.010) of title 4 of part 4 of the Code of Civil Procedure. This rule is adopted as mandated by Family Code section 3110.5.

(Subd (a) amended and relettered effective January 1, 2007; adopted as subd (b).)

(b) Definitions

For purposes of this rule:

(1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.

(2) A "child custody evaluation" is an investigation and analysis of the health, safety, welfare, and best interest of a child with regard to disputed custody and visitation issues conducted under Family Code sections 3111 and 3118, Evidence Code section 730, or Code of Civil Procedure section 2032.010 et seq.

(3) A "full evaluation, investigation, or assessment" is a child custody evaluation that is a comprehensive examination of the health, safety, welfare, and best interest of the child.

(4) A "partial evaluation, investigation, or assessment" is a child custody evaluation that is limited by the court in terms of its scope.

(5) The terms "evaluation," "investigation," and "assessment" are synonymous.

(6) "Best interest of the child" is described in Family Code section 3011.

(7) A "court-connected evaluator" is a superior court employee or a person under contract with a superior court who conducts child custody evaluations.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (c).)

(c) Licensing requirements

A person appointed as a child custody evaluator meets the licensing criteria established by Family Code section 3110.5(c)(1)–(5), if:

(1) The person is licensed as a:

(A) Physician and is either a board certified psychiatrist or has completed a residency in psychiatry;

(B) Psychologist;

(C) Marriage and family therapist; or

(D) Clinical social worker.

(2) A person may be appointed as an evaluator even if he or she does not have a license as described in (c)(1) if:

(A) The court certifies that the person is a court-connected evaluator who meets all the qualifications specified in (j); or

(B) The court finds that all the following criteria have been met:

(i) There are no licensed or certified evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;

(ii) The parties stipulate to the person; and

(iii) The court approves the person.

(Subd (c) amended effective January 1, 2015; adopted effective January 1, 2007.)

(d) Education and training requirements

Before appointment, a child custody evaluator must complete 40 hours of education and training, which must include all the following topics:

(1) The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and visitation;

(2) Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;

(3) The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and

interparental conflict on the psychological and developmental needs of children and adults;

(4) The assessment of child sexual abuse issues required by Family Code section 3118; local procedures for handling child sexual abuse cases; the effect that court procedures may have on the evaluation process when there are allegations of child sexual abuse; and the areas of training required by Family Code section 3110.5(b)(2)(A)–(F), as listed below:

(A) Children's patterns of hiding and disclosing sexual abuse in a family setting;

(B) The effects of sexual abuse on children;

(C) The nature and extent of sexual abuse;

(D) The social and family dynamics of child sexual abuse;

(E) Techniques for identifying and assisting families affected by child sexual abuse; and

(F) Legal rights, protections, and remedies available to victims of child sexual abuse;

(5) The significance of culture and religion in the lives of the parties;

(6) Safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;

(7) When and how to interview or assess adults, infants, and children; gather information from collateral sources; collect and assess relevant data; and recognize the limits of data sources' reliability and validity;

(8) The importance of addressing issues such as general mental health, medication use, and learning or physical disabilities;

(9) The importance of staying current with relevant literature and research;

(10) How to apply comparable interview, assessment, and testing procedures that meet generally accepted clinical, forensic, scientific, diagnostic, or medical standards to all parties;

(11) When to consult with or involve additional experts or other appropriate persons;

(12) How to inform each adult party of the purpose, nature, and method of the evaluation;

(13) How to assess parenting capacity and construct effective parenting plans;

(14) Ethical requirements associated with the child custody evaluator's professional license and rule 5.220;

(15) The legal context within which child custody and visitation issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;

(16) The importance of understanding relevant distinctions among the roles of evaluator, mediator, and therapist;

(17) How to write reports and recommendations, where appropriate;

(18) Mandatory reporting requirements and limitations on confidentiality;

(19) How to prepare for and give court testimony;

(20) How to maintain professional neutrality and objectivity when conducting child custody evaluations; and

(21) The importance of assessing the health, safety, welfare, and best interest of the child or children involved in the proceedings.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (e); previously amended effective January 1, 2005.)

(e) Additional training requirements

In addition to the requirements described in this rule, before appointment, child custody evaluators must comply with the basic and advanced domestic violence training requirements described in rule 5.230.

(Subd (e) adopted effective January 1, 2007.)

(f) Authorized education and training

The education and training described in (d) must be completed:

(1) After January 1, 2000;

(2) Through an eligible provider under this rule; and

(3) By either:

(A) Attending and participating in an approved course; or

(B) Serving as an instructor in an approved course. Each course taught may be counted only once. Instructors may claim and receive credit for only actual classroom time.

(Subd (f) adopted effective January 1, 2007.)

(g) Experience requirements

To satisfy the experience requirements of this rule, persons appointed as child custody evaluators must have participated in the completion of at least four partial or full court-appointed child custody evaluations within the preceding three years, as described below. Each of the four child custody evaluations must have resulted in a written or an oral report.

(1) The child custody evaluator participates in the completion of the child custody evaluations if the evaluator:

(A) Independently conducted and completed the child custody evaluation; or

(B) Materially assisted another child custody evaluator who meets all the following criteria:

(i) Licensing or certification requirements in (c);

(ii) Education and training requirements in (d);

(iii) Basic and advanced domestic violence training in (e);

(iv) Experience requirements in (g)(1)(A) or (g)(2); and

(v) Continuing education and training requirements in (h).

(2) The court may appoint an individual to conduct the child custody evaluation who does not meet the experience requirements described in (1), if the court finds that all the following criteria have been met:

(A) There are no evaluators who meet the experience requirements of this rule who are willing and available, within a reasonable period of time, to perform child custody evaluations;

(B) The parties stipulate to the person; and

(C) The court approves the person.

(3) Those who supervise court-connected evaluators meet the requirements of this rule by conducting or materially assisting in the completion of at least four partial or full court-connected child custody evaluations in the preceding three years.

(Subd (g) amended effective January 1, 2011; adopted as subd (f); previously amended and relettered effective January 1, 2007.)

(h) Appointment eligibility

After completing the licensing requirements in (c), the initial education and training requirements described in (d) and (e), and the experience requirements in (g), a person is eligible for appointment as a child custody evaluator.

(Subd (h) amended effective January 1, 2011; adopted as subd (g); previously amended and relettered effective January 1, 2005; previously amended effective January 1, 2007.)

(i) Continuing education and training requirements

(1) After a child custody evaluator completes the initial education and training requirements described in (d) and (e), the evaluator must complete these continuing education and training requirements to remain eligible for appointment:

(A) Domestic violence update training described in rule 5.230; and

(B) Eight hours of update training covering the subjects described in (d).

(2) The time frame for completing continuing education and training in (1) is as follows:

(A) A newly trained court-connected or private child custody evaluator who recently completed the education and training in (d) and (e) must:

(i) Complete the continuing education and training requirements of this rule within 18 months from the date he or she completed the initial education and training; and

(ii) Specify on form FL-325 or FL-326 the date by which he or she must complete the continuing education and training requirements of this rule.

(B) All other court-connected or private child custody evaluators must complete the continuing education and training requirements in (1) as follows:

(i) Court-connected child custody evaluators must complete the continuing education and training requirements within the 12-month period immediately preceding the date he or she signs the *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (form FL-325), which must be submitted as provided by (*l*) of this rule.

(ii) Private child custody evaluators must complete the continuing education and training requirements within the 12-month period immediately preceding his or her appointment to a case.

(3) Compliance with the continuing education and training requirements of this rule is determined at the time of appointment to a case.

(Subd (i) adopted effective January 1, 2011.)

(j) Court-connected evaluators

A court-connected evaluator who does not meet the education and training requirements in (d) may conduct child custody evaluations if, before appointment, he or she:

(1) Completed at least 20 of the 40 hours of education and training required by (d);

(2) Completes the remaining hours of education and training required by (d) within 12 months of conducting his or her first evaluation as a court-connected child custody evaluator;

(3) Complied with the basic and advanced domestic violence training requirements under Family Code sections 1816 and 3110.5 and rule 5.230;

(4) Complies with the experience requirements in (g); and

(5) Is supervised by a court-connected child custody evaluator who meets the requirements of this rule.

(Subd (j) relettered effective January 1, 2011; adopted as subd (h); previously relettered as subd (i) effective January 1, 2005; previously amended effective January 1, 2007.)

(k) Responsibility of the courts

Each court:

(1) Must develop local court rules that:

(A) Provide for acceptance of and response to complaints about an evaluator's performance; and

(B) Establish a process for informing the public about how to find qualified evaluators in that jurisdiction;

(2) Must use an *Order Appointing Child Custody Evaluator* (form FL-327) to appoint a private child custody evaluator or a court-connected evaluation service. Form FL-327 may be supplemented with local court forms;

(3) Must provide the Judicial Council with a copy of any local court forms used to implement this rule;

(4) As feasible and appropriate, may confer with education and training providers to develop and deliver curricula of comparable quality and relevance to child custody evaluations for both court-connected and private child custody evaluators; and

(5) Must use form *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (form FL-325) to certify that court-connected evaluators have met all the qualifications for court-connected evaluators under this rule for a given year. Form FL-325 may be supplemented with local court rules or forms.

(Subd (k) relettered effective January 1, 2011; adopted as subd (l)*; previously amended and relettered as subd (k) effective January 1, 2005, and as subd (j) effective January 1, 2007.)*

(*l*) Child custody evaluator

A person appointed as a child custody evaluator must:

(1) Submit to the court a declaration indicating compliance with all applicable education, training, and experience requirements:

(A) Court-connected child custody evaluators must submit a *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (form FL-325) to the court executive officer or his or her designee. Court-connected child custody evaluators practicing as of January 1 of a given year must submit the form by January 30 of that year. Court-connected evaluators beginning practice after January 1 must submit the form before any work on the first child custody evaluation has begun and by January 30 of every year thereafter; and

(B) Private child custody evaluators must complete a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) and file it with the clerk's office no later than 10 days after notification of each appointment and before any work on each child custody evaluation has begun;

(2) At the beginning of the child custody evaluation, inform each adult party of the purpose, nature, and method of the evaluation, and provide information about the evaluator's education, experience, and training;

(3) Use interview, assessment, and testing procedures that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards;

(4) Have a license in good standing if licensed at the time of appointment, except as described in (c)(2) and Family Code section 3110.5(d);

(5) Be knowledgeable about relevant resources and service providers; and

(6) Before undertaking the evaluation or at the first practical moment, inform the court, counsel, and parties of possible or actual multiple roles or conflicts of interest.

(Subd (l) *amended and relettered effective January 1, 2011; adopted as subd (m); previously amended and relettered as subd* (l) *effective January 1, 2005, and as subd (k) effective January 1, 2007.)*

(m) Use of interns

Court-connected and court-appointed child custody evaluators may use interns to assist with the child custody evaluation, if:

(1) The evaluator:

(A) Before or at the time of appointment, fully discloses to the parties and attorneys the nature and extent of the intern's participation in the evaluation;

(B) Obtains the written agreement of the parties and attorneys as to the nature and extent of the intern's participation in the evaluation after disclosure;

(C) Ensures that the extent, kind, and quality of work performed by the intern being supervised is consistent with the intern's training and experience;

(D) Is physically present when the intern interacts with the parties, children, or other collateral persons in the evaluation; and

(E) Ensures compliance with all laws and regulations governing the professional practice of the supervising evaluator and the intern.

(2) The interns:

(A) Are enrolled in a master's or doctorate program or have obtained a graduate degree qualifying for licensure or certification as a clinical social worker, marriage and family therapist, psychiatrist, or psychologist;

(B) Are currently completing or have completed the coursework necessary to qualify for their degree in the subjects of child abuse assessment and spousal or partner abuse assessment; and

(C) Comply with the applicable laws related to the practice of their profession in California when interns are:

(i) Accruing supervised professional experience as defined in the California Code of Regulations; and

(ii) Providing professional services for a child custody evaluator that fall within the lawful scope of practice as a licensed professional.

(Subd (m) relettered effective January 1, 2011; adopted as subd (l) *effective January 1, 2007.)*

(n) Education and training providers

"Eligible providers" includes the Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups. Eligible providers must:

(1) Ensure that the training instructors or consultants delivering the training and education programs either meet the requirements of this rule or are experts in the subject matter;

(2) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(3) Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child;

(4) Develop a procedure to verify that participants complete the education and training program;

(5) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider; and

(6) Meet the approval requirements described in (o).

(Subd (n) amended effective January 1, 2016; adopted as subd (n); previously amended and relettered as subd (m) effective January 1, 2005; previously amended effective January 1, 2007; previously relettered as subd (n) effective January 1, 2011.)

(o) Program approval required

All education and training programs must be approved by Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee. Education and training courses that were taken between January 1, 2000, and July 1, 2003, may be applied toward the requirements of this rule if they addressed the subjects listed in (d) and either were certified or approved for continuing education credit by a professional provider group or were offered as part of a related postgraduate degree or licensing program.

(Subd (o) amended effective January 1, 2016; adopted as subd (o); previously amended and relettered as subd (n) effective January 1, 2005; previously amended effective January 1, 2007; previously relettered as subd (o) effective January 1, 2011.)

Rule 5.225 amended effective January 1, 2016; adopted as rule 1257.4 effective January 1, 2002; renumbered as rule 5.225 effective January 1, 2003; previously amended effective January 1, 2005, January 1, 2007, January 1, 2011, and January 1, 2015.

Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators

(a) Authority

This rule of court is adopted under Family Code sections 211 and 3111(d) and (e).

(Subd (a) amended effective January 1, 2007.)

(b) Purpose

Consistent with Family Code sections 3020 and 3111, the purposes of this rule are to require domestic violence training for all court-appointed persons who evaluate or investigate child custody matters and to ensure that this training reflects current research and consensus about best practices for conducting child custody evaluations by prescribing standards that training in domestic violence must meet. Effective January 1, 1998, no person may be a court-appointed investigator under Family Code section 3111(d) or Evidence Code section 730 unless the person has completed domestic violence training described here and in Family Code section 1816.

(Subd (b) amended effective January 1, 2003.)

(c) Definitions

For purposes of this rule, “court-appointed investigator” is considered to be synonymous with “court-appointed evaluator” as defined in Family Code section 3110.

(d) Mandatory training

Persons appointed as child custody investigators under Family Code section 3110 or Evidence Code section 730, and persons who are professional staff or trainees in a child custody or visitation evaluation or investigation, must complete basic training in domestic violence issues as described in Family Code section 1816 and, in addition:

(1) *Advanced training*

Sixteen hours of advanced training must be completed within a 12-month period. The training must include the following:

(A) Twelve hours of instruction, as approved by Judicial Council staff, in:

(i) The appropriate structuring of the child custody evaluation process, including, but not limited to, maximizing safety for clients, evaluators, and court personnel; maintaining objectivity; providing and gathering balanced information from both parties and controlling for bias; providing for separate sessions at separate times (as specified in Family Code section 3113); and considering the impact of the evaluation report and recommendations with particular attention to the dynamics of domestic violence;

(ii) The relevant sections of local, state, and federal law or rules;

(iii) The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, battered women’s shelters, specialized counseling, drug and alcohol counseling, legal advocacy, job training, parenting classes, battered immigrant victims, and welfare exceptions for domestic violence victims;

(iv) The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, arrest, incarceration, probation, applicable Penal Code sections (including Penal Code section 1203.097, which describes certified treatment programs for batterers), drug and

alcohol counseling, legal advocacy, job training, and parenting classes; and

(v) The unique issues in family and psychological assessment in domestic violence cases, including the following concepts:

a. The effects of exposure to domestic violence and psychological trauma on children; the relationship between child physical abuse, child sexual abuse, and domestic violence; the differential family dynamics related to parent-child attachments in families with domestic violence; intergenerational transmission of familial violence; and manifestations of post-traumatic stress disorders in children;

b. The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence;

c. Current legal, psychosocial, public policy, and mental health research related to the dynamics of family violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships;

d. The assessment of family history based on the type, severity, and frequency of violence;

e. The impact on parenting abilities of being a victim or perpetrator of domestic violence;

f. The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases;

g. The influence of alcohol and drug use and abuse on the incidence of domestic violence;

h. Understanding the dynamics of high-conflict relationships and abuser/victim relationships;

i. The importance of, and procedures for, obtaining collateral information from probation departments, children's

protective services, police incident reports, restraining order pleadings, medical records, schools, and other relevant sources;

j. Accepted methods for structuring safe and enforceable child custody and parenting plans that assure the health, safety, welfare, and best interest of the child, and safeguards for the parties; and

k. The importance of discouraging participants in child custody matters from blaming victims of domestic violence for the violence and from minimizing allegations of domestic violence, child abuse, or abuse against any family member.

(B) Four hours of community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the families being evaluated may reside.

(2) *Annual update training*

Four hours of update training are required each year after the year in which the advanced training is completed. These four hours must consist of instruction focused on, but not limited to, an update of changes or modifications in local court practices, case law, and state and federal legislation related to domestic violence, and an update of current social science research and theory, particularly in regard to the impact on children of exposure to domestic violence.

(Subd (d) amended effective January 1, 2016; previously amended effective January 1, 2002, January 1, 2003, January 1, 2004, and January 1, 2005.)

(e) Education and training providers

Only education and training acquired from eligible providers meets the requirements of this rule. “Eligible providers” includes the Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) Eligible providers must:

(A) Ensure that the training instructors or consultants delivering the education and training programs either meet the requirements of this rule or are experts in the subject matter;

(B) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(C) Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child;

(D) Develop a procedure to verify that participants complete the education and training program; and

(E) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider.

(2) Effective July 1, 2005, all education and training programs must be approved by Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee.

(Subd (e) amended effective January 1, 2016; previously amended effective January 1, 2005.)

(f) Local court rules

Each local court may adopt rules regarding the procedures by which child custody evaluators who have completed the training in domestic violence as mandated by this rule will notify the local court. In the absence of such a local rule of court, child custody evaluators must attach copies of their certificates of completion of the initial 12 hours of advanced instruction and of the most recent annual 4-hour update training in domestic violence to each child custody evaluation report.

(Subd (f) relettered effective January 1, 2005; adopted as subd (g); amended effective January 1, 2003, and January 1, 2004.)

(g) Previous training accepted

Persons attending training programs offered after January 1, 1996, that meet all of the requirements set forth in subdivision (d)(1)(A) of this rule are deemed to have met the minimum standards set forth in subdivision (d)(1)(A) of this rule, but they

must still meet the minimum standards listed in subdivisions (d)(1)(B) and (d)(2) of this rule.

(Subd (g) amended effective January 1, 2007; adopted as subd (h); relettered effective January 1, 2005.)

Rule 5.230 amended effective January 1, 2016; adopted as rule 1257.7 effective January 1, 1999; amended and renumbered as rule 5.230 effective January 1, 2003; previously amended effective January 1, 2004, January 1, 2005, and January 1, 2007.

Article 3. Ex parte Communication

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 8, Child Custody and Visitation (Parenting Time) Proceedings—Article 3, Ex Parte communication; adopted January 1, 2013.

Rule 5.235. Ex parte communication in child custody proceedings

Rule 5.235. Ex parte communication in child custody proceedings

(a) Purpose

Generally, ex parte communication is prohibited in legal proceedings. In child custody proceedings, Family Code section 216 recognizes specific circumstances in which ex parte communication is permitted between court-connected or court-appointed child custody mediators or evaluators and the attorney for any party, the court-appointed counsel for a child, or the court. This rule of court establishes mandatory statewide standards of practice relating to when, and between whom, ex parte communication is permitted in child custody proceedings. This rule applies to all court-ordered child custody mediations or evaluations. As in Family Code section 216, this rule of court does not restrict communications between a court-connected or court-appointed child custody mediator or evaluator and a party in a child custody proceeding who is self-represented or represented by counsel.

(b) Definitions

For purposes of this rule,

(1) "Communication" includes any verbal statement made in person, by telephone, by voicemail, or by videoconferencing; any written statement, illustration, photograph, or other tangible item, contained in a letter, document, e-mail, or fax; or other equivalent means, either directly or through third parties.

(2) "Ex parte communication" is a direct or indirect communication on the substance of a pending case without the knowledge, presence, or consent of all parties involved in the matter.

(3) A "court-connected mediator or evaluator" is a superior court employee or a person under contract with a superior court who conducts child custody evaluations or mediations.

(4) A "court-appointed mediator or evaluator" is a professional in private practice appointed by the court to conduct a child custody evaluation or mediation.

(c) Ex parte communication prohibited

In any child custody proceeding under the Family Code, ex parte communication is prohibited between court-connected or court-appointed mediators or evaluators and the attorney for any party, a court-appointed counsel for a child, or the court, except as provided by this rule.

(d) Exception for parties' stipulation

The parties may enter into a stipulation either in open court or in writing to allow ex parte communication between a court-connected or court-appointed mediator or evaluator and:

(1) The attorney for any party; or

(2) The court.

(e) Ex parte communication permitted

In any proceeding under the Family Code, ex parte communication is permitted between a court-connected or court-appointed mediator or evaluator and (1) the attorney for any party, (2) the court-appointed counsel for a child, or (3) the court, only if:

(1) The communication is necessary to schedule an appointment;

(2) The communication is necessary to investigate or disclose an actual or potential conflict of interest or dual relationship as required under rule 5.210(h)(10) and (h)(12);

(3) The court-appointed counsel for a child is interviewing a mediator as provided by Family Code section 3151(c)(5);

(4) The court expressly authorizes ex parte communication between the mediator or evaluator and court-appointed counsel for a child in circumstances other than described in (3); or

(5) The mediator or evaluator is informing the court of the belief that a restraining order is necessary to prevent an imminent risk to the physical safety of the child or party.

(Subd (e) amended effective January 1, 2007.)

(f) Exception for mandated duties and responsibilities

This rule does not prohibit ex parte communication for the purpose of fulfilling the duties and responsibilities that:

(1) A mediator or evaluator may have as a mandated reporter of suspected child abuse;

(2) A mediator or evaluator may have to warn of threatened violent behavior against a reasonably identifiable victim or victims;

(3) A mediator or evaluator may have to address a case involving allegations of domestic violence under Family Code sections 3113, 3181, and 3192 and rule 5.215; and

(4) The court may have to investigate complaints.

(Subd (f) amended effective January 1, 2007.)

Rule 5.235 amended effective January 1, 2007; adopted effective July 1, 2006.

Article 4. Counsel Appointed to Represent a Child

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 8, Child Custody and Visitation (Parenting Time) Proceedings—Article 4, Counsel Appointed to Represent a Child; adopted January 1, 2013.

Rule 5.240. Appointment of counsel to represent a child in family law proceedings
Rule 5.241. Compensation of counsel appointed to represent a child in a family law proceeding

Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

Rule 5.240. Appointment of counsel to represent a child in family law proceedings

(a) Appointment considerations

In considering appointing counsel under Family Code section 3150, the court should take into account the following factors, including whether:

(1) The issues of child custody and visitation are highly contested or protracted;

(2) The child is subjected to stress as a result of the dispute that might be alleviated by the intervention of counsel representing the child;

(3) Counsel representing the child would be likely to provide the court with relevant information not otherwise readily available or likely to be presented;

(4) The dispute involves allegations of physical, emotional, or sexual abuse or neglect of the child.

(5) It appears that one or both parents are incapable of providing a stable, safe, and secure environment;

(6) Counsel is available for appointment who is knowledgeable about the issues being raised regarding the child in the proceeding;

(7) The best interest of the child appears to require independent representation; and

(8) If there are two or more children, any child would require separate counsel to avoid a conflict of interest.

(b) Request for appointment of counsel

The court may appoint counsel to represent the best interest of a child in a family law proceeding on the court's own motion or if requested to do so by:

(1) A party;

(2) The attorney for a party;

(3) The child, or any relative of the child;

(4) A mediator under Family Code section 3184;

(5) A professional person making a custody recommendation under Family Code sections 3111 and 3118, Evidence Code section 730, or Code of Civil Procedure section 2032.010 et seq.;

(6) A county counsel, district attorney, city attorney, or city prosecutor authorized to prosecute child abuse and neglect or child abduction cases under state law; or

(7) A court-appointed guardian ad litem or special advocate;

(8) Any other person who the court deems appropriate.

(c) Orders appointing counsel for a child

The court must issue written orders when appointing and terminating counsel for a child.

(1) The appointment orders must specify the:

(A) Appointed counsel's name, address, and telephone number;

(B) Name of the child for whom counsel is appointed; and

(C) Child's date of birth.

(2) The appointment orders may include the:

(A) Child's address, if appropriate;

(B) Issues to be addressed in the case;

(C) Tasks related to the case that would benefit from the services of counsel for the child;

(D) Responsibilities and rights of the child's counsel;

(E) Counsel's rate or amount of compensation;

(F) Allocation of fees payable by each party or the court;

(G) Source of funds and manner of reimbursement for counsel's fees and costs;

(H) Allocation of payment of counsel's fees to one party subject to reimbursement by the other party;

(I) Terms and amount of any progress or installment payments; and

(J) Ability of the court to reserve jurisdiction to retroactively modify the order on fees and payment.

(3) Courts may use *Order Appointing Counsel for a Child* (form FL-323) or may supplement form FL-323 with local forms developed under rule 10.613.

(Subd (c) amended effective January 1. 2013.)

(d) Panel of counsel eligible for appointment

(1) Each court may create and maintain a list or panel of counsel meeting the minimum qualifications of this rule for appointment.

(2) If a list or panel of counsel is maintained, a court may appoint counsel not on the list or panel in special circumstances, taking into consideration factors including language, culture, and the special needs of a child in the following areas:

(A) Child abuse;

(B) Domestic violence;

(C) Drug abuse of a parent or the child;

(D) Mental health issues of a parent or the child;

(E) Particular medical issues of the child; and

(F) Educational issues.

(3) If the court maintains a panel of counsel eligible for appointment and the court appoints counsel who is not on the panel, the court must state the reason for not appointing a panel counsel in writing or on the record.

(4) Any lists maintained from which the court might appoint counsel should be reviewed at least annually to ensure that those on the list meet the education and training requirements. Courts should ask counsel annually to update their information and to notify the court if any changes would make them unable to be appointed.

(Subd (d) amended effective January 1, 2013.)

(e) Complaint procedures

By January 1, 2010, each court must develop local court rules in accordance with rule 10.613 that provide for acceptance and response to complaints about the performance of the court-appointed counsel for a child.

(f) Termination of appointment

On entering an appearance on behalf of a child, counsel must continue to represent that child until:

(1) The conclusion of the proceeding for which counsel was appointed;

(2) Relieved by the court;

(3) Substituted by the court with other counsel;

(4) Removed on the court's own motion or request of counsel or parties for good cause shown; or

(5) The child reaches the age of majority or is emancipated.

Rule 5.240 amended effective January 1, 2013; adopted effective January 1, 2008.

Rule 5.241. Compensation of counsel appointed to represent a child in a family law proceeding

(a) Determination of counsel's compensation

The court must determine the reasonable sum for compensation and expenses for counsel appointed to represent the child in a family law proceeding, and the ability of the parties to pay all or a portion of counsel's compensation and expenses.

(1) The court must set the compensation for the child's counsel:

(A) At the time of appointment;

(B) At the time the court determines the parties' ability to pay; or

(C) Within a reasonable time after appointment.

(2) No later than 30 days after counsel is relieved as attorney of record, the court may make a redetermination of counsel's compensation:

(A) On the court's own motion;

(B) At the request of a party or a party's counsel; or

(C) At the request of counsel for the child.

(b) Determination of ability to pay

The court must determine the respective financial ability of the parties to pay all or a portion of counsel's compensation.

(1) Before determining the parties' ability to pay:

(A) The court should consider factors such as the parties' income and assets reasonably available at the time of the determination, and eligibility for or existence of a fee waiver under Government Code section 68511.3; and

(B) The parties must have on file a current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155).

(2) The court should determine the parties' ability to pay:

(A) At the time counsel is appointed;

(B) Within 30 days after appointment; or

(C) At the next subsequent hearing.

(3) No later than 30 days after counsel is relieved as attorney of record, the court may redetermine the parties' ability to pay:

(A) On the court's own motion; or

(B) At the request of counsel or the parties.

(c) Payment to counsel

(1) If the court determines that the parties have the ability to pay all or a portion of the fees, the court must order that the parties pay in any manner the court determines to be reasonable and compatible with the parties' financial ability, including progress or installment payments.

(2) The court may use its own funds to pay counsel for a child and seek reimbursement from the parties.

(3) The court must inform the parties that the failure to pay fees to the appointed counsel or to the court may result in the attorney or the court initiating legal action against them to collect the money.

(d) Parties' inability to pay

If the court finds that the parties are unable to pay all or a portion of the cost of the child's counsel, the court must pay the portion the parties are unable to pay.

Rule 5.241 adopted effective January 1, 2008.

Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

(a) Purpose

This rule governs counsel appointed to represent the best interest of the child in a custody or visitation proceeding under Family Code section 3150.

(b) General appointment requirements

To be eligible for appointment as counsel for a child, counsel must:

(1) Be an active member in good standing of the State Bar of California;

(2) Have professional liability insurance or demonstrate to the court that he or she is adequately self-insured; and

(3) Meet the education, training, and experience requirements of this rule.

(c) Education and training requirements

Effective January 1, 2009, before being appointed as counsel for a child in a family law proceeding, counsel must have completed at least 12 hours of applicable education and training which must include all the following subjects:

(1) Statutes, rules of court, and case law relating to child custody and visitation litigation;

(2) Representation of a child in custody and visitation proceedings;

(3) Special issues in representing a child, including the following:

(A) Various stages of child development;

(B) Communicating with a child at various developmental stages and presenting the child's view;

(C) Recognizing, evaluating and understanding evidence of child abuse and neglect, family violence and substance abuse, cultural and ethnic diversity, and gender-specific issues;

(D) The effects of domestic violence and child abuse and neglect on children; and

(E) How to work effectively with multidisciplinary experts.

(d) Annual education and training requirements

Effective January 1, 2010, to remain eligible for appointment as counsel for a child, counsel must complete during each calendar year a minimum of eight hours of applicable education and training in the subjects listed in (c).

(e) Applicable education and training

(1) Education and training that addresses the subjects listed in (c) may be applied toward the requirements of this rule if completed through:

(A) A professional continuing education group;

(B) An educational institution;

(C) A professional association;

(D) A court-connected group; or

(E) A public or private for-profit or not-for-profit group.

(2) A maximum of two of the hours may be by self-study under the supervision of an education provider that provides evidence of completion.

(3) Counsel may complete education and training courses that satisfy the requirements of this rule offered by the education providers in (1) by means of video presentations or other delivery means at remote locations. Such courses are not self-study within the meaning of this rule.

(4) Counsel who serve as an instructor in an education and training course that satisfies the requirements of this rule may receive 1.5 hours of course participation credit for each hour of course instruction. All other counsel may claim credit for actual time he or she attended the education and training course.

(f) Experience requirements

(1) Persons appointed as counsel for a child in a family law proceeding must have represented a party or a child in at least six proceedings involving child custody within the preceding five years as follows:

(A) At least two of the six proceedings must have involved contested child custody and visitation issues in family law; and

(B) Child custody proceedings in dependency or guardianship cases can count for no more than three of the six required for appointment.

(2) Courts may develop local rules that impose additional experience requirements for persons appointed as counsel for a child in a family law proceeding.

(g) Alternative experience requirements

Counsel who does not meet the initial experience requirements in (f) may be appointed to represent a child in a family law proceeding if he or she meets one of the following alternative experience requirements. Counsel must:

(1) Be employed by a legal services organization, a governmental agency, or a private law firm that has been approved by the presiding or supervising judge

of the local family court as qualified to represent a child in family law proceedings and be directly supervised by an attorney in an organization, an agency, or a private law firm who meets the initial experience requirements in (f);

(2) Be an attorney working in consultation with an attorney approved by the presiding or supervising judge of the local family court as qualified to represent a child in family law proceedings; or

(3) Demonstrate substantial equivalent experience as determined by local court rule or procedure.

(h) Compliance with appointment requirements

A person appointed as counsel for a child must:

(1) File a declaration with the court indicating compliance with the requirements of this rule no later than 10 days after being appointed and before beginning work on the case. Counsel may complete the *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) or other local court forms for this purpose; and

(2) Notify the court within five days of any disciplinary action taken by the State Bar of California, stating the basis of the complaint, result, and notice of any reproval, probation, or suspension.

(i) Rights of counsel for a child

Counsel has rights relating to the representation of a child's best interest under Family Code sections 3111, 3151, 3151.5, 3153, and Welfare and Institutions Code section 827, which include the right to:

(1) Reasonable access to the child;

(2) Seek affirmative relief on behalf of the child;

(3) Notice to any proceeding, and all phases of that proceeding, including a request for examination affecting the child;

(4) Take any action that is available to a party to the proceeding, including filing pleadings, making evidentiary objections, and presenting evidence;

(5) Be heard in the proceeding, which may include presenting motions and orders to show cause and participating in settlement conferences and trials, seeking writs, appeals, and arbitrations;

(6) Access the child's medical, dental, mental health, and other health-care records, and school and educational records;

(7) Inspect juvenile case files subject to the provisions of Welfare and Institutions Code section 827;

(8) Interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child; however, the release of this information to counsel does not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications;

(9) Interview mediators, subject to the provisions of Family Code sections 3177 and 3182;

(10) Receive reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation, for purposes of the proceeding, that has not been ordered by the court;

(11) Assert or waive any privilege on behalf of the child;

(12) Seek independent psychological or physical examination or evaluation of the child for purposes of the proceeding on approval by the court;

(13) Receive child custody evaluation reports;

(14) Not be called as a witness in the proceedings;

(15) Request the court to authorize release of relevant reports or files, concerning the child represented by the counsel, of the relevant local child protective services agency; and

(16) Receive reasonable compensation and expenses for representing the child, the amount of which will be determined by the court.

(j) Responsibilities of counsel for a child

Counsel is charged with the representation of the child's best interest. The role of the child's counsel is to gather evidence that bears on the best interest of the child

and present that admissible evidence to the court in any manner appropriate for the counsel of a party. If the child so desires, the child's counsel must present the child's wishes to the court.

(1) Counsel's duties, unless under the circumstances it is inappropriate to exercise the duties, include those under Family Code section 3151:

(A) Interviewing the child;

(B) Reviewing the court files and all accessible relevant records available to both parties; and

(C) Making any further investigations that counsel considers necessary to ascertain the facts relevant to the custody or visitation hearings.

(2) Counsel must serve notices and pleadings on all parties consistent with the requirements for parties.

(3) Counsel may introduce and examine witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

(4) In any case in which counsel is representing a child who is called to testify in the proceeding, counsel must:

(A) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and the possibility that information provided to the court may be on the record and provided to the parties in the case;

(B) Allow but not require the child to state a preference regarding custody or visitation and, in an age-appropriate manner, provide information about the process by which the court will make a decision;

(C) Provide procedures relevant to the child's participation and, if appropriate, provide an orientation to the courtroom where the child will be testifying; and

(D) Inform the parties and then the court about the client's desire to provide input.

(Subd (j) amended effective January 1, 2012.)

(k) Other considerations

Counsel is not required to assume the responsibilities of a social worker, probation officer, child custody evaluator, or mediator and is not expected to provide nonlegal services to the child. Subject to the terms of the court's order of appointment, counsel for a child may take the following actions to implement his or her statutory duties in representing a child in a family law proceeding:

(1) Interview or observe the child as appropriate to the age and circumstances of the child. In doing so, counsel should consider all possible interview or observation environments and select a location most conducive to both conducting a meaningful interview of the child and investigating the issues relevant to the case at that time.

(2) In a manner and to the extent consistent with the child's age, level of maturity, and ability to understand, and consistent with the order of appointment for the case:

(A) Explain to the child at their first meeting counsel's role and the nature of the attorney-client relationship (including confidentiality issues); and

(B) Advise the child on a continuing basis of possible courses of action and of the risks and benefits of each course of action.

(3) Actively participate in the representation of the child at any hearings that affect custody and visitation of the child and attend and participate in any other hearings relevant to the child. In doing so, counsel may, as appropriate:

(A) Take positions relevant to the child on legal issues before the court;

(B) Seek and advocate for services for the child;

(C) Prepare for any hearings or trials;

(D) Work to settle contested issues and to define trial issues;

(E) Prepare witnesses, including the child if the child is to testify;

(F) Introduce and examine witnesses on behalf of the child;

(G) Cross-examine other witnesses;

(H) Make appropriate evidentiary objections;

(I) Review court files and other pertinent records;

(J) Prepare motions to advance the child's interest, including motions to quash subpoenas for the child and other protective orders;

(K) Present arguments to advance the child's interest;

(L) Prepare trial briefs and other documents if appropriate; and

(M) Request appointment of separate appellate counsel.

(4) Conduct thorough, continuing, and independent investigations and discovery to protect the child's interest, which may include:

(A) Obtaining necessary authorizations for the release of information.

(B) Reviewing the child's social services, mental health, drug and alcohol, medical, law enforcement, education, and other records relevant to the case;

(C) Reviewing the court files of the child and his or her siblings, case-related records of the social service agency, and case-related records of other service providers;

(D) Contacting attorneys for the parties and nonlawyer guardians ad litem, Court Appointed Special Advocates (CASAs), and other service professionals, to the extent permitted by local rule, for background information;

(E) Contacting and meeting with the child's parents, legal guardians, or caretakers, with permission of their attorneys;

(F) Interviewing witnesses and individuals involved with the child, including school personnel, child welfare caseworkers, foster parents and other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

(G) Reviewing relevant photographs, video or audio recordings, and other evidence;

(H) Documenting the results of these investigations;

(I) Monitoring compliance with court orders as appropriate, including the provision for and effectiveness of any court-ordered services;

(J) Promoting the timely progression of the case through the judicial system;

(K) Investigating the interests of the child beyond the scope of the proceeding and reporting to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings; however, counsel is not responsible for instituting those proceedings or representing the child in them unless expressly appointed by the court for that purpose; and

(L) After learning of other existing administrative or judicial proceedings involving the child, communicating and cooperating with others to the extent necessary and appropriate to protect the child's interest.

(5) Taking all other steps to represent the child adequately as appropriate to the case, including becoming knowledgeable in other areas affecting minors including:

(A) The Indian Child Welfare Act;

(B) Information about local experts who can provide evaluation, consultation, and testimony; and

(C) Delinquency, dependency, probate, family law, and other proceedings.

(Subd (k) amended effective January 1, 2016.)

Rule 5.242 amended effective January 1, 2016; adopted effective January 1, 2008; previously amended effective January 1, 2012.

Article 5. Children's Participation in Family Court

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 8, Child Custody and Visitation (Parenting Time) Proceedings—Article 5, Children's Participation in Family Court; adopted January 1, 2013.

Rule 5.250. Children's participation and testimony in family court proceedings

(a) Children's participation

This rule is intended to implement Family Code section 3042. Children's participation in family law matters must be considered on a case-by-case basis. No statutory mandate, rule, or practice requires children to participate in court or prohibits them from doing so. When a child wishes to participate, the court should find a balance between protecting the child, the statutory duty to consider the wishes of and input from the child, and the probative value of the child's input while ensuring all parties' due process rights to challenge evidence relied upon by the court in making custody decisions.

(b) Determining if the child wishes to address the court

(1) The following persons must inform the court if they have information indicating that a child in a custody or visitation (parenting time) matter wishes to address the court:

(A) A minor's counsel;

(B) An evaluator;

(C) An investigator; and

(D) A child custody recommending counselor who provides recommendations to the judge under Family Code section 3183.

(2) The following persons may inform the court if they have information indicating that a child wishes to address the court:

(A) A party; and

(B) A party's attorney.

(3) In the absence of information indicating a child wishes to address the court, the judicial officer may inquire whether the child wishes to do so.

(c) Guidelines for determining whether addressing the court is in the child's best interest

(1) When a child indicates that he or she wishes to address the court, the judicial officer must consider whether involving the child in the proceedings is in the child's best interest.

(2) If the child indicating an interest in addressing the court is 14 years old or older, the judicial officer must hear from that child unless the court makes a

finding that addressing the court is not in the child's best interest and states the reasons on the record.

(3) In determining whether addressing the court is in a child's best interest, the judicial officer should consider the following:

(A) Whether the child is of sufficient age and capacity to reason to form an intelligent preference as to custody or visitation (parenting time);

(B) Whether the child is of sufficient age and capacity to understand the nature of testimony;

(C) Whether information has been presented indicating that the child may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the child may benefit from addressing the court;

(D) Whether the subject areas about which the child is anticipated to address the court are relevant to the court's decisionmaking process; and

(E) Whether any other factors weigh in favor of or against having the child address the court, taking into consideration the child's desire to do so.

(d) Guidelines for receiving testimony and other input

(1) If the court precludes the calling of a child as a witness, alternatives for the court to obtain information or other input from the child may include, but are not limited to:

(A) The child's participation in child custody mediation under Family Code section 3180;

(B) Appointment of a child custody evaluator or investigator under Family Code section 3110 or Evidence Code section 730;

(C) Admissible evidence provided by the parents, parties, or witnesses in the proceeding;

(D) Information provided by a child custody recommending counselor authorized to provide recommendations under Family Code section 3183(a); and

(E) Information provided from a child interview center or professional so as to avoid unnecessary multiple interviews.

(2) If the court precludes the calling of a child as a witness and specifies one of the other alternatives, the court must require that the information or evidence obtained by alternative means and provided by a professional or nonparty:

(A) Be in writing and fully document the child's views on the matters on which the child wished to express an opinion;

(B) Describe the child's input in sufficient detail to assist the court in its adjudication process;

(C) Be provided to the court and to the parties by an individual who will be available for testimony and cross-examination; and

(D) Be filed in the confidential portion of the family law file.

(3) On deciding to take the testimony of a child, the judicial officer should balance the necessity of taking the child's testimony in the courtroom with parents and attorneys present with the need to create an environment in which the child can be open and honest. In each case in which a child's testimony will be taken, courts should consider:

(A) Where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from the child on the record in chambers;

(B) Who should be present when the testimony is taken, such as: both parents and their attorneys, only attorneys in the case in which both parents are represented, the child's attorney and parents, or only a court reporter with the judicial officer;

(C) How the child will be questioned, such as whether only the judicial officer will pose questions that the parties have submitted, whether attorneys or parties will be permitted to cross-examine the child, or whether a child advocate or expert in child development will ask the questions in the presence of the judicial officer and parties or a court reporter; and

(D) Whether a court reporter is available in all instances, but especially when testimony may be taken outside the presence of the parties and their attorneys and, if not, whether it will be possible to provide a

listening device so that testimony taken in chambers may be heard simultaneously by the parents and their attorneys in the courtroom or to otherwise make a record of the testimony.

(4) In taking testimony from a child, the court must take special care to protect the child from harassment or embarrassment and to restrict the unnecessary repetition of questions. The court must also take special care to ensure that questions are stated in a form that is appropriate to the witness's age or cognitive level. If the child is not represented by an attorney, the court must inform the child in an age-appropriate manner about the limitations on confidentiality and that the information provided to the court will be on the record and provided to the parties in the case. In the process of listening to and inviting the child's input, the court must allow but not require the child to state a preference regarding custody or visitation and should, in an age-appropriate manner, provide information about the process by which the court will make a decision.

(5) In any case in which a child will be called to testify, the court may consider the appointment of minor's counsel for that child. The court may consider whether such appointment will cause unnecessary delay or otherwise interfere with the child's ability to participate in the process. In addition to adhering to the requirements for minor's counsel under Family Code section 3151 and rules 5.240, 5.241, and 5.242, minor's counsel must:

(A) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and indicate to the child the possibility that information provided to the court will be on the record and provided to the parties in the case;

(B) Allow but not require the child to state a preference regarding custody or visitation (parenting time) and, in an age-appropriate manner, provide information about the process by which the court will make a decision;

(C) Provide procedures relevant to the child's participation and, if appropriate, provide an orientation to the courtroom where the child will be testifying; and

(D) Inform the parties and then the court about the client's desire to provide input.

(6) No testimony of a child may be received without such testimony being heard on the record or in the presence of the parties. This requirement may not be waived by stipulation.

(e) Responsibilities of court-connected or appointed professionals

A child custody evaluator, a child custody recommending counselor, an investigator, or a mediator appointed or assigned to meet with a child in a family court proceeding must:

(1) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and the possibility that information provided to the professional may be shared with the court on the record and provided to the parties in the case;

(2) Allow but not require the child to state a preference regarding custody and visitation (parenting time), and, in an age-appropriate manner, provide information about the process by which the court will make a decision; and

(3) Provide to the parents of the child participating in the court process information about local court procedures relevant to the child's participation and information about how to best support the child in an age-appropriate manner during the court process.

(f) Methods of providing information to parents and supporting children

Courts should provide information to parties and parents and support for children when children want to participate or testify or are otherwise involved in family law proceedings. Such methods may include but are not limited to:

(1) Having court-connected professionals meet jointly or separately with the parents or parties to discuss alternatives to having a child provide direct testimony;

(2) Providing an orientation for a child about the court process and the role of the judicial officer in making decisions, how the courtroom or chambers will be set up, and what participating or testifying will entail;

(3) Providing information to parents or parties before and after a child participates or testifies so that they can consider the possible effect on their child of participating or not participating in a given case;

(4) Including information in child custody mediation orientation presentations and publications about a child's participation in family law proceedings;

(5) Providing a children's waiting room; and

(6) Providing an interpreter for the child, if needed.

(g) Education and training

Education and training content for court staff and judicial officers should include information on children's participation in family court processes, methods other than direct testimony for receiving input from children, and procedures for taking children's testimony.

Rule 5.250 adopted effective January 1, 2012.

Advisory Committee Comment

Rule 5.250 does not apply to probate guardianships except as and to the extent that the rule is incorporated or expressly made applicable by a rule of court in title 7 of the California Rules of Court.

Chapter 9. Child, Spousal, and Domestic Partner Support

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 9, Child, Spousal, and Domestic Partner Support; adopted January 1, 2013.

Article 1. General Provisions

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 9, Child, Spousal, and Domestic Partner Support—Article 1, General Provisions; adopted January 1, 2013.

Rule 5.260. General provisions regarding support cases

Rule 5.260. General provisions regarding support cases

(a) Financial declarations

Except as provided below, for all hearings involving child, spousal, or domestic partner support, both parties must complete, file, and serve a current *Income and Expense Declaration* (form FL-150) on all parties.

(1) A party requesting support orders must include a current, completed *Income and Expense Declaration* (form FL-150) with the *Request for Order* (form FL-300) that is filed with the court and served on all parties.

(2) A party responding to a request for support orders must include a current, completed *Income and Expense Declaration* (form FL-150) with the *Responsive Declaration to Request for Order* (form FL-320) that is filed with the court and served on all parties.

(3) "Current" means the form has been completed within the past three months providing no facts have changed. The form must be sufficiently completed to allow the court to make an order.

(4) In child support hearings, a party may complete a current *Financial Statement (Simplified)* (form FL-155) instead of a current *Income and Expense Declaration* (form FL-150) if he or she meets the requirements allowing submission of a *Financial Statement (Simplified)* (form FL-155).

(5) *Financial Statement (Simplified)* (form FL-155) is not appropriate for use in proceedings to determine or modify spousal or domestic partner support, to determine or modify family support, or to determine attorney's fees and costs.

(b) Deviations from guideline child support in orders and judgments

(1) If a party contends that the amount of support as calculated under the statewide uniform guideline formula is inappropriate, that party must file a declaration stating the amount of support alleged to be proper and the factual and legal bases justifying a deviation from guideline support under Family Code section 4057.

(2) In its discretion, for good cause shown, the court may deviate from the amount of guideline support resulting from the computer calculation. If the court finds good cause to deviate from the statewide uniform guideline formula for child support, the court must state its findings in writing or on the record as required by Family Code sections 4056, 4057, and 4065.

(3) Stipulated agreements for child support that deviate from the statewide uniform guideline must include either a *Non-Guideline Child Support Findings Attachment* (form FL-342(A)) or language in the agreement or judgment conforming with Family Code sections 4056 and 4065.

(c) Request to change prior support orders

The supporting declaration submitted in a request to change a prior child, spousal, or domestic partner support order must include specific facts demonstrating a

change of circumstances. No change of circumstances must be shown to change a previously agreed upon child support order that was below the child support guidelines.

(d) Notification to the local child support agency

The party requesting court orders must provide the local child support agency timely notice of any request to establish, change, or enforce any child, spousal, or domestic partner support order if the agency is providing support enforcement services or has intervened in the case as described in Family Code section 17400.

(e) Judgment for support

(1) If child support is an issue in a judgment:

(A) Each party should file a proposed support calculation with the proposed judgment that sets forth the party's assumptions with regard to gross income, tax filing status, time-share, add-on expenses, and any other factor relevant to the support calculation.

(B) The moving party should file the documents in (A) with the proposed judgment if the judgment is based on respondent's default or a stipulation of the parties.

(C) The court may use and must permit parties or their attorneys to use any software certified by the Judicial Council to present support calculations to the court.

(2) If spousal or domestic partner support is an issue in a judgment:

(A) Use of support calculation software is not appropriate when requesting a judgment or modification of a judgment for spousal or domestic partner support.

(B) Petitioner or the parties may use *Spousal or Partnership Support Declaration Attachment* (form FL-157) to address the issue of spousal or domestic partner support under Family Code section 4320 when relevant to the case.

Rule 5.260 adopted effective January 1, 2013.

Article 2. Certification of Statewide Uniform Guideline Support Calculators

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 9, Child, Spousal, and Domestic Partner Support—Article 2, Certification of Statewide Uniform Guideline Support Calculators; amended January 1, 2013; adopted as Chapter 6.

Rule 5.275. Standards for computer software to assist in determining support

Rule 5.275. Standards for computer software to assist in determining support

(a) Authority

This rule is adopted under Family Code section 3830.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Standards

The standards for computer software to assist in determining the appropriate amount of child or spousal support are:

(1) The software must accurately compute the net disposable income of each parent as follows:

(A) Permit entry of the "gross income" of each parent as defined by Family Code section 4058;

(B) Either accurately compute the state and federal income tax liability under Family Code section 4059(a) or permit the entry of a figure for this amount; this figure, in the default state of the program, must not include the tax consequences of any spousal support to be ordered;

(C) Ensure that any deduction for contributions to the Federal Insurance Contributions Act or as otherwise permitted by Family Code section 4059(b) does not exceed the allowable amount;

(D) Permit the entry of deductions authorized by Family Code sections 4059(c) through (f); and

(E) Permit the entry of deductions authorized by Family Code section 4059(g) (hardship) while ensuring that any deduction subject to the limitation in Family Code section 4071(b) does not exceed that limitation.

(2) Using examples provided by the Judicial Council, the software must calculate a child support amount, using its default settings, that is accurate to within 1 percent of the correct amount. In making this determination, the Judicial Council must calculate the correct amount of support for each example and must then calculate the amount for each example using the software program. Each person seeking certification of software must supply a copy of the software to the Judicial Council. If the software does not operate on a standard Windows 95 or later compatible or Macintosh computer, the person seeking certification of the software must make available to the Judicial Council any hardware required to use the software. The Judicial Council may delegate the responsibility for the calculation and determinations required by this rule.

(3) The software must contain, either on the screen or in written form, a glossary defining each term used on the computer screen or in printed hard copy produced by the software.

(4) The software must contain, either on the screen or in written form, instructions for the entry of each figure that is required for computation of child support using the default setting of the software. These instructions must include but not be limited to the following:

(A) The gross income of each party as provided for by Family Code section 4058;

(B) The deductions from gross income of each party as provided for by Family Code section 4059 and subdivision (b)(1) of this rule;

(C) The additional items of child support provided for in Family Code section 4062; and

(D) The following factors rebutting the presumptive guideline amount: Family Code section 4057(b)(2) (deferred sale of residence) and 4057(b)(3) (income of subsequent partner).

(5) In making an allocation of the additional items of child support under subdivision (b)(4)(C) of this rule, the software must, as its default setting, allocate the expenses one-half to each parent. The software must also provide, in an easily selected option, the alternative allocation of the expenses as provided for by Family Code section 4061(b).

(6) The software or a license to use the software must be available to persons without restriction based on profession or occupation.

(7) The sale or donation of software or a license to use the software to a court or a judicial officer must include a license, without additional charge, to the court or judicial officer to permit an additional copy of the software to be installed on a computer to be made available by the court or judicial officer to members of the public.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(c) Expiration of certification

Any certification provided by the Judicial Council under Family Code section 3830 and this rule must expire one year from the date of its issuance unless another expiration date is set forth in the certification. The Judicial Council may provide for earlier expiration of a certification if (1) the provisions involving the calculation of tax consequences change or (2) other provisions involving the calculation of support change.

(Subd (c) amended effective January 1, 2003.)

(d) Statement of certified public accountant

If the software computes the state and federal income tax liability as provided in subdivision (b)(1)(B) of this rule, the application for certification, whether for original certification or for renewal, must be accompanied by a statement from a certified public accountant that

(1) The accountant is familiar with the operation of the software;

(2) The accountant has carefully examined, in a variety of situations, the operation of the software in regard to the computation of tax liability;

(3) In the opinion of the accountant the software accurately calculates the estimated actual state and federal income tax liability consistent with Internal Revenue Service and Franchise Tax Board procedures;

(4) In the opinion of the accountant the software accurately calculates the deductions under the Federal Insurance Contributions Act (FICA), including the amount for social security and for Medicare, and the deductions for

California State Disability Insurance and properly annualizes these amounts; and

(5) States which calendar year the statement includes and must clearly indicate any limitations on the statement. The Judicial Council may request a new statement as often as it determines necessary to ensure accuracy of the tax computation.

(Subd (d) amended effective January 1, 2003.)

(e) Renewal of certification

At least three months prior to the expiration of a certification, a person may apply for renewal of the certification. The renewal must include a statement of any changes made to the software since the last application for certification. Upon request, the Judicial Council will keep the information concerning changes confidential.

(Subd (e) amended effective January 1, 2003.)

(f) Modifications to the software

The certification issued by the Judicial Council under Family Code section 3830 and this rule imposes a duty upon the person applying for the certification to promptly notify the Judicial Council of all changes made to the software during the period of certification. Upon request, the Judicial Council will keep the information concerning changes confidential. The Judicial Council may, after receipt of information concerning changes, require that the software be recertified under this rule.

(Subd (f) amended effective January 1, 2003.)

(g) Definitions

As used in this chapter:

(1) "Software" refers to any program or digital application used to calculate the appropriate amount of child or spousal support.

(2) "Default settings" refers to the status in which the software first starts when it is installed on a computer system. The software may permit the default settings to be changed by the user, either on a temporary or a permanent basis, if (1) the user is permitted to change the settings back to the default

without reinstalling the software, (2) the computer screen prominently indicates whether the software is set to the default settings, and (3) any printout from the software prominently indicates whether the software is set to the default settings.

(3) "Contains" means, with reference to software, that the material is either displayed by the program code itself or is found in written documents supplied with the software.

(Subd (g) amended effective January 1, 2016; previously amended effective January 1, 2003.)

(h) Explanation of discrepancies

Before the Judicial Council denies a certificate because of failure to comply with the standards in paragraph (b)(1) or (b)(2) of this rule, the Judicial Council may request the person seeking certification to explain the differences in results.

(i) Application

An application for certification must be on a form supplied by the Judicial Council and must be accompanied by an application fee of $250.

(Subd (i) amended effective January 1, 2003.)

(j) Acceptability in the courts

(1) In all actions for child or family support brought by or otherwise involving the local child support agency under title IV-D of the Social Security Act, the Department of Child Support Services' California Guideline Child Support Calculator software program must be used by:

(A) Parties and attorneys to present support calculations to the court; and

(B) The court to prepare support calculations.

(2) In all non–title IV-D proceedings, the court may use and must permit parties or attorneys to use any software certified by the Judicial Council under this rule.

(Subd (j) amended effective January 1, 2009; adopted as subd (k) effective January 1, 2000; previously relettered effective January 1, 2003.)

Rule 5.275 amended effective January 1, 2016; adopted as rule 1258 effective December 1, 1993; previously amended and renumbered as rule 5.275 effective January 1, 2003; previously amended effective January 1, 2000, January 1, 2007, and January 1, 2009.

Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 10, Government Child Support Cases (Title IV-D Support Cases); adopted January 1, 2013.

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Rule 5.300. Purpose, authority, and definitions

(a) Purpose

The rules in this chapter are adopted to provide practice and procedure for support actions under title IV-D of the Social Security Act and under California statutory provisions concerning these actions.

(Subd (a) amended effective January 1, 2007.)

(b) Authority

These rules are adopted under Family Code sections 211, 3680(b), 4251(a), 4252(b), 10010, 17404, 17432, and 17400.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(c) Definitions

As used in these rules, unless the context requires otherwise, "title IV-D support action" refers to an action for child or family support that is brought by or otherwise involves the local child support agency under title IV-D of the Social Security Act.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 5.300 amended effective January 1, 2007; adopted as rule 1280 effective January 1, 1977; previously amended and renumbered effective January 1, 2003.

Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)

(a) Exceptional circumstances

The exceptional circumstances under which a judge may hear a title IV-D support action include:

(1) The failure of the judge to hear the action would result in significant prejudice or delay to a party including added cost or loss of work time;

(2) Transferring the matter to a commissioner would result in undue consumption of court time;

(3) Physical impossibility or difficulty due to the commissioner being geographically separate from the judge presently hearing the matter;

(4) The absence of the commissioner from the county due to illness, disability, death, or vacation; and

(5) The absence of the commissioner from the county due to service in another county and the difficulty of travel to the county in which the matter is pending.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Duty of judge hearing matter

A judge hearing a title IV-D support action under this rule and Family Code sections 4251(a) and 4252(b)(7) must make an interim order and refer the matter to the commissioner for further proceedings.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(c) Discretion of the court

Notwithstanding (a) and (b) of this rule, a judge may, in the interests of justice, transfer a case to a commissioner for hearing.

(Subd (c) amended effective January 1, 2007.)

Rule 5.305 amended effective January 1, 2007; adopted as rule 1280.1 effective July 1, 1997; previously amended and renumbered effective January 1, 2003.

Rule 5.310. Use of existing family law forms

When an existing family law form is required or appropriate for use in a title IV-D support action, the form may be used notwithstanding the absence of a notation for the other parent as a party under Family Code section 17404. The caption of the form must be modified by the person filing it by adding the words "Other parent:" and the name of the other parent to the form.

Rule 5.310 amended effective January 1, 2007; adopted as rule 1280.2 effective July 1, 1997; previously amended and renumbered effective January 1, 2003.

Rule 5.311. Implementation of new and revised governmental forms by local child support agencies

(a) General extended implementation

A local child support agency providing services as required by Family Code section 17400 must implement any new or revised form approved or adopted by the Judicial Council for support actions under title IV-D of the Social Security Act, and under California statutory provisions concerning these actions, within six months of the effective date of the form. During that six-month period, the local child support agency may properly use and file the immediately prior version of the form.

(Subd (a) amended effective January 1, 2007.)

(b) Judgment regarding parental obligations

When the local child support agency files a proposed judgment or proposed supplemental judgment in any action using *Judgment Regarding Parental Obligations (Governmental)* (form FL-630), a final judgment or supplemental judgment may be filed on:

(1) The same version of the form that was used with the initial action or that was filed as an amended proposed judgment; or

(2) The most current version of the form, unless there have been amendments to the form that result in substantial changes from the filed version. If the most current version of the form has been substantially changed from the filed version, then the filed version must be used for the final judgment. A substantial change is one that would change the relief granted in a final judgment from that noticed in a proposed or amended proposed judgment.

(Subd (b) amended effective January 1, 2007.)

Rule 5.311 amended effective January 1, 2007; adopted effective January 1, 2004.

Rule 5.315. Memorandum of points and authorities

Notwithstanding any other rule, including rule 313, a notice of motion in a title IV-D support action must not be required to contain points and authorities if the notice of motion uses a form adopted or approved by the Judicial Council. The absence of points and authorities under these circumstances may not be construed by the court as an admission that the motion is not meritorious and cause for its denial.

Rule 5.315 amended effective January 1, 2007; adopted as rule 1280.3 effective July 1, 1997; previously amended and renumbered effective January 1, 2003.

Rule 5.320. Attorney of record in support actions under title IV-D of the Social Security Act

The attorney of record on behalf of a local child support agency appearing in any action under title IV-D of the Social Security Act is the director of the local child support agency, or if the director of that agency is not an attorney, the senior attorney of that agency or an attorney designated by the director for that purpose. Notwithstanding any other rule, including but not limited to rule 2.100-2.119, the name, address, and telephone number of the county child support agency and the name of the attorney of record are sufficient for any papers filed by the child support agency. The name of the deputy or assistant district attorney or attorney of the child support agency, who is not attorney of record, and the State Bar number of the attorney of record or any of his or her assistants are not required.

Rule 5.320 amended effective January 1, 2007; adopted as rule 1280.4 effective July 1, 1997; previously amended effective January 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 5.324. Telephone appearance in title IV-D hearings and conferences

(a) Purpose

This rule is intended to improve the administration of the high volume of title IV-D child support hearings and conferences. Participation by both parents is needed for fair and accurate child support orders. The opportunity to appear by telephone fosters parental participation.

(b) Definition

"Telephone appearance," as used in this rule, includes any appearance by telephonic, audiovisual, videoconferencing, digital, or other electronic means.

(c) Permissibility of telephone appearances

Upon request, the court, in its discretion, may permit a telephone appearance in any hearing or conference related to an action for child support when the local child support agency is providing services under title IV-D of the Social Security Act.

(d) Exceptions

A telephone appearance is not permitted for any of the following except as permitted by Family Code section 5700.316:

(1) Contested trials, contempt hearings, orders of examination, and any matters in which the party or witness has been subpoenaed to appear in person; and

(2) Any hearing or conference for which the court, in its discretion on a case-by-case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2008.)

(e) Request for telephone appearance

(1) A party, an attorney, a witness, a parent who has not been joined to the action, or a representative of a local child support agency or government agency may request permission of the court to appear and testify by telephone. The local child support agency may request a telephone appearance on behalf of a party, a parent, or a witness when the local child support agency is appearing in the title IV-D support action, as defined by rule 5.300(c). The court may also, on its own motion, allow a telephone appearance.

(2) A party, an attorney, a witness, a parent who has not been joined to the action, or a representative of a local child support agency or government agency who wishes to appear by telephone at a hearing must file a request with the court clerk at least 12 court days before the hearing. A local child support agency that files the request for telephone appearance on behalf of a party, a parent, or a witness must file the request with the court clerk at least 12 court days before the hearing. This request must be served on the other parties, the local child support agency, and attorneys, if any. Service must be by personal delivery, fax, express mail, or other means reasonably calculated to ensure delivery by the close of the next court day.

(3) The mandatory *Request for Telephone Appearance (Governmental)* (form FL-679) must be filed to request a telephone appearance.

(Subd (e) amended effective January 1, 2008.)

(f) Opposition to telephone appearance

Any opposition to a request to appear by telephone must be made by declaration under penalty of perjury under the laws of the State of California. It must be filed with the court clerk and served at least eight court days before the court hearing.

Service on the person or agency requesting the telephone appearance; all parties, including the other parent, a parent who has not been joined to the action, the local child support agency; and attorneys, if any, must be accomplished using one of the methods listed in (e)(2).

(Subd (f) amended effective January 1, 2007.)

(g) Shortening time

The court may shorten the time to file, submit, serve, respond, or comply with any of the procedures specified in this rule.

(h) Notice by court

At least five court days before the hearing, the court must notify the person or agency requesting the telephone appearance, the parties, and attorneys, if any, of its decision. The court may direct the court clerk, the court-approved vendor, the local child support agency, a party, or an attorney to provide the notification. This notice may be given in person or by telephone, fax, express mail, e-mail, or other means reasonably calculated to ensure notification no later than five court days before the hearing date.

(Subd (h) amended effective January 1, 2007.)

(i) Need for personal appearance

If, at any time during the hearing, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

(j) Vendors, procedure, audibility, reporting, and information

Rule 3.670(j)–(q) applies to telephone appearances under this rule.

(Subd (j) amended effective January 1, 2014; previously amended effective January 1, 2007, July 1, 2008, and July 1, 2011.)

(k) Technical equipment

Courts that lack the technical equipment to implement telephone appearances are exempt from the rule.

Rule 5.324 amended effective January 1, 2017; adopted effective July 1, 2005; previously amended effective January 1, 2007, January 1, 2008, July 1, 2008, July 1, 2011, and January 1, 2014.

Rule 5.325. Procedures for clerk's handling of combined summons and complaint

(a) Purpose

This rule provides guidance to court clerks in processing and filing the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600) for actions under Family Code section 17400 or 17404.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Filing of complaint and issuance of summons

The clerk must accept the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600) for filing under Code of Civil Procedure section 411.10. The clerk must issue the original summons in accordance with Code of Civil Procedure section 412.20 by filing the original form FL-600 and affixing the seal of the court. The original form FL-600 must be retained in the court's file.

(Subd (b) amended effective January 1, 2003.)

(c) Issuance of copies of combined summons and complaint

Upon issuance of the original summons, the clerk must conform copies of the filed form FL-600 to reflect that the complaint has been filed and the summons has been issued. A copy of form FL-600 so conformed must be served on the defendant in accordance with Code of Civil Procedure section 415.10 et seq.

(Subd (c) amended effective January 1, 2003.)

(d) Proof of service of summons

Proof of service of the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600) must be on the form prescribed by rule 2.150 or any other proof of service form that meets the requirements of Code of Civil Procedure section 417.10.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(e) Filing of proposed judgment and amended proposed judgment

The proposed judgment must be an attachment to the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600) and must not be file-endorsed separately. An amended proposed judgment submitted for filing must be attached to the *Declaration for Amended Proposed Judgment* (form FL-616), as required by Family Code section 17430(c), and a proof of service by mail, if appropriate. Upon filing, the *Declaration for Amended Proposed Judgment* may be file-endorsed. The amended proposed judgment must not be file-endorsed.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 5.325 amended effective January 1, 2007; adopted as rule 1280.5 effective July 1, 1998; previously amended and renumbered effective January 1, 2003.

Rule 5.330. Procedures for child support case registry form

(a) Purpose

This rule provides guidance to court clerks in processing the *Child Support Case Registry Form* (form FL-191).

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Application

This rule applies to any action or proceeding in which there is an order for child support or family support except for cases in which the local child support agency provides support enforcement services under Family Code section 17400. This rule does not apply to cases in which the local child support agency provides support enforcement services under Family Code section 17400.

(Subd (b) amended effective January 1, 2003.)

(c) Requirement that form be filed

The court must require that a *Child Support Case Registry Form* (form FL-191), completed by one of the parties, be filed each time an initial court order for child support or family support or a modification of a court order for child support or family support is filed with the court. A party attempting to file an initial judgment or order for child support or family support or a modification of an order for child or family support without a completed *Child Support Case Registry Form* (form FL-191) must be given a blank form to complete. The form must be accepted if legibly handwritten in ink or typed. No filing fees may be charged for filing the form.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(d) Distribution of the form

Copies of the *Child Support Case Registry Form* (form FL-191) must be made available by the clerk's office and the family law facilitator's office to the parties without cost. A blank copy of the *Child Support Case Registry Form* (form FL-191) must be sent with the notice of entry of judgment to the party who did not submit the judgment or order.

(Subd (d) amended effective January 1, 2003.)

(e) Items on form that must be completed

A form must be considered complete if items 1b, 1c, 2, 5, and 6 are completed. Either item 3 or item 4 must also be completed as appropriate. If the form is submitted with the judgment or order for court approval, the clerk must complete item 1a once the judgment or order has been signed by the judicial officer and filed.

(Subd (e) amended effective January 1, 2003.)

(f) Clerk handling of form

The completed *Child Support Case Registry Form* (form FL-191) must not be stored in the court's file. It should be date and time stamped when received and stored in an area to which the public does not have access. At least once per month all forms received must be mailed to the California Department of Social Services.

(Subd (f) amended effective January 1, 2003.)

(g) Storage of confidential information

Provided that all information is kept confidential, the court may keep either a copy of the form or the information provided on the form in an electronic format.

Rule 5.330 amended effective January 1, 2007; adopted as rule 1280.6 effective July 1, 1999; previously amended and renumbered effective January 1, 2003.

Rule 5.335. Procedures for hearings on interstate income withholding orders

(a) Purpose

This rule provides a procedure for a hearing under Family Code section 4945 in response to an income withholding order.

(Subd (a) amended effective January 1, 2003.)

(b) Filing of request for hearing

A support obligor may contest the validity or enforcement of an income withholding order by filing a completed request for hearing. A copy of the income withholding order must be attached.

(c) Filing fee

The court must not require a filing fee to file the request for hearing under this rule.

(Subd (c) amended effective January 1, 2003.)

(d) Creation of court file

Upon receipt of the completed request for hearing and a copy of the income withholding order, the clerk must assign a case number and schedule a court date. The court date must be no earlier than 30 days from the date of filing and no later than 45 days from the date of filing.

(Subd (d) amended effective January 1, 2003.)

(e) Notice of hearing

The support obligor must provide the clerk with envelopes addressed to the obligor, the support enforcement agency that sent the income withholding order, and the obligor's employer. The support obligor must also provide an envelope addressed to the person or agency designated to receive the support payments if that person or agency is different than the support enforcement agency that sent the income

withholding order. The support obligor must provide sufficient postage to mail each envelope provided. Upon scheduling the hearing, the clerk must mail a copy of the request for hearing in each envelope provided by the support obligor.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(f) Use of court file in subsequent proceedings

Any subsequent proceedings filed in the same court that involve the same parties and are filed under the Uniform Interstate Family Support Act (UIFSA) must use the file number created under this rule.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(g) Definitions

As used in this rule:

(1) An "income withholding order" is the *Order/Notice to Withhold Income for Child Support* (form FL-195) issued by a child support enforcement agency in another state; and

(2) A "request for hearing" is the *Request for Hearing Regarding Wage and Earnings Assignment (Family Law—Governmental—UIFSA)* (form FL-450).

(Subd (g) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 5.335 amended effective January 1, 2007; adopted as rule 1280.7 effective July 1, 1999; previously amended and renumbered effective January 1, 2003.

Rule 5.340. Judicial education for child support commissioners

Every commissioner whose principal judicial assignment is to hear child support matters must attend the following judicial education programs:

(1) *Basic child support law education*

Within six months of beginning an assignment as a child support commissioner, the judicial officer must attend a basic educational program on California child support law and procedure designed primarily for judicial officers. The training program

must include instruction on both state and federal laws concerning child support. A judicial officer who has completed the basic educational program need not attend the basic educational program again.

(2) *Continuing education*

The judicial officer must attend an update on new developments in child support law and procedure at least once each calendar year.

(3) *Other child support education*

To the extent that judicial time and resources are available, the judicial officer is encouraged to attend additional educational programs on child support and other related family law issues.

(4) *Other judicial education*

The requirements of this rule are in addition to and not in lieu of the requirements of rule 10.462.

Rule 5.340 amended effective January 1, 2017; adopted as rule 1280.8 effective July 1, 1999; previously amended and renumbered effective January 1, 2003; previously amended effective January 1, 2007.

Rule 5.350. Procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed

(a) Purpose

This rule provides a procedure for a hearing to set aside a voluntary declaration of paternity under Family Code section 7575(c).

(b) Filing of request for hearing

A person who has signed a voluntary declaration of paternity, or a local child support agency, may ask that the declaration be set aside by filing a completed *Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity* (form FL-280).

(Subd (b) amended effective January 1, 2006; previously amended effective January 1, 2003.)

(c) Creation of court file

On receipt of the completed request for hearing, the clerk must assign a case number and schedule a court date. The court date must be no earlier than 31 days after the date of filing and no later than 45 days after the date of filing.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(d) Notice of hearing

The person who is asking that the voluntary declaration of paternity be set aside must serve, either by personal service or by mail, the request for hearing and a blank *Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity* (form FL-285) on the other person who signed the voluntary declaration of paternity. If the local child support agency is providing services in the case, the person requesting the set-aside must also serve a copy of the request for hearing on the agency.

(Subd (d) amended effective January 1, 2003.)

(e) Order after hearing

The decision of the court must be written on the *Order After Hearing on Motion to Set Aside Voluntary Declaration of Paternity* (form FL-290). If the voluntary declaration of paternity is set aside, the clerk must mail a copy of the order to the Department of Child Support Services in order that the voluntary declaration of paternity be purged from the records.

(Subd (e) amended effective January 1, 2003.)

(f) Use of court file in subsequent proceedings

Pleadings in any subsequent proceedings, including but not limited to proceedings under the Uniform Parentage Act, that involve the parties and child named in the voluntary declaration of paternity must be filed in the court file that was initiated by the filing of the *Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity* (form FL-280).

(Subd (f) amended effective January 1, 2003.)

Rule 5.350 amended effective January 1, 2007; adopted as rule 1280.10 effective July 1, 2000; previously amended and renumbered effective January 1, 2003; previously amended effective January 1, 2006.

Rule 5.355. Minimum standards of training for court clerk staff whose assignment includes title IV-D child support cases

Any court clerk whose assignment includes title IV-D child support cases must participate in a minimum of six hours of continuing education annually in federal and state laws concerning child support and related issues.

Rule 5.355 amended effective January 1, 2007; adopted as rule 1280.11 effective July 1, 2000; previously amended and renumbered effective January 1, 2003.

Rule 5.360. Appearance by local child support agency

When a local child support agency is providing services as required by Family Code section 17400, that agency may appear in any action or proceeding that it did not initiate by giving written notice to all parties, on *Notice Regarding Payment of Support* (form FL-632), that it is providing services in that action or proceeding under title IV-D of the Social Security Act. The agency must file the original of the notice in the action or proceeding with proof of service by mail on the parties. On service and filing of the notice, the court must not require the local child support agency to file any other notice or pleading before that agency appears in the action or proceeding.

Rule 5.360 amended effective January 1, 2007; adopted as rule 1280.12 effective January 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 5.365. Procedure for consolidation of child support orders

(a) When an order of consolidation of actions has been made under section 1048(a) of the Code of Civil Procedure in cases in which a local child support agency is appearing under section 17400 of the Family Code, or when a motion to consolidate or combine two or more child support orders has been made under section 17408 of the Family Code, the cases in which those orders were entered must be consolidated as follows:

(1) *Priority of consolidation*

The order consolidating cases that contain child support orders must designate the primary court file into which the support orders must be consolidated and must also designate the court files that are subordinate. Absent an order upon showing of good cause, the cases or child support

orders must be consolidated into a single court file according to the following priority, including those cases or orders initiated or obtained by a local child support agency under division 17 of the Family Code that are consolidated under either section 1048(a) of the Code of Civil Procedure or section 17408 of the Family Code:

(A) If one of the cases or child support orders to be consolidated is in an action for nullity, dissolution, or legal separation brought under division 6 of the Family Code, all cases and orders so consolidated must be consolidated into that action, which must be the primary file.

(B) If none of the cases or child support orders to be consolidated is in an action for nullity, dissolution, or legal separation, but one of the child support orders to be consolidated has been issued in an action under the Uniform Parentage Act (Fam. Code, div. 12, pt. 3), all orders so consolidated must be consolidated into that action, which must be the primary file.

(C) If none of the cases or child support orders to be consolidated is in an action for nullity, dissolution, or legal separation or in an action under the Uniform Parentage Act, but one of the child support orders to be consolidated has been issued in an action commenced by a Petition for Custody and Support of Minor Children (form FL-260), all orders so consolidated must be consolidated into that action, which must be the primary file.

(D) If none of the cases or child support orders to be consolidated is in an action for nullity, dissolution, or legal separation or in an action under the Uniform Parentage Act, the case or cases with the higher number or numbers must be consolidated into the case with the lowest number, which must be the primary file. Child support orders in cases brought under the Domestic Violence Protection Act (Fam. Code, div. 10, pt. 4) or any similar law may be consolidated under this rule. However, a domestic violence case must not be designated as the primary file.

(2) *Notice of consolidation*

Upon issuance of the consolidation order, the local child support agency must prepare and file in each subordinate case a *Notice of Consolidation* (form FL-920), indicating that the support orders in those actions are consolidated into the primary file. The notice must state the date of the consolidation, the primary file number, and the case number of each of the cases so consolidated. If the local child support agency was not a participant in the

proceeding in which the consolidation was ordered, the court must designate the party to prepare and file the notice.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Subsequent filings in consolidated cases

Notwithstanding any other rule, including but not limited to rule 367, upon consolidation of cases with child support orders, all filings in those cases, whether dealing with child support or not, must occur in the primary court action and must be filed under that case, caption, and number only. All further orders must be issued only in the primary action, and no further orders may be issued in a subordinate court file. All enforcement and modification of support orders in consolidated cases must occur in the primary court action regardless of in which action the order was originally issued.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 5.365 amended effective January 1, 2007; adopted as rule 1285.13 effective January 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 5.370. Party designation in interstate and intrastate cases

When a support action that has been initiated in another county or another state is filed, transferred, or registered in a superior court of this state under the Uniform Interstate Family Support Act (Fam. Code, div. 9, pt. 5, ch. 6, commencing with § 4900), the intercounty support enforcement provisions of the Family Code (div. 9, pt. 5, ch. 8, art. 9, commencing with § 5600), or any similar law, the party designations in the caption of the action in the responding court must be as follows:

(1) *New actions initiated under the Uniform Interstate Family Support Act*

The party designation in the superior court of this state, responding to new actions initiated under the Uniform Interstate Family Support Act (Fam. Code, div. 9, pt. 5, ch. 6, commencing with § 4900), must be the party designation that appears on the first page of the Uniform Support Petition (form FL-500/OMB 0970-0085) in the action.

(2) *Registered orders under the Uniform Interstate Family Support Act or state law*

The party designation in all support actions registered for enforcement or modification must be the one that appears in the original (earliest) order being registered.

Rule 5.370 amended effective January 1, 2007; adopted as rule 1285.14 effective January 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 5.372. Transfer of title IV-D case to a tribal court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases from a California superior court to a tribal court.

(b) Definitions

(1) "Tribal court" means any tribal court of a federally recognized Indian tribe located in California that is receiving funding from the federal government to operate a child support program under title IV-D of the Social Security Act (42 U.S.C. § 654 et seq.).

(2) "Superior court" means a superior court of the state of California.

(3) "Title IV-D child support cases" include all cases where title IV-D services are being provided whether the case originates from the local child support agency's filing of a summons and complaint or later becomes a title IV-D case when the local child support agency registers a child support order or intervenes in a child support action by filing a change of payee.

(c) Disclosure of related case

A party must disclose in superior court whether there is any related action in tribal court in the first pleading, in an attached affidavit, or under oath. A party's disclosure of a related action must include the names and addresses of the parties to the action, the name and address of the tribal court where the action is filed, the case number of the action, and the name of judge assigned to the action, if known.

(d) Notice of intent to transfer case

Before filing a motion for case transfer of a child support matter from a superior court to a tribal court, the party requesting the transfer, the state title IV-D agency, or the tribal IV-D agency must provide the parties with notice of their right to object to the case transfer and the procedures to make such an objection.

(e) Determination of concurrent jurisdiction

The superior court may, on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under California Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases. When ruling on a motion to transfer, the superior court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party has objected in a timely manner. On the filing of a timely objection to the transfer, the superior court must conduct a hearing on the record considering all the relevant factors set forth in (f).

(f) Evidentiary considerations

In making a determination on the application for case transfer, the superior court must consider:

(1) The nature of the action;

(2) The interests of the parties;

(3) The identities of the parties;

(4) The convenience of the parties and witnesses;

(5) Whether state or tribal law will apply;

(6) The remedy available in the superior court or tribal court; and

(7) Any other factors deemed necessary by the superior court.

(g) Order on request to transfer

The court must issue a final order on the request to transfer including a determination of whether concurrent jurisdiction exists.

(h) Proceedings after order granting transfer

Once the superior court has granted the application to transfer, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court.

Rule 5.372 adopted effective January 1, 2014.

Rule 5.375. Procedure for a support obligor to file a motion regarding mistaken identity

(a) Purpose

This rule applies to a support obligor who claims that support enforcement actions have erroneously been taken against him or her by the local child support agency because of a mistake in the support obligor's identity. This rule sets forth the procedure for filing a motion in superior court to establish the mistaken identity under Family Code section 17530 after the support obligor has filed a claim of mistaken identity with the local child support agency and the claim has been denied.

(Subd (a) amended effective January 1, 2003.)

(b) Procedure for filing motion in superior court

The support obligor's motion in superior court to establish mistaken identity must be filed on *Request for Order* (form FL-300) with appropriate attachments. The support obligor must also file as exhibits to the request for order a copy of the claim of mistaken identity that he or she filed with the local child support agency and a copy of the local child support agency's denial of the claim.

(Subd (b) amended effective January 1, 2013; previously amended effective January 1, 2003, and January 1, 2007.)

Rule 5.375 amended effective January 1, 2013; adopted as rule 1280.15 effective January 1, 2001; previously amended and renumbered effective January 1, 2003; previously amended effective January 1, 2007.

Chapter 11. Domestic Violence Cases

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 11, Domestic Violence Cases; adopted January 1, 2013.

Article 1. Domestic Violence Prevention Act Cases

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 11, Domestic Violence Cases—Article 1, Domestic Violence Prevention Act Cases; adopted January 1, 2013.

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

Rule 5.381. Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

(a) No requirement to open separate case; no filing fee

(1) If the court accepts the agreement of parentage and issues a judgment of parentage, the court may not require a party to open a separate parentage or other type of case in which to file the judgment. The court may open a separate type of case, but the court must not charge a fee for filing the judgment of parentage in the new case.

(2) When a judgment of parentage is filed in a Domestic Violence Prevention Act case in which a restraining order is currently in effect, no filing fee may be charged.

(b) Retention

The judgment must be retained by the court as a paternity record under Government Code section 68152.

(c) Notice of Entry of Judgment

When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court must serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

(Subd (c) amended effective January 1, 2017.)

Rule 5.380 amended effective January 1, 2017; adopted effective January 1, 2012.

Rule 5.381. Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases

(a) Application of rule

This rule addresses court procedures for the modification of child custody, visitation, and support orders in accordance with Family Code section 6340(a).

(b) Filing fees

A filing fee may be charged on a request to modify a child custody, visitation, or support order only after a protective order, as defined in Family Code section 6218, is no longer in effect. The filing fee, if charged, is the same as the filing fee for a motion, application, or any other paper requiring a hearing after the first paper.

(c) Retention

The court must retain any child custody, visitation, or support order filed in a Domestic Violence Prevention Act as a Family Law order under Government Code section 68152(c)(5).

Rule 5.381 adopted effective January 1, 2012.

Article 2. Tribal Court Protective Orders

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 11, Domestic Violence Cases—Article 2, Tribal Court Protective Orders; adopted January 1, 2013.

Rule 5.386. Procedures for filing a tribal court protective order

Rule 5.386. Procedures for filing a tribal court protective order

(a) Request for written procedures for filing a tribal court protective order

At the request of any tribal court located within the county, a court must adopt a written procedure or local rule to permit the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404.

(b) Process for registration of order

The written procedure or local rule developed in consultation with the local tribal court or courts must provide a process for:

(1) The tribal court or courts to contact a representative of the superior court to inform him or her that a request for registration of a tribal court protective order will be made;

(2) Confirmation of receipt of the request for registration of the order; and

(3) Return of copies of the registered order to the tribal court or the protected person.

(c) No filing fee required

In accordance with Family Code section 6404(b), no fee may be charged for the fax or electronic filing registration of a tribal court protective order.

(d) Facsimile coversheet

The *Fax Transmission Cover Sheet for Registration of Tribal Court Protective Order* (form DV-610) or similar cover sheet established by written procedure or local rule must be used when fax filing a tribal court protective order. The cover sheet must be the first page transmitted, to be followed by any special handling instructions needed to ensure that the document will comply with local rules. Neither the cover sheet nor the special handling instructions are to be filed in the case. The court is not required to keep a copy of the cover sheet.

Rule 5.386 adopted effective July 1, 2012.

Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 12, Separate Trials (Bifurcation) and Interlocutory Appeals; adopted January 1, 2013.

Article 1. Separate Trials

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 12, Separate Trials (Bifurcation) and Interlocutory Appeals—Article 1, Separate Trials; adopted January 1, 2013.

Rule 5.390. Bifurcation of issues

Rule 5.390. Bifurcation of issues

(a) Request for order to bifurcate

As part of the noticed *Request for Order* (FL-300) of a party, the stipulation of the parties, case management, or the court's own motion, the court may bifurcate one or more issues to be tried separately before other issues are tried. A party requesting a separate trial or responding to a request for a separate trial must complete *Application or Response to Application for Separate Trial* (form FL-315).

(b) When to bifurcate

The court may separately try one or more issues before trial of the other issues if resolution of the bifurcated issue is likely to simplify the determination of the other issues. Issues that may be appropriate to try separately in advance include:

(1) Validity of a postnuptial or premarital agreement;

(2) Date of separation;

(3) Date to use for valuation of assets;

(4) Whether property is separate or community;

(5) How to apportion increase in value of a business;

(6) Existence or value of business or professional goodwill;

(7) Termination of status of a marriage or domestic partnership;

(8) Child custody and visitation (parenting time);

(9) Child, spousal, or domestic partner support;

(10) Attorney's fees and costs;

(11) Division of property and debts;

(12) Reimbursement claims; or

(13) Other issues specific to a family law case.

(c) Alternate date of valuation

Requests for separate trial regarding alternate date of valuation under Family Code section 2552(b) must be accompanied by a declaration stating the following:

(1) The proposed alternate valuation date;

(2) Whether the proposed alternate valuation date applies to all or only a portion of the assets and, if the *Request for Order* (FL-300) is directed to only a portion of the assets, the declaration must separately identify each such asset; and

(3) The reasons supporting the alternate valuation date.

(d) Separate trial to terminate status of marriage or domestic partnership

(1) All pension plans that have not been divided by court order that require joinder must be joined as a party to the case before a petitioner or respondent may file a request for a separate trial to terminate marital status or the domestic partnership. Parties may refer to *Retirement Plan Joinder—Information Sheet* (form FL-318-INFO) to help determine whether their retirement benefit plans must be joined.

(2) The party not requesting termination of status may ask the court:

(A) To order that the judgment granting a dissolution include conditions that preserve his or her claims in retirement benefit plans, health insurance, and other assets; and

(B) For other orders made as conditions to terminating the parties' marital status or domestic partnership.

(3) The court must use *Bifurcation of Status of Marriage or Domestic Partnership—Attachment* (form FL-347) as an attachment to the order after hearing in these matters.

(4) In cases involving division of pension benefits acquired by the parties during the marriage or domestic partnership, the court must use *Pension Benefits—Attachment to Judgment* (form FL-348) to set out the orders upon severance of the status of marriage or domestic partnership. The form serves as a temporary qualified domestic relations order and must be attached to the status-only judgment and then served on the plan administrator. It can also be attached to a judgment to allow the parties time to prepare a qualified domestic relations order.

(e) Notice by clerk

Within 10 days after the order deciding the bifurcated issue and any statement of decision under rule 3.1591 have been filed, the clerk must serve copies to the parties and file a certificate of mailing or a certificate of electronic service.

(Subd (e) amended effective January 1, 2017.)

Rule 5.390 amended effective January 1, 2017; adopted effective January 1, 2013.

Article 2. Interlocutory Appeals

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 12, Separate Trials (Bifurcation) and Interlocutory Appeals—Article 2, Interlocutory Appeals; adopted January 1, 2013.

Rule 5.392. Interlocutory appeals

(a) Applicability

This rule does not apply to appeals from the court's termination of marital status as a separate issue, or to appeals from other orders that are separately appealable.

(Subd (a) amended effective January 1, 2003; previously amended effective January 1, 1994.)

(b) Certificate of probable cause for appeal

(1) The order deciding the bifurcated issue may include an order certifying that there is probable cause for immediate appellate review of the issue.

(2) If it was not in the order, within 10 days after the clerk serves the order deciding the bifurcated issue, a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of the order. The motion must be heard within 30 days after the order deciding the bifurcated issue is served.

(3) The clerk must promptly serve notice of the decision on the motion to the parties. If the motion is not determined within 40 days after serving the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2002, and January 1, 2003.)

(c) Content and effect of certificate

(1) A certificate of probable cause must state, in general terms, the reason immediate appellate review is desirable, such as a statement that final resolution of the issue:

(A) Is likely to lead to settlement of the entire case;

(B) Will simplify remaining issues;

(C) Will conserve the courts' resources; or

(D) Will benefit the well-being of a child of the marriage or the parties.

(2) If a certificate is granted, trial of the remaining issues may be stayed. If trial of the remaining issues is stayed, unless otherwise ordered by the trial court on noticed motion, further discovery must be stayed while the certification is pending. These stays terminate upon the expiration of time for filing a motion to appeal if none is filed, or upon the Court of Appeal denying all motions to appeal, or upon the Court of Appeal decision becoming final.

(Subd (c) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(d) Motion to appeal

(1) If the certificate is granted, a party may, within 15 days after the court serves the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.

(2) The motion must contain:

(A) A brief statement of the facts necessary to an understanding of the issue;

(B) A statement of the issue; and

(C) A statement of why, in the context of the case, an immediate appeal is desirable.

(3) The motion must include or have attached:

(A) A copy of the decision of the trial court on the bifurcated issue;

(B) Any statement of decision;

(C) The certification of the appeal; and

(D) A sufficient partial record to enable the Court of Appeal to determine whether to grant the motion.

(4) A summary of evidence and oral proceedings, if relevant, supported by a declaration of counsel may be used when a transcript is not available.

(5) The motion must be accompanied by the filing fee for an appeal under rule 8.100(c) and Government Code sections 68926 and 68926.1.

(6) A copy of the motion must be served on the trial court.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2002, January 1, 2003, and January 1, 2007.)

(e) Proceedings to determine motion

(1) Within 10 days after service of the motion, an adverse party may serve and file an opposition to it.

(2) The motion to appeal and any opposition will be submitted without oral argument, unless otherwise ordered.

(3) The motion to appeal is deemed granted unless it is denied within 30 days from the date of filing the opposition or the last document requested by the court, whichever is later.

(4) Denial of a motion to appeal is final forthwith and is not subject to rehearing. A party aggrieved by the denial of the motion may petition for review by the Supreme Court.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2002, and January 1, 2003.)

(f) Proceedings if motion to appeal is granted

(1) If the motion to appeal is granted, the moving party is deemed an appellant, and the rules governing other civil appeals apply except as provided in this rule.

(2) The partial record filed with the motion will be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion is served, a party notifies the Court of Appeal of additional portions of the record that are needed for the full consideration of the appeal.

(3) If a party notifies the court of the need for an additional record, the additional material must be secured from the trial court by augmentation under rule

8.155, unless it appears to the Court of Appeal that some of the material is not needed.

(4) Briefs must be filed under a schedule set for the matter by the Court of Appeal.

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2002, January 1, 2003, and January 1, 2007.)

(g) Review by writ or appeal

The trial court's denial of a certification motion under (b) does not preclude review of the decision on the bifurcated issue by extraordinary writ.

(Subd (g) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(h) Review by appeal

None of the following precludes review of the decision on the bifurcated issue upon appeal of the final judgment:

(1) A party's failure to move for certification under (b) for immediate appeal;

(2) The trial court's denial of a certification motion under (b) for immediate appeal;

(3) A party's failure to move to appeal under (d); and

(4) The Court of Appeals denial of a motion to appeal under (d).

Rule 5.392 renumbered effective January 1, 2017; adopted as rule 1269.5 effective July 1, 1989; previously amended and renumbered as rule 5.180 effective January 1, 2003; previously amended effective January 1, 1994, January 1, 2002, January 1, 2007, and January 1, 2013.

Chapter 13. Trials and Long-Cause Hearings

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 13, Trials and Long Cause Hearings; adopted January 1, 2013.

Rule 5.393. Setting trials and long-cause hearings
Rule 5.394. Trial or hearing brief

Rule 5.393. Setting trials and long-cause hearings

(a) Definitions

For purposes of this rule:

(1) A "trial day" is defined as a period no less than two and a half hours of a single court day.

(2) A "long-cause hearing" is defined as a hearing on a request for order that extends more than a single court day.

(3) A "trial brief" or "hearing brief" is a written summary or statement submitted by a party that explains to a judge the party's position on particular issues that will be part of the trial or hearing.

(b) Conference with judge before trial or long-cause hearing

The judge may schedule a conference with the parties and their attorneys before any trial or long-cause hearing.

(1) *Time estimates*

During the conference, each party must provide an estimate of the amount of time that will be needed to complete the trial or long-cause hearing. The estimate must take into account the time needed to examine witnesses and introduce evidence at the trial.

(2) *Trial or hearing brief*

The judge must determine at the conference whether to require each party to submit a trial or hearing brief. If trial briefs will be required, they must comply with the requirements of rule 5.394. Any additional requirements to the brief must be provided to the parties in writing before the end of the conference.

(c) Sequential days

Consistent with the goal of affording family law litigants continuous trials and long-cause hearings without interruption, when trials or long-cause hearings are set, they must be scheduled on as close to sequential days as the calendar of the trial judge permits.

(d) Intervals between trial or hearing days

When trials or long-cause hearings are not completed in the number of days originally scheduled, the court must schedule the remaining trial days as soon as possible on the earliest available days with the goal of minimizing intervals between days for trials or long-cause hearings.

Rule 5.393 adopted effective January 1, 2013.

Rule 5.394. Trial or hearing brief

(a) Contents of brief

For cases in which the judge orders each party to complete a trial or hearing brief or other pleading, the contents of the brief must include at least:

(1) The statistical facts and any disputes about the statistical facts. Statistical facts that may apply to the case could include:

(A) Date of the marriage or domestic partnership;

(B) Date of separation;

(C) Length of marriage or domestic partnership in years and months; and

(D) Names and ages of the parties' minor children;

(2) A brief summary of the case;

(3) A statement of any issues that need to be resolved at trial;

(4) A brief statement summarizing the contents of any appraisal or expert report to be offered at trial;

(5) A list of the witnesses to be called at trial and a brief description of the anticipated testimony of each witness, as well as name, business address, and statement of qualifications of any expert witness;

(6) Any legal arguments on which a party intends to rely; and

(7) Any other matters determined by the judge to be necessary and provided to the parties in writing.

(b) Service of brief

The parties must serve the trial or hearing brief on all parties and file the brief with the court a minimum of 5 court days before the trial or long-cause hearing.

Rule 5.394 adopted effective January 1, 2013.

Chapter 14. Default Proceedings and Judgments

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 14, Default Proceedings and Judgments; adopted January 1, 2013.

Rule 5.401. Default
Rule 5.402. Request for default; forms
Rule 5.405. Judgment checklists
Rule 5.407. Review of default and uncontested judgments submitted on the basis of declaration under Family Code section 2336
Rule 5.409. Default and uncontested judgment hearings on judgments submitted on the basis of declarations under Family Code section 2336
Rule 5.411. Stipulated judgments
Rule 5.413. Notice of entry of judgment
Rule 5.415. Completion of notice of entry of judgment

Rule 5.401. Default

(a) Entry of default

Upon proper application of the petitioner, the clerk must enter a default if the respondent or defendant fails within the time permitted to:

(1) Make an appearance as stated in rule 5.62;

(2) File a notice of motion to quash service of summons under section 418.10 of the Code of Civil Procedure; or

(3) File a petition for writ of mandate under section 418.10 of the Code of Civil Procedure.

(b) Proof of facts

(1) The petitioner may apply to the court for the relief sought in the petition at the time default is entered. The court must require proof to be made of the facts stated in the petition and may enter its judgment based on that proof.

(2) The court may permit the use of a completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160) for all or any part of the proof required or permitted to be offered on any issue to which they are relevant.

(c) Disposition of all matters required

A judgment based on a default must include disposition of all matters subject to the court's jurisdiction for which a party seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time.

Rule 5.401 adopted effective January 1, 2013.

Rule 5.402. Request for default; forms

(a) Forms

No default may be entered in any proceeding unless a request has been completed on a *Request to Enter Default* (form FL-165) and filed by the petitioner. However, an *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) are not required if the petition contains no request for support, costs, or attorney's fees. A *Property Declaration* (form FL-160) is not required if the petition contains no request for property.

(b) Service address required

For the purpose of completing the declaration of mailing, unless service was by publication and the address of respondent is unknown, it is not sufficient to state that the address of the party to whom notice is given is unknown or unavailable.

Rule 5.402 adopted effective January 1, 2013.

Rule 5.405. Judgment checklists

The *Judgment Checklist—Dissolution/Legal Separation* (form FL-182) lists the forms that courts may require to complete a judgment based on default or uncontested judgment in dissolution or legal separation cases based on a declaration under Family Code section 2336. The court may not require any additional forms or attachments.

Rule 5.405 renumbered effective January 1, 2013; adopted as rule 5.146 effective July 1, 2012.

Rule 5.407. Review of default and uncontested judgments submitted on the basis of declaration under Family Code section 2336

Once a valid proof of service of summons has been filed with the court or respondent has made a general appearance in the case:

(a) Court review

The court must conduct a procedural review of all the documents submitted for judgment based on default or uncontested judgments submitted under Family Code section 2336 and notify the attorneys or self-represented litigants who submitted them of all identified defects.

(Subd (a) amended effective January 1, 2013.)

(b) Notice of errors and omissions

Basic information for correction of the defects must be included in any notification to attorneys or self-represented litigants made under (a).

Rule 5.407 amended and renumbered effective January 1, 2013; adopted as rule 5.147 effective July 1, 2012.

Rule 5.409. Default and uncontested judgment hearings on judgments submitted on the basis of declarations under Family Code section 2336

The decision to hold a hearing in a case in which a judgment has been submitted on the basis of a declaration under Family Code section 2336 should be made on a case-by-case basis at the discretion of the court or request of a party. Courts must allow judgments in default and uncontested cases to be submitted by declaration pursuant to section 2336 and must not require that a hearing be conducted in all such cases.

Rule 5.409 renumbered effective January 1, 2013; adopted as rule 5.148 effective July 1, 2012.

Rule 5.411. Stipulated judgments

(a) Format

A stipulated judgment (which must be attached to form FL-180 or form FL-250) may be submitted to the court for signature as an uncontested matter or at the time of the hearing on the merits and must contain the exact terms of any judgment proposed to be entered in the case. At the end, immediately above the space

reserved for the judge's signature, the stipulated judgment must contain the following:

The foregoing is agreed to by:

_____ (Petitioner)	_____ (Respondent)

Approved as conforming to the agreement of the parties:

_____ (Attorney for Petitioner)	_____ (Attorney for Respondent)

(b) Disposition of all matters required

A stipulated judgment must include disposition of all matters subject to the court's jurisdiction for which a party seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time. A stipulated judgment constitutes a written agreement between the parties as to all matters covered by the stipulation.

Rule 5.411 adopted effective January 1, 2013.

Rule 5.413. Notice of entry of judgment

(a) Notice by clerk

Notwithstanding Code of Civil Procedure section 664.5, the clerk must give notice of entry of judgment, using *Notice of Entry of Judgment* (form FL-190), to the attorney for each party or to the party if self-represented, of the following:

(1) A judgment of legal separation;

(2) A judgment of dissolution;

(3) A judgment of nullity;

(4) A judgment establishing parental relationship (on form FL-190); or

(5) A judgment regarding custody or support.

(b) Notice to local child support agency form

This rule applies to local child support agency proceedings except that the notice of entry of judgment must be on *Notice of Entry of Judgment and Proof of Service by Mail* (form FL-635).

Rule 5.413 adopted effective January 1, 2013.

Rule 5.415. Completion of notice of entry of judgment

(a) Required attachments

Every person who submits a judgment for signature by the court must submit:

(1) Stamped envelopes addressed to the parties (if they do not have attorneys), or to the attorneys of record (if the parties are represented) that show the address of the court clerk as the return address; and

(2) An original and at least two additional copies of the *Notice of Entry of Judgment* (form FL-190).

(b) Fully completed

Form FL-190 must be fully completed except for the designation of the date entered, the date of mailing, and signatures. It must specify in the certificate of mailing the place where notices have been given to the other party.

(c) Address of respondent or defendant

If there has been no appearance by the other party, the address stated in the affidavit of mailing in part 3 of the *Request to Enter Default* (form FL-165) must be the party's last known address and must be used for mailing form FL-190 to that party. In support proceedings initiated by the local child support agency, an envelope addressed to the child support agency need not be submitted. If service was by publication and the address of respondent or defendant is unknown, those facts must be stated in place of the required address.

(d) Consequences of failure to comply

Failure to complete the form or to submit the envelopes is cause for refusal to sign the judgment until compliance with the requirements of this rule.

(e) Application to local child support agencies

This rule applies to local child support agency proceedings filed under the Family Code except that:

(1) The local child support agency must use form *Notice of Entry of Judgment and Proof of Service by Mail* (form FL-635);

(2) The local child support agency may specify in the certificate of mailing that the address where the *Notice of Entry of Judgment* (form FL-190) was mailed is on file with the local child support agency; and

(3) An envelope addressed to the local child support agency need not be submitted.

Rule 5.415 adopted effective January 1, 2013.

Chapter 15. Settlement Services

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 15, Settlement Services; adopted January 1, 2013.

Rule 5.420. Domestic violence procedures for court-connected settlement service providers

Rule 5.420. Domestic violence procedures for court-connected settlement service providers

(a) Purpose

This rule sets forth the protocol for court-connected settlement service providers handling cases involving domestic violence and not involving child custody or visitation (parenting time).

(b) Definitions

(1) "Domestic violence" is used as defined in Family Code sections 6203 and 6211.

(2) "Protective order" is synonymous with "domestic violence restraining order" as well as the following:

(A) "Emergency protective order" under Family Code section 6215;

(B) "Protective order" under Family Code section 6218;

(C) "Restraining order" under Welfare and Institutions Code section 213.5; and

(D) "Orders by court" under Penal Code section 136.2.

(3) "Settlement service(s)" refers to voluntary procedures in which the parties in a family law case agree to meet with a neutral third party professional for the purpose of identifying the issues involved in the case and attempting to reach a resolution of those issues by mutual agreement.

(c) Duties of settlement service providers

Courts providing settlement services must develop procedures for handling cases involving domestic violence. In developing these procedures, courts should consider:

(1) Reviewing court files or, if available, intake forms, to inform the person providing settlement services of any existing protective orders or history of domestic violence;

(2) Making reasonable efforts to ensure the safety of parties when they are participating in services;

(3) Avoiding negotiating with the parties about using violence with each other, whether either party should or should not obtain or dismiss a restraining order, or whether either party should cooperate with criminal prosecution;

(4) Providing information and materials that describe the settlement services and procedures with respect to domestic violence;

(5) Meeting first with the parties separately to determine whether joint meetings are appropriate in a case in which there has been a history of domestic violence between the parties or in which a protective order is in effect;

(6) Conferring with the parties separately regarding safety-related issues and the option of continuing in separate sessions at separate times if domestic violence is discovered after services have begun;

(7) Protecting the confidentiality of each party's times of arrival, departure, and meeting for separate sessions when appropriate; and

(8) Providing information to parties about support persons participating in joint or separate sessions.

(d) Training and education

All settlement service providers should participate in programs of continuing instruction in issues related to domestic violence, including child abuse.

Rule 5.420 adopted effective January 1, 2013.

Chapter 16. Limited Scope Representation; Attorney's Fees and Costs

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 16, Limited Scope Representation; Attorney's Fees and Costs; adopted January 1, 2013.

Article 1. Limited Scope Representation

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 16, Limited Scope Representation; Attorney's Fees and Costs—Article 1, Limited Scope Representation; adopted January 1, 2013.

Rule 5.425. Limited scope representation; application of rules

Rule 5.425. Limited scope representation; application of rules

(a) Definition

"Limited scope representation" is a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person.

(b) Application

This rule applies to limited scope representation in family law cases. Rules 3.35 through 3.37 apply to limited scope representation in civil cases.

(c) Types of limited scope representation

These rules recognize two types of limited scope representation:

(1) *Noticed representation*

This type occurs when an attorney and a party notify the court and other parties of the limited scope representation. The procedures in (d) and (e) apply only to cases involving noticed limited scope representation.

(2) *Undisclosed representation*

In this type of limited scope representation, a party contracts with an attorney to draft or assist in drafting legal documents, but the attorney does not make an appearance in the case. The procedures in (f) apply to undisclosed representation.

(d) Noticed limited scope representation

(1) A party and an attorney must provide the required notice of their agreement for limited scope representation by serving other parties and filing with the court a *Notice of Limited Scope Representation* (form FL-950).

(2) After the notice in (1) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served:

(A) The attorney must be served with documents that relate only to the issues identified in the *Notice of Limited Scope Representation* (form FL-950); and

(B) The party must be served directly with documents that relate to all other issues outside the scope of the attorney's representation.

(e) Procedures to be relieved as counsel on completion of limited scope representation

An attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form FL-950) may use the following procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney—Civil* (form MC-050):

(1) *Application*

An application to be relieved as attorney on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

(2) *Filing and service of application*

The application to be relieved as attorney must be filed with the court and

served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Counsel on Completion of Limited Scope Representation* (form FL-956).

(3) *No objection*

If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Counsel on Completion of Limited Scope Representation* (form FL-955) is served on the client, the attorney making the application must file an updated form FL-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Counsel on Completion of Limited Scope Representation* (form FL-958). The clerk must then forward the order for judicial signature.

(4) *Objection*

If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Counsel on Completion of Limited Scope Representation* (form FL-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and the attorney.

(5) *Service of the order*

If no objection is served and filed and the proposed order is signed, the attorney who filed the *Application to Be Relieved as Counsel on Completion of Limited Scope Representation* (form FL-955) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

(f) Nondisclosure of attorney assistance in preparation of court documents

(1) *Nondisclosure*

In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but does not make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.

(2) *Attorney's fees*

If a litigant seeks a court order for attorney's fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of attorney's fees, including the name of the attorney who assisted in the preparation of the documents, the time involved or other basis for billing, the tasks performed, and the amount billed.

(3) *Applicability*

This rule does not apply to an attorney who has made a general appearance or has contracted with his or her client to make an appearance on any issue that is the subject of the pleadings.

Rule 5.425 adopted effective January 1, 2013.

Article 2. Attorney's Fees and Costs

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 16, Limited Scope Representation; Attorney's Fees and Costs—Article 2, Attorney's Fees and Costs; adopted January 1, 2013.

Rule 5.427. Attorney's fees and costs

Rule 5.427. Attorney's fees and costs

(a) Application

This rule applies to attorney's fees and costs based on financial need, as described in Family Code sections 2030, 2032, 3121, 3557, and 7605.

(b) Request

(1) Except as provided in Family Code section 2031(b), to request attorney's fees and costs, a party must complete, file and serve the following documents:

(A) *Request for Order (form FL-300)*;

(B) *Request for Attorney's Fees and Costs Attachment* (form FL-319) or a comparable declaration that addresses the factors covered in form FL-319;

(C) A current *Income and Expense Declaration* (form FL-150);

(D) A personal declaration in support of the request for attorney's fees and costs, either using *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158; and

(E) Any other papers relevant to the relief requested.

(2) The party requesting attorney's fees and costs must provide the court with sufficient information about the attorney's hourly billing rate; the nature of the litigation; the attorney's experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the requested fees and costs are just, necessary, and reasonable.

(Subd (b) amended effective July 1, 2012.)

(c) Response to request

To respond to the request for attorney's fees and costs, a party must complete, file, and serve the following documents:

(1) *Responsive Declaration to Request for Order* (form FL-320);

(2) A current *Income and Expense Declaration* (form FL-150);

(3) A personal declaration responding to the request for attorney's fees and costs, either using *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158; and

(4) Any other papers relevant to the relief requested.

(Subd (c) amended effective July 1, 2012.)

(d) Income and expense declaration

Both parties must complete, file, and serve a current *Income and Expense Declaration* (form FL-150). A *Financial Statement (Simplified)* (form FL-155) is not appropriate for use in proceedings to determine or modify attorney's fees and costs.

(1) "Current" is defined as being completed within the past three months, provided that no facts have changed. The form must be sufficiently completed to allow determination of the issues.

(2) When attorney's fees are requested by either party, the section on the *Income and Expense Declaration* (form FL-150) related to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section related to the amount of attorney's fees incurred, currently owed, and the source of money used to pay such fees.

(e) Court findings and order

The court may make findings and orders regarding attorney's fees and costs by using *Attorney's Fees and Costs Order Attachment* (form FL-346). This form is an attachment to *Findings and Order After Hearing* (form FL-340), *Judgment* (form FL-180), and *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).

Rule 5.427 renumbered effective January 1, 2013; adopted as rule 5.93 effective January 1, 2012; previously amended effective July 1, 2012.

Chapter 17. Family Law Facilitator

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 17, Family Law Facilitator; adopted January 1, 2013.

Rule 5.430. Minimum standards for the Office of the Family Law Facilitator

Rule 5.430. Minimum standards for the Office of the Family Law Facilitator

(a) Authority

These standards are adopted under Family Code section 10010.

(Subd (a) amended effective January 1, 2003.)

(b) Family law facilitator qualifications

The Office of the Family Law Facilitator must be headed by at least one attorney, who is an active member of the State Bar of California, known as the family law facilitator. Each family law facilitator must possess the following qualifications:

(1) A minimum of five years experience in the practice of law, which must include substantial family law practice including litigation and/or mediation;

(2) Knowledge of family law procedures;

(3) Knowledge of the child support establishment and enforcement process under Title IV-D of the federal Social Security Act (42 U.S.C. § 651 et seq.);

(4) Knowledge of child support law and the operation of the uniform state child support guideline; and

(5) Basic understanding of law and psychological issues related to domestic violence.

(Subd (b) amended effective January 1, 2003.)

(c) Substituted experience

Courts may substitute additional experience, skills, or background appropriate to their community for the qualifications listed above.

(d) Desirable experience

Additional desirable experience for a family law facilitator may include experience in working with low-income, semiliterate, self-represented, or non-English-speaking litigants.

(Subd (d) amended effective January 1, 2007.)

(e) Service provision

Services may be provided by other paid and volunteer members of the Office of the Family Law Facilitator under the supervision of the family law facilitator.

(f) Protocol required

Each court must develop a written protocol to provide services when a facilitator deems himself or herself disqualified or biased.

(g) Grievance procedure

Each court must develop a written protocol for a grievance procedure for processing and responding to any complaints against a family law facilitator.

(Subd (g) adopted effective January 1, 2003.)

(h) Training requirements

Each family law facilitator should attend at least one training per year for family law facilitators provided by the Judicial Council.

(Subd (h) relettered effective January 1, 2003; adopted as subd (g).)

Rule 5.430 renumbered effective January 1, 2013; adopted as rule 1208 effective January 1, 2000; previously amended and renumbered as rule 5.35 effective January 1, 2003; previously amended effective January 1, 2007.

Chapter 18. Court Coordination Rules

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 18, Court Coordination Rules; adopted January 1, 2013.

Rule 5.440. Related cases
Rule 5.445. Court communication protocol for domestic violence and child custody orders.

Rule 5.440. Related cases

Where resources permit, courts should identify cases related to a pending family law case to avoid issuing conflicting orders and make effective use of court resources.

(a) Definition of "related case"

For purposes of this rule, a pending family law case is related to another pending case, or to a case that was dismissed with or without prejudice, or to a case that was disposed of by judgment, if the cases:

(1) Involve the same parties or the parties' minor children;

(2) Are based on issues governed by the Family Code or by the guardianship provisions of the Probate Code; or

(3) Are likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

(b) Confidential information

Other than forms providing custody and visitation (parenting time) orders to be filed in the family court, where the identification of a related case includes a

disclosure of information relating to a juvenile dependency or delinquency matter involving the children of the parties in the pending family law case, the clerk must file that information in the confidential portion of the court file.

(c) Coordination of title IV-D cases

To the extent possible, courts should coordinate title IV-D (government child support) cases with other related family law matters.

Rule 5.440 adopted effective January 1, 2013.

Rule 5.445. Court communication protocol for domestic violence and child custody orders.

(a) Definitions

For purposes of this rule:

(1) "Criminal court protective order" means any court order issued under California Penal Code section 136.2 arising from a complaint, an information, or an indictment in which the victim or witness and the defendant have a relationship as defined in Family Code section 6211.

(2) "Court" means all departments and divisions of the superior court of a single county.

(3) "Cases involving child custody and visitation" include family, juvenile, probate, and guardianship proceedings.

(Subd (a) amended effective January 1, 2007.)

(b) Purpose

(1) This rule is intended to:

(A) Encourage courts to share information about the existence and terms of criminal court protective orders and other orders regarding child custody and visitation that involve the defendant and the victim or witness named in the criminal court protective orders.

(B) Encourage courts hearing cases involving child custody and visitation to take every action practicable to ensure that they are aware of the

existence of any criminal court protective orders involving the parties to the action currently before them.

(C) Encourage criminal courts to take every action practicable to ensure that they are aware of the existence of any child custody or visitation court orders involving the defendant in the action currently before them.

(D) Permit appropriate visitation between a criminal defendant and his or her children under civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a criminal court protective order is not violated.

(E) Protect the rights of all parties and enhance the ability of law enforcement to enforce orders.

(F) Encourage courts to establish regional communication systems with courts in neighboring counties regarding the existence of and terms of criminal court protective orders.

(2) This rule is not intended to change the procedures, provided in Family Code section 6380, for the electronic entry of domestic violence restraining orders into the Domestic Violence Restraining Order System.

(Subd (b) amended effective January 1, 2007.)

(c) Local rule required

Every superior court must, by January 1, 2004, adopt local rules containing, at a minimum, the following elements:

(1) *Court communication*

A procedure for communication among courts issuing criminal court protective orders and courts issuing orders involving child custody and visitation, regarding the existence and terms of criminal protective orders and child custody and visitation orders, including:

(A) A procedure requiring courts issuing any orders involving child custody or visitation to make reasonable efforts to determine whether there exists a criminal court protective order that involves any party to the action; and

(B) A procedure requiring courts issuing criminal court protective orders to make reasonable efforts to determine whether there exist any child custody or visitation orders that involve any party to the action.

(2) *Modification*

A procedure by which the court that has issued a criminal court protective order may, after consultation with a court that has issued a subsequent child custody or visitation order, modify the criminal court protective order to allow or restrict contact between the person restrained by the order and his or her children.

(3) *Penal Code section 136.2*

The requirements of Penal Code section 136.2(f)(1) and (2).

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2005.)

Rule 5.445 renumbered effective January 1, 2013; adopted as rule 5.500 effective January 1, 2003; previously amended effective January 1, 2005; previously amended and renumbered as rule 5.450 effective January 1, 2007.

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 1. Contact and Coordination

Rule 5.451. Contact after adoption agreement
Rule 5.460. Request for sibling contact information
Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding

Rule 5.451. Contact after adoption agreement

(a) Applicability of rule

This rule applies to any adoption of a child. The adoption petition must be filed under Family Code sections 8714 and 8714.5. If the child is a dependent of the juvenile court, the adoption petition may be filed in that juvenile court and the clerk must open a confidential adoption file for the child, and this file must be separate and apart from the dependency file, with an adoption case number different from

the dependency case number. For the purposes of this rule, a "relative" is defined as follows:

(1) An adult related to the child or the child's sibling or half-sibling by blood or affinity, including a relative whose status is preceded by the word "step," "great," "great-great," or "grand"; or

(2) The spouse or domestic partner of any of the persons described in (1) even if the marriage or domestic partnership was terminated by dissolution or the death of the spouse related to the child.

(Subd (a) amended effective January 1, 2013; previously amended effective January 1, 2007.)

(b) Contact after adoption agreement

An adoptive parent or parents, a birth relative or relatives, including a birth parent or parents of a child who is the subject of an adoption petition, and the child may enter into a written agreement permitting postadoption contact between the child and birth relatives. No prospective adoptive parent or birth relative may be required by court order to enter into a contact after adoption agreement.

(Subd (b) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(c) Court approval; time of decree

If, at the time the adoption petition is granted, the court finds that the agreement is in the best interest of the child, the court may enter the decree of adoption and grant postadoption contact as reflected in the approved agreement.

(Subd (c) amended effective January 1, 2013; previously amended effective January 1, 2003.)

(d) Terms of agreement

The terms of the agreement are limited to the following, although they need not include all permitted terms:

(1) Provisions for visitation between the child and a birth parent or parents;

(2) Provisions for visitation between the child and other identified birth relatives, including siblings or half-siblings of the child;

(3) Provisions for contact between the child and a birth parent or parents;

(4) Provisions for contact between the child and other identified birth relatives, including siblings or half-siblings of the child;

(5) Provisions for contact between the adoptive parent or parents and a birth parent or parents;

(6) Provisions for contact between the adoptive parent or parents and other identified birth relatives, including siblings or half-siblings of the child;

(7) Provisions for the sharing of information about the child with a birth parent or parents;

(8) Provisions for the sharing of information about the child with other identified birth relatives, including siblings or half-siblings of the child; and

(9) The terms of any contact after adoption agreement entered into under a petition filed under Family Code section 8714 must be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(Subd (d) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, July 1, 2003 ,and January 1, 2007.)

(e) Child a party

The child who is the subject of the adoption petition is a party to the agreement whether or not specified as such.

(1) Written consent by a child 12 years of age or older to the terms of the agreement is required for enforcement of the agreement, unless the court finds by a preponderance of the evidence that the agreement is in the best interest of the child and waives the requirement of the child's written consent.

(2) If the child has been found by a juvenile court to be described by section 300 of the Welfare and Institutions Code, an attorney must be appointed to represent the child for purposes of participation in and consent to any contact after adoption agreement, regardless of the age of the child. If the child has been represented by an attorney in the dependency proceedings, that attorney must be appointed for the additional responsibilities of this rule. The attorney

is required to represent the child only until the adoption is decreed and dependency terminated.

(Subd (e) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(f) Form and provisions of the agreement

The agreement must be prepared and submitted on *Contact After Adoption Agreement* (form ADOPT-310) with appropriate attachments.

(Subd (f) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, and January 1, 2007.)

(g) Report to the court

The department or agency participating as a party or joining in the petition for adoption must submit a report to the court. The report must include a criminal record check and descriptions of all social service referrals. If a contact after adoption agreement has been submitted, the report must include a summary of the agreement and a recommendation as to whether it is in the best interest of the child.

(Subd (g) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(h) Enforcement of the agreement

The court that grants the petition for adoption and approves the contact after adoption agreement must retain jurisdiction over the agreement.

(1) Any petition for enforcement of an agreement must be filed on *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315). The form must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other dispute resolution.

(2) The court may make its determination on the petition without testimony or an evidentiary hearing and may rely solely on documentary evidence or offers of proof. The court may order compliance with the agreement only if:

(A) There is sufficient evidence of good-faith attempts to resolve the issues through mediation or other dispute resolution; and

(B) The court finds enforcement is in the best interest of the child.

(3) The court must not order investigation or evaluation of the issues raised in the petition unless the court finds by clear and convincing evidence that:

(A) The best interest of the child may be protected or advanced only by such inquiry; and

(B) The inquiry will not disturb the stability of the child's home to the child's detriment.

(4) Monetary damages must not be ordered.

(Subd (h) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, July 1, 2003, January 1, 2007.)

(i) Modification or termination of agreement

The agreement may be modified or terminated by the court. Any petition for modification or termination of an agreement must be filed on *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315). The form must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other appropriate dispute resolution.

(1) The agreement may be terminated or modified only if:

(A) All parties, including the child of 12 years or older, have signed the petition or have indicated on the *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-320) their consent or have executed a modified agreement filed with the petition; or

(B) The court finds all of the following:

(i) The termination or modification is necessary to serve the best interest of the child;

(ii) There has been a substantial change of circumstances since the original agreement was approved; and

(iii) The petitioner has participated in, or has attempted to participate in, mediation or appropriate dispute resolution.

(2) The court may make its determination without testimony or evidentiary hearing and may rely solely on documentary evidence or offers of proof.

(3) The court may order modification or termination without a hearing if all parties, including the child of 12 years or older, have signed the petition or have indicated on the *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-320) their consent or have executed a modified agreement filed with the petition.

(Subd (i) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, July 1, 2003, and January 1, 2007.)

(j) Costs and fees

The fee for filing a *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315) must not exceed the fee assessed for the filing of an adoption petition. Costs and fees for mediation or other appropriate dispute resolution must be assumed by each party, with the exception of the child. All costs and fees of litigation, including any court-ordered investigation or evaluation, must be charged to the petitioner unless the court finds that a party other than the child has failed, without good cause, to comply with the approved agreement; all costs and fees must then be charged to that party.

(Subd (j) amended effective January 1, 2013; previously amended effective July 1, 2001, January 1, 2003, July 1, 2003, and January 1, 2007.)

(k) Adoption final

Once a decree of adoption has been entered, the court may not set aside the decree, rescind any relinquishment, modify or set aside any order terminating parental rights, or modify or set aside any other orders related to the granting of the adoption petition, due to the failure of any party to comply with the terms of a postadoption contact agreement or any subsequent modifications to it.

(Subd (k) amended effective January 1, 2013.)

Rule 5.451 amended and renumbered effective January 1, 2013; adopted as rule 1180 effective July 1, 1998; previously amended and renumbered as rule 5.400 effective January 1, 2003; previously amended effective July 1, 2001, July 1, 2003; and January 1, 2007.

Rule 5.460. Request for sibling contact information

(a) Applicability of rule

This rule applies to all persons wishing to exchange contact information with their adopted siblings and all adopted persons wishing to have contact with their siblings, regardless of whether the adoption occurred in juvenile or family court.

(b) Definitions

As used in this rule:

(1) "Adoptee" means any person adopted under California law.

(2) "Department" means the California Department of Social Services (CDSS).

(3) "Licensed adoption agency" means an agency licensed by the department to provide adoption services and includes a licensed county adoption agency and a licensed private adoption agency under Family Code sections 8521, 8530, and 8533.

(4) "Confidential intermediary" means either the department or a licensed adoption agency that provided adoption services for either sibling.

(5) "Alternate confidential intermediary" means a named entity or person designated by the court in place of a licensed adoption agency when the court finds that the agency would experience economic hardship by serving as confidential intermediary.

(6) "Sibling" means a biological sibling, half-sibling, or stepsibling of the adoptee.

(7) "Waiver" means *Waiver of Rights to Confidentiality for Siblings*, department form AD 904A (used for adoptees or siblings over the age of 18 years) or AD 904B (used for adoptees or siblings under the age of 18).

(8) "Consent" means the consent contained within the Department form AD 904B. It is the approval of the filing of a waiver by a person under the age of 18 years obtained from an adoptive parent, a legal parent, a legal guardian, or a dependency court when a child is currently a dependent of the court.

(9) "Petition" means Judicial Council form *Request for Appointment of Confidential Intermediary* (form ADOPT-330).

(10) "Order" means Judicial Council form *Order for Appointment of Confidential Intermediary* (form ADOPT-331).

(c) Waiver submitted by person under the age of 18 years

(1) *Adoptee or sibling waiver*

Each adoptee or sibling under the age of 18 years may submit a waiver to the department or the licensed adoption agency, provided that a consent is also completed.

(2) *Court consent*

If the sibling is currently under the jurisdiction of the juvenile court and his or her parent or legal guardian is unable or unavailable to sign the consent, the court may sign it.

(Subd (c) amended effective January 1, 2013.)

(d) No waiver on file—sibling requesting contact

If, after contacting the department or licensed adoption agency, the sibling who is seeking contact learns that no waiver is on file for the other sibling, the sibling seeking contact should use the following procedure to ask the court that finalized the adoption of either sibling to designate a confidential intermediary to help locate the other sibling:

(1) *Sibling's request*

(A) A sibling requesting contact under Family Code section 9205 must file a petition and submit a blank order to the court that finalized the adoption of either sibling.

(B) If the sibling requesting contact is under the age of 18 years, the petition must be filed through the sibling's duly appointed guardian ad litem under Code of Civil Procedure section 373 or through the sibling's attorney.

(2) *Appointment of a confidential intermediary*

(A) The court must grant the petition unless the court finds that it would be detrimental to the adoptee or sibling with whom contact is sought. The

court may consider any and all relevant information in making this determination, including, but not limited to, a review of the court file.

(B) The court will appoint the department or licensed adoption agency that provided adoption services for either sibling as the confidential intermediary.

(C) If the court finds that the licensed adoption agency that conducted the adoptee's adoption is unable to serve as the intermediary, owing to economic hardship, the court may then appoint any one of the following who agrees to serve as an alternate confidential intermediary:

(i) A CASA volunteer or CASA program staff member;

(ii) A court-connected mediator;

(iii) An adoption service provider as defined in Family Code section 8502(a);

(iv) An attorney; or

(v) Another California licensed adoption agency or the California Department of Social Services' Adoptions Support Bureau when no other individuals are available.

(D) When an alternate confidential intermediary is appointed, the licensed adoption agency must provide to the court all records related to the adoptee or sibling for inspection by the alternate confidential intermediary.

(3) *Role of the confidential intermediary*

(A) The confidential intermediary must:

(i) Have access to all records of the adoptee or the sibling, including the court adoption file and adoption agency or CDSS files of either sibling;

(ii) Make all reasonable efforts to locate the adoptee, the sibling, or the adoptive or birth parent;

(iii) Attempt to obtain the consent of the adoptee, the sibling, or the adoptive or birth parent; and

(iv) Notify any located adoptee, sibling, or adoptive or birth parent that consent is optional, not required by law, and does not affect the status of the adoption.

(B) The confidential intermediary must not make any further attempts to obtain consent if the individual denies the request for consent.

(C) The confidential intermediary must use information found in the records of the adoptee or the sibling for authorized purposes only and must not disclose any information obtained in this procedure unless specifically authorized.

(4) *Adopted sibling seeking contact with a sibling who is a dependent child*

An adoptee seeking contact with his or her sibling who is a dependent child must follow the procedure set forth under Welfare and Institutions Code section 388(b) to seek contact with the sibling.

(Subd (d) amended effective January 1, 2013.)

Rule 5.460 amended and renumbered effective January 1, 2013; adopted as rule 5.410 effective January 1, 2008.

Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding

(a) Custody and visitation order from other courts or divisions

On termination of juvenile court jurisdiction under rule 5.700 or termination of a probate guardianship under rule 7.1008, the juvenile court or probate court will direct the transmission of its custody or visitation orders to any superior court in which a related family law custody proceeding or probate guardianship proceeding is pending for filing in that proceeding.

If no such proceeding is pending, the court terminating jurisdiction will direct the transmission of its order to the superior court of, in order of preference, the county in which the parent with sole physical custody resides; if none, the county where the child's primary residence is located; or, if neither exists, a county or location where any custodial parent resides.

(1) *Procedure for filing custody or visitation orders from juvenile or probate court*

(A) Except as directed in subparagraph (B), on receiving the custody or visitation order of a juvenile court or probate court, the clerk of the receiving court must file the order in any pending nullity, dissolution, legal separation, Uniform Parentage Act, Domestic Violence Prevention Act, or other family law custody proceeding, or in any probate guardianship proceeding that affects custody or visitation of the child.

(B) If the only pending proceeding related to the child in the receiving court is filed under Family Code section 17400 et seq., the clerk must proceed as follows.

(i) If the receiving court has issued a custody or visitation order in the pending proceeding, the clerk must file the received order in that proceeding.

(ii) If the receiving court has not issued a custody or visitation order in the pending proceeding, the clerk must not file the received order in that proceeding, but must instead proceed under subparagraph (C).

(C) If no dependency, family law, or guardianship proceeding affecting custody or visitation of the child is pending, the order must be used to open a new custody proceeding in the receiving court. The clerk must immediately open a family law file without charging a filing fee, assign a case number, and file the order in the new case file.

(2) *Endorsed filed copy—clerk's certificate of mailing*

Within 15 court days of receiving the order, the clerk must send an endorsed filed copy of the order showing the case number assigned by the receiving court by first-class mail to each of the child's parents and to the court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the issuing court's file.

(Subd (a) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(b) Modification of former guardian visitation orders—custodial parent

When a parent has custody of the child following termination of a probate guardianship, a former guardian's request for modification of the probate court

visitation order, including an order denying visitation, must be brought in a proceeding under the Family Code.

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(c) Independent action for former guardian visitation

(1) If the court terminated a guardianship under the Probate Code and did not issue a visitation order, the former guardian may maintain an independent action for visitation if a dependency proceeding is not pending. The former guardian may bring the action without the necessity of a separate joinder action.

(2) If the child has at least one living parent and has no guardian, visitation must be determined in a proceeding under the Family Code. If the child does not have at least one living parent, visitation must be determined in a guardianship proceeding, which may be initiated for that purpose.

(3) *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) must be filed with a petition or motion for visitation by a former guardian.

(Subd (c) amended effective January 1, 2007.)

Rule 5.475 amended effective January 1, 2016; adopted effective January 1, 2006; previously amended effective January 1, 2007, January 1, 2008, and January 1, 2013.

Chapter 2. Indian Child Welfare Act

Rule 5.480. Application
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Rule 5.480. Application

This chapter addressing the Indian Child Welfare Act (25 United States Code section 1901 et seq.) as codified in various sections of the California Family, Probate, and

Welfare and Institutions Codes, applies to most proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; or adoptive placement. This chapter applies to:

(1) Proceedings under Welfare and Institutions Code section 300 et seq.;

(2) Proceedings under Welfare and Institutions Code sections 601 and 602 et seq., whenever the child is either in foster care or at risk of entering foster care. In these proceedings, inquiry is required in accordance with rule 5.481(a). The other requirements of this chapter contained in rules 5.481 through 5.487 apply only if:

    (A) The court's jurisdiction is based on conduct that would not be criminal if the child were 18 years of age or over;

    (B) The court has found that placement outside the home of the parent or legal guardian is based entirely on harmful conditions within the child's home. Without a specific finding, it is presumed that placement outside the home is based at least in part on the child's criminal conduct, and this chapter shall not apply; or

    (C) The court is setting a hearing to terminate parental rights of the child's parents.

(3) Proceedings under Family Code section 3041;

(4) Proceedings under the Family Code resulting in adoption or termination of parental rights; and

(5) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

This chapter does not apply to voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand.

Rule 5.480 amended effective July 1, 2013; adopted effective January 1, 2008; previously amended effective January 1, 2013.

Rule 5.481. Inquiry and notice

(a) Inquiry

The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.

(1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians whether the child is or may be an Indian child and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.

(2) At the first appearance by a parent, Indian custodian, or guardian in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights proceeding to declare a child free of the custody and control of one or both parents, or adoption proceeding; the court must order the parent, Indian custodian, or guardian if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete *Parental Notification of Indian Status* (form ICWA-020).

(4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 United States Code sections 1901 and

1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030);

(B) Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.

(5) The circumstances that may provide reason to know the child is an Indian child include the following:

(A) The child or a person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court, the county welfare agency, the probation department, the licensed adoption agency or adoption service provider, the investigator, the petitioner, or any appointed guardian or conservator;

(B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community; or

(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

(Subd (a) amended effective January 1, 2013.)

(b) Notice

(1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court must send *Notice of Child Custody*

Proceeding for Indian Child (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.2, Family Law Code section 180, and Probate Code section 1460.2.

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2) in any case described by rule 5.480(2)(A)–(C).

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (a)(5).

(4) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.

(Subd (b) amended effective July 1, 2013; previously amended effective January 1, 2013.)

Rule 5.481 amended effective July 1, 2013; adopted effective January 1, 2008; previously amended effective January 1, 2013.

Advisory Committee Comment

Except for purposes of inquiry, the requirements of the Indian Child Welfare Act (ICWA) and related provisions of state law do not apply to most cases adjudicated under section 602 of the Welfare and Institutions Code for conduct that would be criminal if committed by an adult (see *In re W.B.* (2012) 55 Cal.4th 30). But in those cases where ICWA does not apply, following inquiry and receipt of information about Indian ancestry, the court is encouraged to communicate with and voluntarily provide informal or formal notice to the Indian child's tribe regarding resources and services to benefit the Indian child and his or her family. Such notice should particularly be encouraged wherever the Indian child's tribe has previously intervened or participated in other proceedings involving the child, such as earlier dependency or probate guardianship proceedings. The California Legislature has stated: "[i]t is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected…." (See Welf. & Inst. Code, §§ 224(a)(2), 306.6.) Further, Welfare and Institutions Code section 727.1(a) mandates that in selecting a placement for a child under the supervision of a probation officer, the court "shall consider, in order of priority, placement with relatives, *tribal members*, and foster family…." (Emphasis added.) This mandate applies even if the case is not governed by ICWA.

As a matter of policy and best practice, culturally appropriate placements and services provide psychological benefit for the Indian child and family. By engaging the Indian child's tribe, tribal members, Indian Health Services, or other agencies and organizations providing services to Native Americans, additional resources and culturally appropriate services are often identified to assist in case planning. (See Welf. & Inst. Code, §§ 727.4(d)(5),(6) & 16501.1(c)(1) for information on services and case planning for children adjudicated under section 602.) Outreach to these entities is also an important part of family finding and engagement efforts for Indian children and of finding appropriate placements. By contacting the child's tribe, placement options and services—such as substance abuse treatment, counseling, and other services—may be available to Indian children and their families. A list of available services can be found on the California Courts website at Program, Tribal/State Programs, ICWA, Statewide Directory of Services for Native American Families, at *www.courts.ca.gov/5807.htm*.

Rule 5.482. Proceedings after notice

(a) Timing of proceedings

(1) If it is known or there is reason to know that a child is an Indian child, the court hearing must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice, except as stated in sections (a)(2) and (3).

(2) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster care described by rule 5.480(2)(A)–(C) may proceed without delay, provided that:

(A) Notice of the detention hearing must be given as soon as possible after the filing of the petition initiating the proceeding; and

(B) Proof of notice must be filed with the court within 10 days after the filing of the petition.

(3) The parent, Indian custodian, or tribe must be granted a continuance, if requested, of up to 20 days to prepare for the proceeding, except for specified hearings in the following circumstances:

(A) The detention hearing in dependency cases and in delinquency cases described by rule 5.480(2)(A)–(C);

(B) The jurisdiction hearing in a delinquency case described by rule 5.480(2)(A)–(C) in which the court finds the continuance would not

conform to speedy trial considerations under Welfare and Institutions Code section 657; and

(C) The disposition hearing in a delinquency case described by rule 5.480(2)(A)–(C) in which the court finds good cause to deny the continuance under Welfare and Institutions Code section 682. A good cause reason includes when probation is recommending the release of a detained child to his or her parent or to a less restrictive placement. The court must follow the placement preferences under rule 5.484 when holding the disposition hearing.

(Subd (a) amended effective July 1, 2013; previously amended effective January 1, 2013.)

(b) Proof of notice

Proof of notice filed with the court must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes.

(Subd (b) amended effective January 1, 2013.)

(c) When there is no information or response from a tribe

(1) If after notice has been provided as required by federal and state law and neither the tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, then the court may determine that the Indian Child Welfare Act does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.

(2) If at any time, based on the petition or other information, the court knows or has reason to know the child is an Indian child, the court must proceed as if the child were an Indian child.

(3) The court is not required to delay proceedings until a response to notice is received.

(Subd (c) relettered effective August 15, 2016; adopted as subd (d); previously amended effective January 1, 2013.)

(d) Intervention

The Indian child's tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings and may, but are not required to, file with the court the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of their intent to intervene.

(Subd (d) relettered effective August 15, 2016; adopted as subd (e); previously amended effective January 1, 2013.)

(e) Posthearing actions

Whenever an Indian child is removed from a guardian, conservator, other custodian, foster home, or institution for placement with a different guardian, conservator, custodian, foster home, institution, or preadoptive or adoptive home, the placement must comply with the placement preferences and standards specified in Welfare and Institutions Code section 361.31.

(Subd (e) relettered effective August 15, 2016; adopted as subd (f); previously amended effective January 1, 2013.)

(f) Consultation with tribe

Any person or court involved in the placement of an Indian child in a proceeding described by rule 5.480 must use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference specified in rule 5.484.

(Subd (f) relettered effective August 15, 2016; adopted as subd (g); previously amended effective July 1, 2013.)

Rule 5.482 amended effective August 15, 2016; adopted effective January 1, 2008; previously amended effective January 1, 2013, and July 1, 2013.

Rule 5.483. Transfer of case

(a) Mandatory transfer of case to tribal court with exclusive jurisdiction

The court must order transfer of a case to the tribal court of the child's tribe if:

(1) The Indian child is a ward of the tribal court; or

(2) The Indian child is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings under section 1911 or 1918 of title 25 of the United States Code.

(b) Presumptive transfer of case to tribal court with concurrent state and tribal jurisdiction

Unless the court finds good cause under subdivision (d), the court must order transfer of a case to the tribal court of the child's tribe if the parent, the Indian custodian, or the child's tribe requests.

(c) Documentation of request to transfer a case to tribal court

The parent, the Indian custodian, or the child's tribe may request transfer of the case, either orally or in writing or by filing *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-050).

If the request is made orally, the court must document the request and make it part of the record.

(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction

(1) One or more of the following circumstances constitutes mandatory good cause to deny a request to transfer:

(A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record;

(B) The child's tribe does not have a "tribal court" or any other administrative body as defined in section 1903 of the Indian Child Welfare Act: "a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;" or

(C) The tribal court of the child's tribe declines the transfer.

(2) One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer:

(A) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery;

(B) The proceeding was at an advanced stage when the request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;

(C) The Indian child is over 12 years of age and objects to the transfer; or

(D) The parents of a child over five years of age are not available and the child has had little or no contact with his or her tribe or members of the child's tribe.

(3) If it appears that there is good cause to deny a transfer, the court must hold an evidentiary hearing on the transfer and make its findings on the record.

(Subd (d) amended effective January 1, 2013.)

(e) Evidentiary considerations

The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.

(Subd (e) amended effective January 1, 2013.)

(f) Evidentiary burdens

(1) The burden of establishing good cause to deny a request to transfer is on the party opposing the transfer.

(2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated in writing, in

advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

(Subd (f) amended effective January 1, 2013.)

(g) Order on request to transfer

(1) The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

(2) When a matter is being transferred from the jurisdiction of a juvenile court, the order must include:

(A) All of the findings, orders, or modifications of orders that have been made in the case;

(B) The name and address of the tribe to which jurisdiction is being transferred;

(C) Directions for the agency to release the child case file to the tribe having jurisdiction under section 827.15 of the Welfare and Institutions Code;

(D) Directions that all papers contained in the child case file must be transferred to the tribal court; and

(E) Directions that a copy of the transfer order and the findings of fact must be maintained by the transferring court.

(Subd (g) amended effective January 1, 2016.)

(h) Advisement when transfer order granted

When the court grants a petition transferring a case to tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b) and rule 5.483, the court must advise the parties orally and in writing that any appeal to the order for transfer to a tribal court must be made before the transfer to tribal jurisdiction is finalized and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

(Subd (h) adopted effective January 1, 2016.)

(i) Proceeding after transfer

When, under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), the court transfers any proceeding listed in rule 5.480, the court must proceed as follows:

(1) Dismiss the proceeding or terminate jurisdiction if the court has received proof that the tribal court has accepted the transfer of jurisdiction;

(2) Make an order transferring the physical custody of the child to a designated representative of the tribal court (not necessarily the same "designated representative" identified in the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040)); and

(3) Include in the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) all contact information for the designated tribal court representative.

(Subd (i) relettered effective January 1, 2016; adopted as subd (h).)

Rule 5.483 amended effective January 1, 2016; adopted effective January 1, 2008; previously amended effective January 1, 2013.

Advisory Committee Comment

Once a transfer to tribal court is finalized as provided in rule 5.483(i), the appellate court lacks jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897).

As stated by the Court of Appeal in *In re M.M.*, the juvenile court has the discretion to stay the provisions of a judgment or order awarding, changing, or affecting custody of a minor child "pending review on appeal or for any other period or periods that it may deem appropriate" (Code Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay in the lower court. (See *Nuckolls v. Bank of California, Nat. Assn.* (1936) 7 Cal.2d 574, 577 [61 P.2d 927] ["Inasmuch as the [L]egislature has provided a method by which the trial court, in a proper case, may grant the stay, the appellate courts, assuming that they have the power, should not, except in some unusual emergency, exercise their power until the petitioner has first presented the matter to the trial court."].) If the juvenile court should deny the stay request, the aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules of Court, rule 8.112).

Subsection (h) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

Rule 5.484. Placement of an Indian child

(a) Evidentiary burdens

In any child custody proceeding listed in rule 5.480, the court may not order placement of an Indian child unless it finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage and it considers evidence regarding prevailing social and cultural standards of the child's tribe, including that tribe's family organization and child-rearing practices.

(1) Testimony by a "qualified expert witness," as defined in Welfare and Institutions Code section 224.6, Family Code section 177(a), and Probate Code section 1459.5(b), is required before a court orders a child placed in foster care or terminates parental rights.

(2) Stipulation by the parent, Indian custodian, or tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the person or tribe has been fully advised of the requirements of the Indian Child Welfare Act and has knowingly, intelligently, and voluntarily waived them. Any such stipulation must be agreed to in writing.

(3) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of Welfare and Institutions Code section 361, will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

(Subd (a) amended effective January 1, 2013.)

(b) Standards and preferences in placement of an Indian child

(1) Unless the court finds good cause to the contrary, all placements of Indian children in any proceeding listed in rule 5.480 must follow the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.

(2) The court may deviate from the preference order only for good cause, which may include the following considerations:

(A) The requests of the parent or Indian custodian;

(B) The requests of the Indian child, when of sufficient age;

(C) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or

(D) The unavailability of suitable families based on a documented diligent effort to identify families meeting the preference criteria.

(3) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the preference order not be followed.

(4) The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.

(5) The preferences and wishes of the Indian child, when of sufficient age, and the parent must be considered, and weight given to a consenting parent's request for anonymity.

(6) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in rule 5.481(a)(4)(A), and participation in the cultural and ceremonial events of the child's tribe.

(Subd (b) amended effective January 1, 2013.)

(c) Active efforts

In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful.

(1) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(2) Efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended

family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

(Subd (c) amended effective January 1, 2013.)

Rule 5.484 amended effective January 1, 2013; adopted effective January 1, 2008.

Rule 5.485. Termination of parental rights

(a) Evidentiary burdens

The court may only terminate parental rights to an Indian child or declare an Indian child free of the custody and control of one or both parents if at the hearing terminating parental rights or declaring the child free of the custody and control of one or both parents, the court:

(1) Finds by clear and convincing evidence that active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family were made; and

(2) Makes a determination, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Welfare and Institutions Code section 224.6 and Family Code section 177(a), that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(b) When parental rights may not be terminated

The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason for determining that termination of parental rights would not be in the child's best interest. Such a reason may include:

(1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights; or

(2) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

Rule 5.485 amended effective January 1, 2013; adopted effective January 1, 2008.

Rule 5.486. Petition to invalidate orders

(a) Who may petition

Any Indian child who is the subject of any action for foster-care placement, guardianship placement, or termination of parental rights; any parent or Indian custodian from whose custody such child was removed; and the Indian child's tribe may petition the court to invalidate the action on a showing that the action violated the Indian Child Welfare Act.

(b) Court of competent jurisdiction

If the Indian child is a dependent child or ward of the juvenile court or the subject of a pending petition, the juvenile court is a court of competent jurisdiction with the authority to hear the request to invalidate the foster placement or termination of parental rights.

(c) Request to return custody of the Indian child

If a final decree of adoption is vacated or set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may request a return of custody of the Indian child.

(1) The court must reinstate jurisdiction.

(2) In a juvenile case, the juvenile court must hold a new disposition hearing in accordance with 25 United States Code section 1901 et seq. where the court may consider all placement options as stated in Welfare and Institutions Code sections 361.31(b), (c), (d), and (h).

(3) The court may consider placement with a biological parent or prior Indian custodian if the biological parent or prior Indian custodian can show that placement with him or her is not detrimental to the child and that the placement is in the best interests of the child.

(4) The hearing on the request to return custody of an Indian child must be conducted in accordance with statutory requirements and the relevant sections of this rule.

Rule 5.486 amended effective January 1, 2013; adopted effective January 1, 2008.

Rule 5.487. Adoption record keeping

(a) Copies of adoption decree and other information to the Secretary of the Interior

After granting a decree of adoption of an Indian child, the court must provide the Secretary of the Interior with a copy of the decree and the following information:

(1) The name and tribal affiliation of the Indian child;

(2) The names and addresses of the biological parents;

(3) The names and addresses of the adoptive parents; and

(4) The agency maintaining files and records regarding the adoptive placement.

(b) Affidavit of confidentiality to the Bureau of Indian Affairs

If a biological parent has executed an affidavit requesting that his or her identity remain confidential, the court must provide the affidavit to the Bureau of Indian Affairs, which must ensure the confidentiality of the information.

Rule 5.487 amended effective January 1, 2013; adopted effective January 1, 2008.

Advisory Committee Comment

This chapter was adopted, effective January 1, 2008, as the result of the passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), which codified the federal Indian Child Welfare Act into California's Family, Probate, and Welfare and Institutions Codes affecting all proceedings listed in rule 5.480. Rule 5.664, which applied the Indian Child Welfare Act but was limited in its effect to juvenile proceedings, was repealed effective January 1, 2008, and was replaced by this chapter.

As of January 1, 2008, only the Washoe Tribe of Nevada and California is authorized under the Indian Child Welfare Act to exercise exclusive jurisdiction as discussed in rule 5.483.

Chapter 3. Adoptions under the Hague Adoption Convention

Title 5, Family and Juvenile Rules—Division 2, Rules Applicable in Family and Juvenile Proceedings—Chapter 3, Adoptions under the Hague Adoption Convention; adopted effective July 1, 2013.

Rule 5.490. Adoption of a child resident in the United States by a resident of a foreign country party to the Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention or Hague Adoption Convention)

Rule 5.491. Adoption of a child resident in the United States by a resident of a foreign country not party to the Hague Adoption Convention

Rule 5.492. Adoption by a United States resident of a child resident in a foreign country that is party to the Hague Adoption Convention

Rule 5.490. Adoption of a child resident in the United States by a resident of a foreign country party to the Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention or Hague Adoption Convention)

(a) Purpose

The rules in this chapter are adopted to provide practice and procedure for intercountry adoptions conducted under the Hague Adoption Convention and applicable California law.

(b) Applicability of rule

This rule applies to any adoption of a child resident in the United States by an individual or individuals residing in a convention country, as defined in Family Code section 8900.5(f), if, in connection with the adoption, the child has moved or will move between the United States and the convention country.

(c) Adoption request and attachments

(1) The *Adoption Request* (form ADOPT-200) and *Verification of Compliance with Hague Adoption Convention Attachment* (ADOPT-216) must allege specific facts about the applicability of the Hague Adoption Convention and whether the petitioner is seeking a California adoption, will be petitioning for a Hague Adoption Certificate, or will be seeking a Hague Custody Declaration.

(2) The court must determine whether a child resident in the United States has been or will be moved to a convention country in connection with an adoption by an individual or individuals residing in a convention country.

(d) Evidence required to verify compliance with the Hague Adoption Convention

If the Hague Adoption Convention applies to the case, and the court is asked to issue findings and an order supporting a request for the U.S. Department of State to issue a Hague Adoption Certificate or a Hague Custody Declaration for the adoption placement, the court must receive sufficient evidence to conclude that the

child is eligible for adoption and find that the placement is in the best interest of the child. The court must receive evidence of all of the following:

(1) The adoption agency or provider is accredited by the Council on Accreditation, is supervised by an accredited primary provider, or is acting as an exempted provider, as defined in Family Code section 8900.5(g), to provide intercountry adoption services for convention cases;

(2) A child background study has been completed and transmitted to a foreign authorized entity in accordance with the regulations governing convention adoptions with proof that the necessary consents have been obtained and the reason for its determination that the proposed placement is in the child's best interest, based on the home study and child background study and giving due consideration to the child's upbringing and his or her ethnic, religious, and cultural background;

(3) The child is eligible for adoption under California law;

(4) The adoption agency or provider has made reasonable efforts, as described under 22 Code of Federal Regulations section 96.54(a), to place the child in the United States, but was unable to do so, or an exception to this requirement applies to the case. Such reasonable efforts include: (1) disseminating information on the child and his or her availability for adoption through print, media, and Internet resources designed to communicate with potential prospective adoptive parents in the United States; (2) listing information about the child on a national or state adoption exchange or registry for at least 60 calendar days after the birth of the child; (3) responding to inquiries about adoption of the child; and (4) providing a copy of the child background study to potential U.S. prospective adoptive parent(s);

(5) The agency has determined that the placement is in the child's best interest;

(6) A home study on the petitioner(s) has been completed, which includes:

(A) Information on the petitioner(s), such as identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, an assessment of their ability to care for the child, and the characteristics of the child for whom they would be qualified to care;

(B) Confirmation that a competent authority has determined that the petitioner is eligible and suited to adopt and has ensured that the petitioner has been counseled as necessary; and

(C) The results of criminal background checks;

(7) The Hague Adoption Convention authority designated by the receiving country has declared that the child will be permitted to enter and reside permanently or on the same basis as the adopting parent(s) in the receiving country, and has consented to the adoption;

(8) All appropriate consents have been obtained in writing in accordance with the following standards:

(A) Counseling was provided to any biological or legal parent or legal guardian consenting to the adoption;

(B) All biological or legal parents or legal guardians were informed of the legal effect of adoption;

(C) Such consent was freely given without inducement by compensation;

(D) Such consent was not subsequently withdrawn; and

(E) Consents were taken only after the birth of the child.

(9) As appropriate in light of the child's age and maturity, the child has been counseled and informed of the effects of the adoption and the child's views have been considered. If the child's consent is required, the child has also been counseled and informed of the effects of granting consent and has freely given consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind;

(10) The adoption agency or provider has committed to taking all steps to ensure the secure transfer of the child, including obtaining permission for the child to leave the United States;

(11) The adoption agency or provider has agreed to keep the receiving country's designated Hague Adoption Convention authority informed about the status of the case;

(12) The petitioner consents to adoption or has agreed to accept custody of the child for purposes of adoption;

(13) The adoption agency or provider demonstrates that any contact between the birth family and the adoptive family complies with applicable state law and federal regulations governing the timing of such communications; and

(14) The adoption agency or provider certifies that no one is deriving improper financial gain from the adoption and describes the financial arrangement with the prospective adoptive family.

(e) Court findings required to support the application for a Hague Adoption Certificate or Hague Custody Declaration

The court must make findings relating to the application for a Hague Adoption Certificate or Hague Custody Declaration from the Department of State. To meet the requirements for issuance of the certificate or declaration, the findings must include that:

(1) The adoption is in the child's best interest;

(2) The substantive regulatory requirements set forth in 22 Code of Federal Regulations sections 97.3(a)–(k) have been met; and

(3) The adoption services provider meets the requirements of 22 Code of Federal Regulations part 96.

(f) Court findings to verify that all Hague Adoption Convention requirements have been met

If the court is satisfied that all Hague Adoption Convention requirements have been met, the court must make findings of fact and order the following:

(1) The child is eligible for adoption;

(2) The grant of custody with respect to the proposed adoption is in the child's best interest; and

(3) The court grants custody of the child to the named family for purposes of adoption, as applicable.

(g) Petitioner's intent to finalize adoption

If the adoption is not finalized in California, a petition for a Hague Custody Declaration must state specific facts indicating that the petitioner intends to finalize

the adoption in petitioner's country of residence or that petitioner will return to California after any required post-placement supervisory period to finalize the adoption in a superior court of California.

Rule 5.490 adopted effective July 1, 2013.

Advisory Committee Comment

The Hague Adoption Convention (HAC) is a treaty that entered into force with respect to the United States on April 1, 2008. The HAC strengthens protections for children, birth parents, and prospective adoptive parents and establishes internationally agreed-upon rules and procedures for adoptions between countries that have a treaty relationship under the HAC. It provides a framework for countries party to the Convention to work together to ensure that children are provided with permanent, loving homes; that adoptions take place in the best interest of a child; and that the abduction, sale, or traffic of children is prevented. This rule expands procedurally on Family Code sections 8900 through 8925, which address intercountry adoptions, by specifying the findings and evidence set forth in 22 Code of Federal Regulations section 97.3 that are required by a state court when the HAC applies to an adoption.

Rule 5.491. Adoption of a child resident in the United States by a resident of a foreign country not party to the Hague Adoption Convention

The adoption of a child resident in the United States by a resident of a foreign country not party to the Hague Adoption Convention must conform to the law governing California adoptions.

Rule 5.491 adopted effective July 1, 2013.

Rule 5.492. Adoption by a United States resident of a child resident in a foreign country that is party to the Hague Adoption Convention

A United States resident who plans to adopt, in California, a child resident in a foreign country that is party to the Hague Adoption Convention must provide to the California court the required proof, in the form of a Hague Custody Declaration, that all required Hague Adoption Convention findings have been made by the child's country of residence.

Rule 5.492 adopted effective July 1, 2013.

Chapter 4: Protective Orders

Rule 5.495. Firearm relinquishment procedures

Rule 5.495. Firearm relinquishment procedures

(a) Application of rule

This rule applies when a family or juvenile law domestic violence protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 is issued or in effect.

(b) Purpose

This rule addresses situations in which information is presented to the court about firearms and provides the court with options for appropriately addressing the issue. This rule is intended to:

(1) Assist courts issuing domestic violence protective orders in determining whether a restrained person has a firearm in or subject to his or her immediate possession or control.

(2) Assist courts that have issued domestic violence protective orders in determining whether a restrained person has complied with the court's order to relinquish, store, or sell the firearm under Family Code section 6389(c).

(c) Firearm determination

When relevant information is presented to the court at any noticed hearing that a restrained person has a firearm, the court must consider that information to determine, by a preponderance of the evidence, whether the person subject to a protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 has a firearm in or subject to his or her immediate possession or control in violation of Family Code section 6389.

(d) Determination procedures

(1) In making a determination under this rule, the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt or if an exemption from the firearm prohibition was granted under Family Code section 6389(h).

(2) The court may make the determination at any noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing, or at any subsequent family or juvenile law hearing while the order remains in effect.

(3) If the court makes a determination that the restrained person has a firearm in violation of Family Code section 6389, the court must make a written record of the determination and provide a copy to any party who is present at the hearing and, upon request, to any party not present at the hearing.

(e) Subsequent review hearing

(1) When presented with information under (c), the court may set a review hearing to determine whether a violation of Family Code section 6389 has taken place.

(2) The review hearing must be held within 10 court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least 2 court days before the review hearing, in accordance with Code of Civil Procedure 414.10, by personal service or by mail to the restrained person's last known address.

(3) The court may for good cause extend the date of the review hearing for a reasonable period or remove it from the calendar.

(4) The court must order the restrained person to appear at the review hearing.

(5) The court may conduct the review hearing in the absence of the protected person.

(6) Nothing in this rule prohibits the court from permitting a party to appear by telephone under California Rules of Court, rule 5.9.

(f) Child custody and visitation

(1) If the court determines that the restrained person has a firearm in violation of Family Code section 6389, the court must consider that determination when deciding whether the restrained person has overcome the presumption in Family Code section 3044.

(2) An order for custody or visitation issued at any time during a family law matter must be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members, as specified in Family Code section 3020. The court must consider whether the best interest of the child, based on the circumstances of the case, requires that any visitation or custody arrangement be limited to situations in which a third person, specified by the

court, is present, or that visitation or custody be suspended or denied, as specified in Family Code section 6323(d).

(3) An order for visitation issued at any time during a juvenile court matter must not jeopardize the safety of the child, as specified in Welfare and Institutions Code section 362.1.

(g) Other orders

(1) The court may consider a determination that the restrained person has a firearm in violation of Family Code section 6389 in issuing:

(A) An order to show cause for contempt under section 1209(a)(5) of the Code of Civil Procedure for failure to comply with the court's order to surrender or sell a firearm; or

(B) An order for money sanctions under section 177.5 of the Code of Civil Procedure.

(2) This rule should not be construed to limit the court's power to issue orders it is otherwise authorized or required to issue.

Rule 5.495 adopted effective July 1, 2014.

Advisory Committee Comment

When issuing a family or juvenile law domestic violence protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5, ex parte or after a noticed hearing, the court is required to order a restrained person "to relinquish any firearm in [that person's] immediate possession or control or subject to [that person's] immediate possession or control." (Fam. Code, § 6389(c)(1).) Several mandatory Judicial Council forms—*Temporary Restraining Order* (form DV-110), *Restraining Order After Hearing* (form DV-130), and *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250)—include mandatory orders in bold type that the restrained person must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control within 24 hours after service of the order and must file a receipt with the court showing compliance with the order within 48 hours of receiving the order. California law requires personal service of the request for and any temporary protective order at least five days before the hearing, unless the court issues an order shortening time for service. Therefore, by the date of the hearing, the restrained person should have relinquished, stored, or sold his or her firearms and submitted a receipt to the court.

Courts are encouraged to develop local procedures to calendar firearm relinquishment review hearings for restrained persons.

Section (f) of this rule restates existing law on the safety and welfare of children and family members and recognizes the safety issues associated with the presence of prohibited firearms.

Although this rule does not require the court to compel a restrained person to testify, the court may wish to advise a party of his or her privilege against self-incrimination under the Fifth Amendment to the United States Constitution. The court may also consider whether to grant use immunity under Family Code section 6389(d).

Division 3. Juvenile Rules

Chapter 1. Preliminary Provisions—Title and Definitions

Rule 5.500. Division title
Rule 5.501. Preliminary provisions
Rule 5.502. Definitions and use of terms
Rule 5.504. Judicial Council forms
Rule 5.505. Juvenile dependency court performance measures

Rule 5.500. Division title

The rules in this division may be referred to as the Juvenile Rules.

Rule 5.500 adopted effective January 1, 2007.

Rule 5.501. Preliminary provisions

(a) Application of rules (§§ 200–945)

The rules in this division solely apply to every action and proceeding to which the juvenile court law (Welf. & Inst. Code, div. 2, pt. 1, ch. 2, § 200 et seq.) applies, unless they are explicitly made applicable in any other action or proceeding. The rules in this division do not apply to an action or proceeding heard by a traffic hearing officer, nor to a rehearing or appeal from a denial of a rehearing following an order by a traffic hearing officer.

(Subd (a) amended effective January 1, 2007.)

(b) Authority for and purpose of rules (Cal. Const., art. VI, §§ 6, 265)

The Judicial Council adopted the rules in this division under its constitutional and statutory authority to adopt rules for court administration, practice, and procedure that are not inconsistent with statute. These rules implement the purposes of the juvenile court law by promoting uniformity in practice and procedure and by providing guidance to judicial officers, attorneys, social workers, probation officers, and others participating in the juvenile court.

(Subd (b) amended effective January 1, 2007.)

(c) Rules of construction

Unless the context otherwise requires, these preliminary provisions and the following rules of construction govern the construction of these rules:

(1) Insofar as these rules are substantially the same as existing statutory provisions relating to the same subject matter, these rules must be construed as restatements of those statutes; and

(2) Insofar as these rules may add to existing statutory provisions relating to the same subject matter, these rules must be construed so as to implement the purposes of the juvenile court law.

(Subd (c) amended effective January 1, 2007.)

(d) Severability clause

If a rule or a subdivision of a rule in this division is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule or a subdivision of a rule in this division is invalid in one or more of its applications, the rule or subdivision remains in effect in all valid applications that are severable from the invalid applications.

Rule 5.501 amended and renumbered effective January 1, 2007; adopted as rule 1400 effective January 1, 1990.

Rule 5.502. Definitions and use of terms

Definitions (§§ 202(e), 303, 319, 361, 361.5(a)(3), 450, 628.1, 636, 726, 727.3(c)(2), 727.4(d), 4512(j), 4701.6(b), 11400(v), 11400(y), 16501(f)(16); 20 U.S.C. § 1415; 25 U.S.C. § 1903(2))

As used in these rules, unless the context or subject matter otherwise requires:

(1) "Affinity" means the connection existing between one spouse or domestic partner and the blood or adoptive relatives of the other spouse or domestic partner.

(2) "At risk of entering foster care" means that conditions within a child's family may require that the child be removed from the custody of a parent or guardian and placed in foster care unless or until those conditions are resolved.

(3) "CASA" means Court Appointed Special Advocate as defined in rule 5.655.

(4) "Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for a child subject to a juvenile dependency petition" is defined in rule 5.662.

(5) "Child" means a person under the age of 18 years.

(6) "Clerk" means the clerk of the juvenile court.

(7) "Court" means the juvenile court and includes any judicial officer of the juvenile court.

(8) "Court-ordered services" or "court-ordered treatment program" means child welfare services or services provided by an appropriate agency ordered at a dispositional hearing at which the child is declared a dependent child or ward of the court, and any hearing thereafter, for the purpose of maintaining or reunifying a child with a parent or guardian.

(9) "Date the child entered foster care" means:

(A) In dependency, the date on which the court sustained the petition filed under section 300 or 60 days after the "initial removal" of the child as defined below, whichever is earlier; or

(B) In delinquency, the date 60 days after the date on which the child was initially removed from the home, unless one of the following exceptions applies:

(i) If the child is detained pending foster care placement and remains detained for more than 60 days, then the "date the child entered foster care" means the date the court declares the child a ward and orders the child placed in foster care under the supervision of the probation officer;

(ii) If, before the child is placed in foster care, the child is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the "date the child entered foster care" is the date the child is physically placed in foster care; or

(iii) If, at the time the wardship petition was filed, the child was a dependent of the juvenile court and in out-of-home placement, then the "date the child entered foster care" is the date defined in (A).

(10) "De facto parent" means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period.

(11) "Detained" means any removal of the child from the person or persons legally entitled to the child's physical custody, or any release of the child on home supervision under section 628.1 or 636. A child released or placed on home supervision is not detained for the purposes of federal foster care funding.

(12) "Domestic partner" means one of two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring as described in Family Code section 297.

(13) "Educational rights holder" means the adult identified or appointed by the court to make educational or developmental-services decisions for a child, nonminor, or nonminor dependent. If the court limits a parent's or guardian's decisionmaking rights and appoints an educational rights holder, the appointed rights holder acts as the child's or youth's parent, spokesperson, decision maker, and "authorized representative" as described in sections 4512(j) and 4701.6(b) in regard to all matters related to educational or developmental-services needs, including those described in sections 319, 361, 726, 4512, 4646–4648, and 4700–4731; Education Code sections 56028(b)(2), 56050, and 56055; Government Code sections 7579.5 and 7579.6; chapter 33 (commencing with section 1400) of title 20 of the United States Code; and part 300 (commencing with section 300.1) of title 34 of the Code of Federal Regulations, unless the court orders otherwise. An appointed educational rights holder is entitled to access to educational and developmental-services records and information to the extent permitted by law, including by sections 4514 and 5328, and to the same extent as a parent, as that term is used in title 20 United States Code section 1232g and defined in title 34 Code of Federal Regulations part 99.3.

(14) “Foster care” means residential care provided in any of the settings described in section 11402.

(15) “Foster parent” includes a relative with whom the child is placed.

(16) “General jurisdiction” means the jurisdiction the juvenile court maintains over a nonminor under section 303(b) at the time of the dismissal of dependency jurisdiction, delinquency jurisdiction, or transition jurisdiction for the purpose of considering a request to resume its dependency jurisdiction or to assume or resume its transition jurisdiction over the person as a nonminor dependent.

(17) “Guardian” means legal guardian of the child.

(18) “Hearing” means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following:

(A) A judicial officer, in a courtroom, in which the proceedings are recorded by a court reporter; or

(B) An administrative panel, provided that the hearing meets the conditions described in section 366.3(d) and (e) for dependents and section 727.4(d)(7)(B) for delinquents.

(19) “Indian child” means any unmarried person under 18 years of age who is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. In a court proceeding defined in section 224.1(d), the term also means a youth who satisfies the conditions in either (a) or (b), above, is 18 years of age but not yet 21 years of age, and remains under the jurisdiction of the juvenile court, unless that youth, directly or through his or her attorney, chooses not to be considered an Indian child for purposes of the proceeding.

(20) “Indian child’s tribe” means (a) the Indian tribe of which the Indian child is a member or is eligible for membership, or (b), if an Indian child is a member of, or eligible for membership in, more than one tribe, the Indian tribe with which the Indian child has the more significant contacts, as determined under section 224.1(e).

(21) “Initial removal” means the date on which the child, who is the subject of a petition filed under section 300 or 600, was taken into custody by the social worker or a peace officer, or was deemed to have been taken into custody under section 309(b) or 628(c), if removal results in the filing of the petition before the court.

(22) “Member of the household,” for purposes of section 300 proceedings, means any person continually or frequently found in the same household as the child.

(23) “Modification of parental rights” means a modification of parental rights through a tribal customary adoption under Welfare and Institutions Code section 366.24.

(24) “90-day Transition Plan” means the personalized plan developed at the direction of a child currently in a foster care placement during the 90-day period before the child’s planned exit from foster care when she or he attains 18 years of age or, if applicable, developed at the direction of a nonminor during the 90-day period prior to his or her anticipated exit from foster care. A 90-day Transition Plan must also be developed for and at the direction of a former foster child who remains eligible for Independent Living Program services during the 90-day period before he or she attains 18 years of age. The plan is as detailed as the child or nonminor chooses and includes information about a power of attorney for health care and specific options regarding housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports, and employment services. Inclusion of information in the plan relating to sexual health, services, and resources to ensure the child or nonminor is informed and prepared to make healthy decisions about his or her life is encouraged.

(25) “Nonminor” means a youth at least 18 years of age and not yet 21 years of age who remains subject to the court’s dependency, delinquency, or general jurisdiction under section 303 but is not a “nonminor dependent.”

(26) “Nonminor dependent” means a youth who is a dependent or ward of the court, or a nonminor under the transition jurisdiction of the court, is at least 18 years of age and not yet 21 years of age, and:

(A) Was under an order of foster care placement on his or her 18th birthday;

(B) Is currently in foster care under the placement and care authority of the county welfare department, the county probation department, or an Indian tribe that entered into an agreement under section 10553.1; and

(C) Is participating in a current Transitional Independent Living Case Plan as defined in this rule.

(27) “Notice” means a paper to be filed with the court accompanied by proof of service on each party required to be served in the manner prescribed by these rules. If a notice or other paper is required to be given to or served on a party, the notice or service must be given to or made on the party’s attorney of record, if any.

(28) "Notify" means to inform, either orally or in writing.

(29) "Petitioner," in section 300 proceedings, means the county welfare department; "petitioner," in section 601 and 602 proceedings, means the probation officer or prosecuting attorney.

(30) "Preadoptive parent" means a licensed foster parent who has been approved to adopt a child by the California State Department of Social Services, when it is acting as an adoption agency, or by a licensed adoption agency, or, in the case of an Indian child for whom tribal customary adoption is the permanent plan, the individual designated by the child's identified Indian tribe as the prospective adoptive parent.

(31) "Probation officer," in section 300 proceedings, includes a social worker in the county agency responsible for the administration of child welfare.

(32) "Punishment" means the imposition of sanctions, as defined in section 202(e), on a child declared a ward of the court after a petition under section 602 is sustained. A court order to place a child in foster care must not be used as punishment.

(33) "Reasonable efforts" or "reasonable services" means those efforts made or services offered or provided by the county welfare agency or probation department to prevent or eliminate the need for removing the child, or to resolve the issues that led to the child's removal in order for the child to be returned home, or to finalize the permanent placement of the child.

(34) "Relative" means

(A) An adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship. This term includes:

(i) A parent, sibling, grandparent, aunt, uncle, nephew, niece, great-grandparent, great-aunt or -uncle (grandparents' sibling), first cousin, great-great-grandparent, great-great-aunt or -uncle (great-grandparents' sibling), first cousin once removed (parents' first cousin), and great-great-great-grandparent;

(ii) A stepparent or stepsibling; and

(iii) The spouse or domestic partner of any of the persons described in subparagraphs (A)(i) and (ii), even if the marriage or partnership was terminated by death or dissolution; or

(B) An extended family member as defined by the law or custom of an Indian child's tribe. (25 U.S.C. § 1903(2).)

(35) "Removal" means a court order that takes away the care, custody, and control of a dependent child or ward from the child's parent or guardian, and places the care, custody, and control of the child with the court, under the supervision of the agency responsible for the administration of child welfare or the county probation department.

(36) "Section" means a section of the Welfare and Institutions Code unless stated otherwise.

(37) "Sibling group" means two or more children related to each other by blood, adoption, or affinity through a common legal or biological parent.

(38) "Social study," in section 300, 601, or 602 proceedings, means any written report provided to the court and all parties and counsel by the social worker or probation officer in any matter involving the custody, status, or welfare of a child in a dependency or wardship proceeding.

(39) "Social worker," in section 300 proceedings, means an employee of the county child welfare agency and includes a probation officer performing the child welfare duties.

(40) "Subdivision" means a subdivision of the rule in which the term appears.

(41) "Transition dependent" means a ward of the court at least 17 years and five months of age but not yet 18 years of age who is subject to the court's transition jurisdiction under section 450.

(42) "Transition jurisdiction" means the juvenile court's jurisdiction over a child or nonminor described in Welfare and Institutions Code section 450.

(43) "Transitional independent living case plan" means a child's case plan submitted for the last review hearing held before he or she turns 18 years of age or a nonminor dependent's case plan, developed with the child or nonminor dependent and individuals identified as important to him or her, signed by the child or nonminor dependent and updated every six months, that describes the goals and objectives of how the child or nonminor will make progress in the transition to living independently and assume incremental responsibility for adult decision making; the collaborative efforts between the child or nonminor dependent and the social worker, probation officer, or Indian tribe and the supportive services as described in the Transitional Independent Living Plan (TILP) to ensure the child's or nonminor

dependent's active and meaningful participation in one or more of the eligibility criteria described in subdivision (b) of section 11403; the child or nonminor dependent's appropriate supervised placement setting; the child or nonminor dependent's permanent plan for transition to living independently; and the steps the social worker, probation officer, or Indian tribe is taking to ensure the child or nonminor dependent achieves permanence, including maintaining or obtaining permanent connections to caring and committed adults, as set forth in paragraph (16) of subdivision (f) of section 16501.1.

(44) "Transitional Independent Living Plan" means the written unique, individualized service delivery plan for a child or nonminor mutually agreed upon by the child or nonminor and the social worker or probation officer that identifies the child's or nonminor's current level of functioning, emancipation goals, and the specific skills needed to prepare the child or nonminor to live independently upon leaving foster care.

(45) "Tribal customary adoption" means adoption by and through the tribal custom, traditions, or law of an Indian child's tribe as defined in Welfare and Institutions Code section 366.24 and to which a juvenile court may give full faith and credit under 366.26(e)(2). Termination of parental rights is not required to effect a tribal customary adoption.

Rule 5.502 amended effective January 1, 2016; adopted as rule 1401 effective January 1, 1990; previously amended and renumbered as rule 5.502 effective January 1, 2007; previously amended effective July 1, 1992, July 1, 1997, January 1, 1998, January 1, 1999, January 1, 2001, July 1, 2002, January 1, 2003, January 1, 2008, July 1, 2010, January 1, 2011, January 1, 2012, July 1, 2012, and January 1, 2014.

Rule 5.504. Judicial Council forms

(a) Explanation of Judicial Council legal forms

Rules 1.30–1.37 and 2.131–2.134 apply to Judicial Council legal forms, including forms applicable to the juvenile court.

(Subd (a) amended effective January 1, 2007; repealed and adopted effective January 1, 2001.)

(b) Electronically produced forms

The forms applicable to juvenile court may be produced entirely by computer, word-processor printer, or similar process, or may be produced by the California

State Department of Social Services Child Welfare Systems Case Management System.

(Subd (b) amended effective July 1, 2006; adopted as subd (c) effective July 1, 1991; amended and relettered effective January 1, 2001; previously amended effective January 1, 1993, January 1, 1998, and January 1, 2006.)

(c) Implementation of new and revised mandatory forms

To help implement mandatory Judicial Council juvenile forms:

(1) New and revised mandatory forms produced by computer, word-processor printer, or similar process must be implemented within one year of the effective date of the form. During that one-year period the court may authorize the use of a legally accurate alternative form, including any existing local form or the immediate prior version of the Judicial Council form.

(2) Until January 1, 2019, a court may produce court orders in any form or format as long as:

(A) The document is substantively identical to the mandatory Judicial Council form it is modifying;

(B) Any electronically generated form is identical in both language and legally mandated elements, including all notices and advisements, to the mandatory Judicial Council form it is modifying;

(C) The order is an otherwise legally sufficient court order, as provided in rule 1.31(g), concerning orders not on Judicial Council mandatory forms; and

(D) The court sends written notice of its election to change the form or format of the mandatory form to the Family and Juvenile Law Advisory Committee and submits additional informational reports as requested by the committee.

(Subd (c) amended effective January 1, 2017; adopted effective January 1, 2006; previously amended effective January 1, 2007, and January 1, 2012.)

Rule 5.504 amended effective January 1, 2017; adopted as rule 1402 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1991, January 1, 1992, July 1, 1992, January 1, 1993, January 1, 1994, January 1, 1998, January 1, 2001, January 1, 2006, July 1, 2006, and January 1, 2012.

Rule 5.505. Juvenile dependency court performance measures

(a) Purpose

The juvenile dependency court performance measures and related procedures set forth in this rule are intended to:

(1) Protect abused and neglected children by assisting courts in promoting children's placement in safe and permanent homes, enhancing their well-being and that of their families, and ensuring that all participants receive timely and fair treatment;

(2) Assist trial courts in meeting the mandated timelines for dependency hearings, securing due process for all litigants, and, in collaboration with the child welfare agency, improving safety, permanency, and well-being outcomes for children and families under the jurisdiction of the juvenile dependency court; and

(3) Assist courts in making well-informed resource allocation decisions.

(b) Performance measures

Detailed definitions of the performance measures and descriptions of the methods for producing the performance measures in accordance with (c)(2) and (3) are contained in the Judicial Council–approved *Implementation Guide to Juvenile Dependency Court Performance Measures.*

The juvenile dependency court performance measures are:

(1) Hearing timeliness:

(A) Percentage of children for whom the initial hearing is completed within the statutory time frame following the filing of the initial petition;

(B) Percentage of children for whom the jurisdictional hearing is completed within the statutory time frame following the initial hearing;

(C) Percentage of children for whom the disposition hearing is completed within the statutory time frame following the finding of jurisdiction;

(D) Percentage of children for whom a 3-month or other interim review hearing is held;

(E) Percentage of children for whom the 6-month review hearing is completed within 6 months of the date the child entered foster care;

(F) Percentage of children for whom the 12-month permanency hearing is completed within 12 months of the date the child entered foster care;

(G) Percentage of children for whom the 18-month review hearing is completed within 18 months of the date of original protective custody;

(H) Percentage of children for whom the first section 366.26 hearing is completed within 120 days of the termination of reunification services;

(I) Percentage of children whose postpermanency hearing is completed within 6 months of the section 366.26 hearing or the last postpermanency hearing;

(J) Percentage of children in long-term foster care whose subsequent section 366.26 hearing is completed within 12 months of the previous section 366.26 hearing;

(K) Percentage of children whose adoption is finalized within 180 days after termination of parental rights;

(L) Median time from disposition or section 366.26 hearing to order establishing guardianship;

(M) Percentage of children for whom the first and subsequent postpermanency review hearings are completed within the statutory time frame;

(N) Percentage of hearings delayed by reasons for delay and hearing type;

(O) Median time from filing of original petition to implementation of a permanent plan by permanent plan type; and

(P) Median time from filing of original petition to termination of jurisdiction by reason for termination of jurisdiction.

(2) Court procedures and due process:

(A) Percentage of cases in which all hearings are heard by one judicial officer;

(B) Percentage of cases in which all parties and other statutorily entitled individuals are served with a copy of the original petition;

(C) Percentage of hearings in which notice is given to all statutorily entitled parties and individuals within the statutory time frame;

(D) Percentage of hearings in which child or parents are present if statutorily entitled to be present;

(E) Percentage of hearings in which a judicial inquiry is made when a child 10 years of age or older is not present at hearing;

(F) Percentage of hearings in which other statutorily entitled individuals who are involved in the case (e.g., CASA volunteers, caregivers, de facto parents, others) are present;

(G) Percentage of cases in which legal counsel for parents, children, and the child welfare agency are present at every hearing;

(H) Point at which children and parents are assigned legal counsel;

(I) Percentage of cases in which legal counsel for children or parents changes;

(J) Percentage of cases in which no reunification services are ordered and reasons;

(K) Percentage of cases for which youth have input into their case plans; and

(L) Cases in compliance with the requirements of the Indian Child Welfare Act (ICWA).

(3) Child safety in the child welfare system:

(A) Percentage of children who are not victims of another substantiated maltreatment allegation within 6 and 12 months after the maltreatment incident that led to the filing of the initial petition; and

(B) For all children served in foster care during the year, percentage of children who were not victims of substantiated maltreatment by a foster parent or facility staff member.

(4) Child permanency:

(A) Percentage of children reunified in less than 12 months;

(B) Percentage of children who were reunified but reentered foster care within 12 months;

(C) Percentage of children who were discharged from foster care to a finalized adoption within 24 months;

(D) Percentage of children in foster care who were freed for adoption;

(E) Percentage of children in long-term foster care who were discharged to a permanent home before their 18th birthdays;

(F) Of children discharged to emancipation or aging out of foster care, percentage who were in foster care 3 years or longer;

(G) Percentage of children with multiple foster-care placements;

(5) Child and family well-being:

(A) Percentage of children 14 years of age or older with current transitional independent living plans;

(B) Percentage of children for whom a section 391 termination of jurisdiction hearing was held;

(C) Percentage of section 391 termination of jurisdiction hearings that did not result in termination of jurisdiction and reasons jurisdiction did not terminate;

(D) Percentage of youth present at section 391 termination of jurisdiction hearing with judicial confirmation of receipt of all services and documents mandated by section 391(b)(1–5);

(E) Percentage of children placed with all siblings who are also under court jurisdiction, as appropriate;

(F) Percentage of children placed with at least one but not all siblings who are also under court jurisdiction, as appropriate;

(G) For children who have siblings under court jurisdiction but are not placed with all of them, percentage of cases in which sibling visitation is not ordered and reasons;

(H) Percentage of cases in which visitation is not ordered for parents and reasons;

(I) Number of visitation orders for adults other than parents and siblings, (e.g., grandparents, other relatives, extended family members, others) as appropriate;

(J) Number of cases in which the court has requested relative-finding efforts from the child welfare agency;

(K) Percentage of children placed with relatives;

(L) For children 10 years of age or older and in foster care for at least 6 months, percentage for whom the court has inquired whether the social worker has identified persons important to the child; and

(M) For children 10 years of age or older in foster care for at least 6 months, percentage for whom the court has made orders to enable the child to maintain relationships with persons important to that child.

(c) Data collection

(1) California's Court Case Management System (CCMS) family and juvenile law module must be capable of collecting the data described in the *Implementation Guide to Juvenile Dependency Court Performance Measures* in order to calculate the performance measures and to produce performance measure reports.

(2) Before implementation of the CCMS family and juvenile law module, each local court must collect and submit to the Judicial Council the subset of juvenile dependency data described in (b) and further delineated in the *Implementation Guide to Juvenile Dependency Court Performance Measures* that it is reasonably capable of collecting and submitting with its existing court case management system and resources.

(3) On implementation of the CCMS family and juvenile law module in a local court, and as the necessary data elements become electronically available, the local court must collect and submit to the Judicial Council the juvenile dependency data described in (b) and further delineated in the

Implementation Guide to Juvenile Dependency Court Performance Measures. For the purposes of this subdivision, "implementation of the CCMS family and juvenile law module" in a local court means that the CCMS family and juvenile law module has been deployed in that court, is functioning, and has the ability to capture the required data elements and that local court staff has been trained to use the system.

(Subd (c) amended effective January 1, 2016.)

(d) Use of data and development of measures before CCMS implementation

Before CCMS implementation, the Judicial Council must:

(1) Establish a program to assist the local courts in collecting, preparing, analyzing, and reporting the data required by this rule;

(2) Establish a procedure to assist the local courts in submitting the required data to the Judicial Council;

(3) Use the data submitted under (c)(2) to test and refine the detailed definitions of the performance measures and descriptions of the methods for producing the performance measures described in the *Implementation Guide to Juvenile Dependency Court Performance Measures;*

(4) Consult with local courts about the accuracy of the data submitted under (c)(2). After such consultation, use data to generate aggregate data reports on performance measures, consistent with section 16543, while not disclosing identifying information about children, parents, judicial officers, and other individuals in the dependency system; and

(5) Assist the courts in using the data to achieve improved outcomes for children and families in the dependency system, make systemic improvements, and improve resource allocation decisions.

(Subd (d) amended effective January 1, 2016.)

(e) Use of data after CCMS implementation

On implementation of CCMS, the Judicial Council must:

(1) Use the data submitted under (c)(3) to conduct ongoing testing, refining, and updating of the information in the *Implementation Guide to Juvenile Dependency Court Performance Measures;*

(2) Use the data submitted under (c)(3) to generate aggregate data reports on performance measures, consistent with section 16543, while not disclosing identifying information about children, parents, judicial officers, and other individuals in the dependency system;

(3) Upon the request of any local court, extract data from the system and prepare county-level reports to meet data reporting requirements; and

(4) Assist the courts in using the data to achieve improved outcomes for children and families in the dependency system, make systemic improvements, and improve resource allocation decisions.

(Subd (e) amended effective January 1, 2016.)

Rule 5.505 amended effective January 1, 2016; adopted effective January 1, 2009.

Advisory Committee Comment

The juvenile dependency court performance measures and related procedures set forth in this rule fulfill the requirements of the Child Welfare Leadership and Accountability Act of 2006 (Welf. & Inst. Code, §§ 16540–16545).

Consistent with section 16545, the Child Welfare Council and the secretary of the California Health and Human Services Agency were consulted in adopting these performance measures. The appropriate court technology groups have also been consulted.

The *Implementation Guide to Juvenile Dependency Court Performance Measures* is a companion publication to this rule, approved by the Judicial Council.

It is anticipated that the Judicial Council will update the *Implementation Guide to Juvenile Dependency Court Performance Measures*, as appropriate, to stay current with Court Case Management System (CCMS) requirements, local court needs, and the most recent versions of the relevant state and federal child welfare measures. Proposed updates other than those that are purely technical will be circulated for public comment prior to publication.

Chapter 2. Commencement of Juvenile Court Proceedings

Rule 5.510. Proper court; determination of child's residence; exclusive jurisdiction
Rule 5.512. Joint assessment procedure
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Rule 5.510. Proper court; determination of child's residence; exclusive jurisdiction

(a) Proper court (§§ 327, 651)

The proper court in which to commence proceedings to declare a child a dependent or ward of the court is the juvenile court in the county:

(1) In which the child resides;

(2) In which the child is found; or

(3) In which the acts take place or the circumstances exist that are alleged to bring the child within the provisions of section 300 or 601 or 602.

(Subd (a) amended effective January 1, 2007.)

(b) Determination of residence—general rule (§ 17.1)

Unless otherwise provided in the juvenile court law or in these rules, the residence of a child must be determined under section 17.1.

(c) Exclusive jurisdiction (§§ 304, 316.2, 726.4)

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

(A) All issues regarding custody and visitation of the child; and

(B) All issues and actions regarding the parentage of the child under rule 5.635 and Family Code section 7630.

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

(Subd (c) amended effective January 1, 2015; adopted effective January 1, 1999; previously amended effective January 1, 2007.)

Rule 5.510 amended effective January 1, 2015; adopted as rule 1403 effective January 1, 1991; previously amended effective January 1, 1999; previously amended and renumbered effective January 1, 2007.

Rule 5.512. Joint assessment procedure

(a) Joint assessment requirement (§ 241.1)

Whenever a child appears to come within the description of section 300 and either section 601 or section 602, the responsible child welfare and probation departments must conduct a joint assessment to determine which status will serve the best interest of the child and the protection of society.

(1) The assessment must be completed as soon as possible after the child comes to the attention of either department.

(2) Whenever possible, the determination of status must be made before any petition concerning the child is filed.

(3) The assessment report need not be prepared before the petition is filed but must be provided to the court for the hearing as stated in (e).

(4) If a petition has been filed, on the request of the child, parent, guardian, or counsel, or on the court's own motion, the court may set a hearing for a determination under section 241.1 and order that the joint assessment report be made available as required in (f).

(Subd (a) amended effective January 1, 2007.)

(b) Proceedings in same county

If the petition alleging jurisdiction is filed in a county in which the child is already a dependent or ward, the child welfare and probation departments in that county must assess the child under a jointly developed written protocol and prepare a joint assessment report to be filed in that county.

(Subd (b) amended effective January 1, 2007.)

(c) Proceedings in different counties

If the petition alleging jurisdiction is filed in one county and the child is already a dependent or ward in another county, a joint assessment must be conducted by the responsible departments of each county. If the departments cannot agree on which will prepare the joint assessment report, then the department in the county where the petition is to be filed must prepare the joint assessment report.

(1) The joint assessment report must contain the recommendations and reasoning of both the child welfare and the probation departments.

(2) The report must be filed at least 5 calendar days before the hearing on the joint assessment in the county where the second petition alleging jurisdictional facts under sections 300, 601, or 602 has been filed.

(Subd (c) amended effective January 1, 2007.)

(d) Joint assessment report

The joint assessment report must contain the joint recommendation of the probation and child welfare departments if they agree on the status that will serve the best interest of the child and the protection of society, or the separate recommendation of each department if they do not agree. The report must also include:

(1) A description of the nature of the referral;

(2) The age of the child;

(3) The history of any physical, sexual, or emotional abuse of the child;

(4) The prior record of the child's parents for abuse of this or any other child;

(5) The prior record of the child for out-of-control or delinquent behavior;

(6) The parents' cooperation with the child's school;

(7) The child's functioning at school;

(8) The nature of the child's home environment;

(9) The history of involvement of any agencies or professionals with the child and his or her family;

(10) Any services or community agencies that are available to assist the child and his or her family;

(11) A statement by any counsel currently representing the child; and

(12) A statement by any CASA volunteer currently appointed for the child.

(Subd (d) amended effective January 1, 2007.)

(e) Hearing on joint assessment

If the child is detained, the hearing on the joint assessment report must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of detention and before the jurisdictional hearing. If the child is not detained, the hearing on the joint assessment must occur before the jurisdictional hearing and within 30 days of the date of the petition. The juvenile court must conduct the hearing and determine which type of jurisdiction over the child best meets the child's unique circumstances.

(Subd (e) amended effective January 1, 2007.)

(f) Notice and participation

At least 5 calendar days before the hearing, notice of the hearing and copies of the joint assessment report must be provided to the child, the child's parent or guardian, all attorneys of record, any CASA volunteer, and any other juvenile court having jurisdiction over the child. The notice must be directed to the judicial officer or department that will conduct the hearing.

(Subd (f) amended effective January 1, 2007.)

(g) Conduct of hearing

All parties and their attorneys must have an opportunity to be heard at the hearing. The court must make a determination regarding the appropriate status of the child and state its reasons on the record or in a written order.

(h) Notice of decision after hearing

Within 5 calendar days after the hearing, the clerk of the juvenile court must transmit the court's findings and orders to any other juvenile court with current jurisdiction over the child.

(i) Local protocols

On or before January 1, 2004, the probation and child welfare departments of each county must adopt a written protocol for the preparation of joint assessment reports, including procedures for resolution of disagreements between the probation and child welfare departments, and submit a copy to the Judicial Council.

Rule 5.512 amended and renumbered effective January 1, 2007; adopted as rule 1403.5 effective January 1, 2003.

Rule 5.514. Intake; guidelines

(a) Role of juvenile court

It is the duty of the presiding judge of the juvenile court to initiate meetings and cooperate with the probation department, welfare department, prosecuting attorney, law enforcement, and other persons and agencies performing an intake function. The goal of the intake meetings is to establish and maintain a fair and efficient intake program designed to promote swift and objective evaluation of the circumstances of any referral and to pursue an appropriate course of action.

(Subd (a) amended effective January 1, 2007.)

(b) Purpose of intake program

The intake program must be designed to:

(1) Provide for settlement at intake of:

(A) Matters over which the juvenile court has no jurisdiction;

(B) Matters in which there is insufficient evidence to support a petition; and

(C) Matters that are suitable for referral to a nonjudicial agency or program available in the community;

(2) Provide for a program of informal supervision of the child under sections 301 and 654; and

(3) Provide for the commencement of proceedings in the juvenile court only when necessary for the welfare of the child or protection of the public.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1995.)

(c) Investigation at intake (§§ 309, 652.5)

The probation officer or the social worker must conduct an investigation and determine whether:

(1) The matter should be settled at intake by:

(A) Taking no action;

(B) Counseling the child and any others involved in the matter; or

(C) Referring the child, the child's family, and any others involved to other agencies and programs in the community for the purpose of receiving services to prevent or eliminate the need for removal;

(2) A program of informal supervision should be undertaken for not more than six months under section 301 or 654; or

(3) A petition should be filed under section 300 or 601, or the prosecuting attorney should be requested to file a petition under section 602.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1994, January 1, 1995, and January 1, 2001.)

(d) Mandatory referrals to the prosecuting attorney (§ 653.5)

Notwithstanding (c), the probation officer must refer to the prosecuting attorney, within 48 hours, all affidavits requesting that a petition be filed under section 602 if it appears to the probation officer that:

(1) The child, regardless of age:

(A) Is alleged to have committed an offense listed in section 707(b);

(B) Has been referred for the sale or possession for sale of a controlled substance under chapter 2 of division 10 of the Health and Safety Code;

(C) Has been referred for a violation of Health and Safety Code section 11350 or 11377 at a school, or for a violation of Penal Code sections 245.5, 626.9, or 626.10;

(D) Has been referred for a violation of Penal Code section 186.22;

(E) Has previously been placed on informal supervision under section 654; or

(F) Has been referred for an alleged offense in which restitution to the victim exceeds $1,000;

(2) The child was 16 years of age or older on the date of the alleged offense and the referral is for a felony offense; or

(3) The child was under 16 years of age on the date of the alleged offense and the referral is not the first referral for a felony offense.

Except for the offenses listed in (1)(C), the provisions of this subdivision do not apply to narcotics and drug offenses listed in Penal Code section 1000.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 1994, and January 1, 1995.)

(e) Informal supervision (§§ 301, 654)

(1) If the child is placed on a program of informal supervision for not more than six months under section 301, the social worker may file a petition at any time during the six-month period. If the objectives of a service plan under section 301 have not been achieved within six months, the social worker may extend the period up to an additional six months, with the consent of the parent or guardian.

(2) If a child is placed on a program of informal supervision for not more than six months under section 654, the probation officer may file a petition under section 601, or request that the prosecuting attorney file a petition under section 602, at any time during the six-month period, or within 90 days thereafter. If a child on informal supervision under section 654 has not participated in the specific programs within 60 days, the probation officer must immediately file a petition under section 601, or request that the prosecuting attorney file one under section 602, unless the probation officer determines that the interests of the child and the community can be adequately protected by continuing under section 654.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 1995.)

Rule 5.514 amended and renumbered effective January 1, 2007; adopted as rule 1404 effective January 1, 1991; previously amended effective January 1, 1994, January 1, 1995, and January 1, 2001.

Rule 5.516. Factors to consider

(a) Settlement at intake (§ 653.5)

In determining whether a matter not described in rule 5.514(d) should be settled at intake, the social worker or probation officer must consider:

(1) Whether there is sufficient evidence of a condition or conduct to bring the child within the jurisdiction of the court;

(2) If the alleged condition or conduct is not considered serious, whether the child has previously presented significant problems in the home, school, or community;

(3) Whether the matter appears to have arisen from a temporary problem within the family that has been or can be resolved;

(4) Whether any agency or other resource in the community is available to offer services to the child and the child's family to prevent or eliminate the need to remove the child from the child's home;

(5) The attitudes of the child, the parent or guardian, and any affected persons;

(6) The age, maturity, and capabilities of the child;

(7) The dependency or delinquency history, if any, of the child;

(8) The recommendation, if any, of the referring party or agency; and

(9) Any other circumstances that indicate that settling the matter at intake would be consistent with the welfare of the child and the protection of the public.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001.)

(b) Informal supervision

In determining whether to undertake a program of informal supervision of a child not described by rule 5.514(d), the social worker or probation officer must consider:

(1) If the condition or conduct is not considered serious, whether the child has had a problem in the home, school, or community that indicates that some supervision would be desirable;

(2) Whether the child and the parent or guardian seem able to resolve the matter with the assistance of the social worker or probation officer and without formal court action;

(3) Whether further observation or evaluation by the social worker or probation officer is needed before a decision can be reached;

(4) The attitudes of the child and the parent or guardian;

(5) The age, maturity, and capabilities of the child;

(6) The dependency or delinquency history, if any, of the child;

(7) The recommendation, if any, of the referring party or agency;

(8) The attitudes of affected persons; and

(9) Any other circumstances that indicate that a program of informal supervision would be consistent with the welfare of the child and the protection of the public.

(Subd (b) amended effective January 1, 2007.)

(c) Filing of petition

In determining whether to file a petition under section 300 or 601 or to request the prosecuting attorney to file a petition under section 602, the social worker or probation officer must consider:

(1) Whether any of the statutory criteria listed in rules 5.770 and 5.772 relating to the fitness of the child are present;

(2) Whether the alleged conduct would be a felony;

(3) Whether the alleged conduct involved physical harm or the threat of physical harm to person or property;

(4) If the alleged condition or conduct is not serious, whether the child has had serious problems in the home, school, or community that indicate that formal court action is desirable;

(5) If the alleged condition or conduct is not serious, whether the child is already a ward or dependent of the court;

(6) Whether the alleged condition or conduct involves a threat to the physical or emotional health of the child;

(7) Whether a chronic, serious family problem exists after other efforts to resolve the problem have been made;

(8) Whether the alleged condition or conduct is in dispute and, if proven, whether court-ordered disposition appears desirable;

(9) The attitudes of the child and the parent or guardian;

(10) The age, maturity, and capabilities of the child;

(11) Whether the child is on probation or parole;

(12) The recommendation, if any, of the referring party or agency;

(13) The attitudes of affected persons;

(14) Whether any other referrals or petitions are pending; and

(15) Any other circumstances that indicate that the filing of a petition is necessary to promote the welfare of the child or to protect the public.

(Subd (c) amended effective January 1, 2007.)

(d) Certification to juvenile court

Copies of the certification, the accusatory pleading, any police reports, and the order of a superior court, certifying that the accused person was under the age of 18 on the date of the alleged offense, must immediately be delivered to the clerk of the juvenile court.

(1) On receipt of the documents, the clerk must immediately notify the probation officer, who must immediately investigate the matter to determine whether to commence proceedings in juvenile court.

(2) If the child is under the age of 18 and is in custody, the child must immediately be transported to the juvenile detention facility.

(Subd (d) amended effective January 1, 2007.)

Rule 5.516 amended effective January 1, 2007; adopted as rule 1405 effective January 1, 1991; previously amended effective January 1, 2001.

Rule 5.518. Court-connected child protection/dependency mediation

(a) Purpose (§ 350)

This rule establishes mandatory standards of practice and administration for court-connected dependency mediation services in accordance with section 350. This rule is intended to ensure fairness, accountability, and a high quality of service to children and families and to improve the safety, confidentiality, and consistency of dependency mediation programs statewide.

(Subd (a) amended effective January 1, 2007.)

(b) Definitions

(1) "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.

(2) "Safety and best interest of the child" refers to the child's physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of all of the following:

(A) The preservation and strengthening of the family and family relationships whenever appropriate and possible;

(B) The manner in which the child may be protected from the risk of future abuse or neglect;

(C) The child's need for safety, stability, and permanency;

(D) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system;

(E) The child's need for continuity of care and the effect that removal and subsequent placements have had, or may have, on the child; and

(F) The child's education, which includes the child's participation, progress, need for assistance, cognitive development and, if applicable, early childhood education and care, the need for special education and related services, and the extent to which the child has or has had limited English proficiency (LEP).

(3) "Safety of family members" refers to the physical, psychological, and emotional well-being of all family members, with consideration of the following:

(A) The role of domestic violence in creating a perceived or actual threat for the victim; and

(B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.

(4) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that the mediator may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and the fear of prospective violence.

(5) "Protocols" refer to any local set of rules, policies, and procedures developed and implemented by juvenile dependency mediation programs. All protocols must be developed in accordance with pertinent state laws, California Rules of Court, and local court rules.

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(c) Responsibility for mediation services

(1) Each court that has a dependency mediation program must ensure that:

(A) Dependency mediators are impartial, are competent, and uphold the standards established by this rule;

(B) Dependency mediators maintain an appropriate focus on issues related to the child's safety and best interest and the safety of all family members;

(C) Dependency mediators provide a forum for all interested persons to develop a plan focused on the best interest of the child, emphasizing family preservation and strengthening and the child's need for permanency;

(D) Dependency mediation services and case management procedures are consistent with applicable state law without compromising each party's right to due process and a timely resolution of the issues;

(E) Dependency mediation services demonstrate accountability by:

(i) Providing for the processing of complaints about a mediator's performance; and

(ii) Participating in any statewide and national data-collection efforts;

(F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings;

(G) Whenever possible, dependency mediation is conducted in the shared language of the participants. When the participants speak different languages, interpreters, court-certified when possible, should be assigned to translate at the mediation session; and

(H) Dependency mediation services preserve, in accordance with pertinent law, party confidentiality, whether written or oral, by the:

(i) Storage and disposal of records and any personal information accumulated by the mediation program; and

(ii) Management of any new child abuse reports and related documents.

(2) Each dependency mediator must:

(A) Attempt to assist the mediation participants in reaching a settlement of the issues consistent with preserving the safety and best interest of the child, first and foremost, and the safety of all family members and participants;

(B) Discourage participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member;

(C) Be conscious of the values of preserving and strengthening the family as well as the child's need for permanency;

(D) Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties;

(E) Treat all mediation participants in a manner that preserves their dignity and self-respect;

(F) Promote a safe and balanced environment for all participants to express and advocate for their positions and interests;

(G) Identify and disclose potential grounds on which a mediator's impartiality might reasonably be challenged through a procedure that allows for the selection of another mediator within a reasonable time. If a dependency mediation program has only one mediator and the parties are unable to resolve the conflict, the mediator must inform the court;

(H) Identify and immediately disclose to the participants any reasonable concern regarding the mediator's continuing capacity to be impartial, so they can decide whether the mediator should withdraw or continue;

(I) Promote the participants' understanding of the status of the case in relation to the ongoing court process, what the case plan requires of them, and the terms of any agreement reached during the mediation; and

(J) Conduct an appropriate review to evaluate the viability of any agreement reached, including the identification of any provision that depends on the action or behavior of any individual who did not participate in creating the agreement.

(Subd (c) amended effective January 1, 2007.)

(d) Mediation process

The dependency mediation process must be conducted in accordance with pertinent state laws, applicable rules of court, and local protocols. All local protocols must include the following:

(1) The process by which cases are sent to mediation, including:

(A) Who may request mediation;

(B) Who decides which cases are to be sent to mediation;

(C) Whether mediation is voluntary or mandatory;

(D) How mediation appointments are scheduled; and

(E) The consequences, if any, to a party who fails to participate in the mediation process.

(2) A policy on who participates in the mediation, according to the following guidelines:

(A) When at all possible, dependency mediation should include the direct and active participation of the parties, including but not limited to the child, the parents or legal guardian, a representative of the child protective agency, and, at some stage, their respective attorneys.

(B) The child has a right to participate in the dependency mediation process accompanied by his or her attorney. If the child makes an informed choice not to participate, then the child's attorney may participate. If the child is unable to make an informed choice, then the child's attorney may participate.

(C) Any attorney who has not participated in the mediation must have an opportunity to review and agree to any proposal before it is submitted to the court for approval.

(D) As appropriate, other family members and any guardian ad litem, CASA volunteer, or other involved person or professional may participate in the mediation.

(E) A mediation participant who has been a victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person. Unless otherwise invited or ordered to participate under the protocols developed by the court, a support person may not actively participate in the mediation except to be present as a source of emotional support for the alleged victim.

(3) A method by which the mediator may review relevant case information before the mediation.

(4) A protocol for providing mediation in cases in which domestic violence or violence perpetrated by any other mediation participant has, or allegedly has, occurred. This protocol must include specialized procedures designed to protect victims of domestic violence from intimidation by perpetrators. The protocol must also appropriately address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. The protocol must require:

(A) A review of case-related information before commencing the mediation;

(B) The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of:

(i) Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement;

(ii) Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which the mediation can proceed; and

(iii) Assisting the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the child and family members; and

(C) A mediation structure designed to meet the need of the victim of violence for safety and for full and noncoerced participation in the process, which structure must include:

(i) An option for the victim to attend the mediation session without the alleged perpetrator being present; and

(ii) Permission for the victim to have a support person present during the mediation process, whether he or she elects to be seen separately from or together with the alleged perpetrator.

(5) An oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about:

(A) The mediation process, the typical participants, the range of disputes that may be discussed, and the typical outcomes of mediation;

(B) The importance of keeping confidential all communications, negotiations, or settlement discussions by and between the participants in the course of mediation;

(C) The mediator's role and any limitations on the confidentiality of the process; and

(D) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.

(6) Protocols related to the inclusion of children in the mediation, including a requirement that the mediator explain in an age-appropriate way the mediation process to a participating child. The following information must be explained to the child:

(A) How the child may participate in the mediation;

(B) What occurs during the mediation process;

(C) The role of the mediator;

(D) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome;

(E) Any limitations on the confidentiality of the process;

(F) The child's right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and

(G) The child's right to leave the mediation session if his or her emotional or physical well-being is threatened.

(7) Policy and procedures for scheduling follow-up mediation sessions.

(8) A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation.

(9) A procedure for ensuring that each participant clearly understands any agreement reached during the mediation, and a procedure for presenting the agreement to the court for its approval. This procedure must include the requirement that all parties and the attorneys who participate in the agreement review and approve it and indicate their agreement in writing before its submission to the court.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(e) Education, experience, and training requirements for dependency mediators

Dependency mediators must meet the following minimum qualifications:

(1) Possession of one or more of the following:

(A) A master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or another behavioral science substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university; or

(B) A juris doctorate or bachelor of laws degree;

(2) At least two years of experience as an attorney, a referee, a judicial officer, a mediator, or a child welfare worker in juvenile dependency court, or at least three years of experience in mediation or counseling, preferably in a setting related to juvenile dependency or domestic relations; and

(3) Completion of at least 40 hours of initial dependency mediation training before or within 12 months of beginning practice as a dependency mediator. Currently practicing dependency mediators must complete the required 40 hours of initial training by January 1, 2006. The training must cover the following subject areas as they relate to the practice of dependency mediation:

(A) Multiparty, multi-issue, multiagency, and high-conflict cases, including:

(i) The roles and participation of parents, other family members, children, attorneys, guardians ad litem, children's caregivers, the child welfare agency staff, CASA volunteers, law enforcement, mediators, the court, and other involved professionals and interested participants in the mediation process;

(ii) The impact that the mediation process can have on a child's well-being, and when and how to involve the child in the process;

(iii) The methods to help parties collaboratively resolve disputes and jointly develop plans that consider the needs and best interest of the child;

(iv) The disclosure, recantation, and denial of child abuse and neglect;

(v) Adult mental health issues; and

(vi) The rights to educational and developmental services recognized or established by state and federal law and strategies for appropriately addressing the individual needs of persons with disabilities;

(B) Physical and sexual abuse, exploitation, emotional abuse, endangerment, and neglect of children, and the impacts on children, including safety and treatment issues related to child abuse, neglect, and family violence;

(C) Family violence, its relevance to child abuse and neglect, and its effects on children and adult victims, including safety and treatment issues related to child abuse, neglect, and family violence;

(D) Substance abuse and its impact on children;

(E) Child development and its relevance to child abuse, neglect, and child custody and visitation arrangements;

(F) Juvenile dependency and child welfare systems, including dependency law;

(G) Interfamilial relationships and the psychological needs of children, including, but not limited to:

(i) The effect of removal or nonremoval of children from their homes and family members; and

(ii) The effect of terminating parental rights;

(H) The effect of poverty on parenting and familial relationships;

(I) Awareness of differing cultural values, including cross-generational cultural issues and local demographics;

(J) An overview of the special needs of dependent children, including their educational, medical, psychosocial, and mental health needs; and

(K) Available community resources and services for dealing with domestic and family violence, substance abuse, and housing, educational, medical, and mental health needs for families in the juvenile dependency system.

(Subd (e) amended effective January 1, 2014; previously amended effective January 1, 2005, January 1, 2007, and January 1, 2008.)

(f) Substitution for education or experience

The court, on a case-by-case basis, may approve substitution of experience for the education, or education for the experience, required by (e)(1) and (e)(2).

(Subd (f) amended effective January 1, 2007.)

(g) Continuing education requirements for mediators

In addition to the 40 hours of training required by (e)(3), all dependency mediators, mediation supervisors, program coordinators and directors, volunteers, interns, and paraprofessionals must participate in at least 12 hours per year of continuing instruction designed to enhance dependency mediation practice, skills, and techniques, including at least 4 hours specifically related to the issue of family violence.

(Subd (g) amended effective January 1, 2007.)

(h) Volunteers, interns, or paraprofessionals

Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they are supervised by a professional mediator who is qualified to act as a professional dependency mediator as described in (e). They must meet the training and continuing education requirements in (e)(3) and (g) unless they co-mediate with another professional who meets the requirements of this rule. They are exempt from meeting the education and experience requirements in (e)(1) and (e)(2).

(Subd (h) amended effective January 1, 2007.)

(i) Education and training providers

Only education and training acquired from eligible providers meet the requirements of this rule. "Eligible providers" includes the Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) Eligible providers must:

(A) Ensure that the training instructors or consultants delivering the education and training programs either meet the requirements of this rule or are experts in the subject matter;

(B) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(C) Emphasize the importance of focusing dependency mediations on the health, safety, welfare, and best interest of the child;

(D) Develop a procedure to verify that participants complete the education and training program; and

(E) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider.

(2) Effective July 1, 2005, all education and training programs must be approved by Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee.

(Subd (i) amended effective January 1, 2016; adopted effective January 1, 2005; previously amended effective January 1, 2007.)

(j) Ethics/standards of conduct

Mediators must:

(1) Meet the standards of the applicable code of ethics for court employees.

(2) Maintain objectivity, provide information to and gather information from all parties, and be aware of and control their own biases.

(3) Protect the confidentiality of all parties, including the child. Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). Any limitations to confidentiality must be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.

(4) Maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations.

(5) Decline to provide legal advice.

(6) Consider the health, safety, welfare, and best interest of the child and the safety of all parties and other participants in all phases of the process and encourage the formulation of settlements that preserve these values.

(7) Operate within the limits of their training and experience and disclose any limitations or bias that would affect their ability to conduct the mediation.

(8) Not require the child to state a preference for placement.

(9) Disclose to the court, to any participant, and to the participant's attorney any conflicts of interest or dual relationships, and not accept any referral except by court order or the parties' stipulation. In the event of a conflict of interest, the mediator must suspend mediation and meet and confer in an effort to resolve the conflict of interest either to the satisfaction of all parties or according to local court rules. The court may order mediation to continue

with another mediator or offer the parties an alternative method of resolving the issues in dispute.

(10) Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, absence of bargaining ability, or unconscionability.

(11) Protect the integrity of the mediation process by terminating the mediation when a party or participant has no genuine interest in resolving the dispute and is abusing the process.

(12) Terminate any session in which an issue of coercion, inability to participate, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.

(Subd (j) amended effective January 1, 2007; adopted as subd (i); previously relettered effective January 1, 2005.)

Rule 5.518 amended effective January 1, 2016; adopted as rule 1405.5 effective January 1, 2004; previously amended and renumbered as rule 5.518 effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2008, and January 1, 2014.

Rule 5.520. Filing the petition; application for petition

(a) Discretion to file (§§ 325, 650)

Except as provided in sections 331, 364, 604, 653.5, 654, and 655, the social worker or probation officer has the sole discretion to determine whether to file a petition under section 300 and 601. The prosecuting attorney has the sole discretion to file a petition under section 602.

(Subd (a) amended effective January 1, 2007.)

(b) Filing the petition (§§ 325, 650)

A proceeding in juvenile court to declare a child a dependent or a ward of the court is commenced by the filing of a petition.

(1) In proceedings under section 300, the social worker must file the petition;

(2) In proceedings under section 601, the probation officer must file the petition; and

(3) In proceedings under section 602, the prosecuting attorney must file the petition. The prosecuting attorney may refer the matter back to the probation officer for appropriate action.

(Subd (b) amended effective January 1, 2007.)

(c) Application for petition (§§ 329, 331, 653, 653.5, 655)

Any person may apply to the social worker or probation officer to commence proceedings. The application must be in the form of an affidavit alleging facts showing the child is described in sections 300, 601, or 602. The social worker or probation officer must proceed under sections 329, 653, or 653.5. The applicant may seek review of a decision not to file a petition by proceeding under section 331 or 655.

(Subd (c) amended effective January 1, 2007.)

Rule 5.520 amended and renumbered effective January 1, 2007; adopted as rule 1406 effective January 1, 1991.

Rule 5.522. Remote filing

(a) Applicability and definitions

(1) This rule applies to juvenile court proceedings in courts that permit fax or electronic filing by local rule.

(2) As used in this rule, “fax,” “fax transmission,” “fax machine,” and “fax filing” are defined in rule 2.301. A fax machine also includes any electronic device capable of receiving a fax transmission, as defined in rule 2.301.

(3) As used in this rule, “electronic filing” is defined in rule 2.250. Rule 2.250 also defines other terms used in this rule related to electronic filing, such as “document,” “electronic filer,” “electronic filing service provider,” “regular filing hours,” and “close of business.”

(Subd (a) amended effective January 1, 2015; previously amended effective January 1, 2007.)

(b) Electronic filing

(1) A court may allow for the electronic filing of documents in juvenile dependency and delinquency proceedings as provided under, and consistent with, rule 2.252 et seq.

(2) A court may allow for the electronic filing of documents directly with the court or may provide by local rule for indirect filing through an electronic filing service provider that has in place systems to ensure the integrity and confidentiality of transmission of records and adheres to the requirements of rule 2.256(a)(1).

(3) Electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption or other secure methods.

(4) This rule does not incorporate the electronic service provisions in rule 2.251.

(Subd (b) adopted effective January 1, 2015.)

(c) Fax filing

(1) *Juvenile court documents that may be filed by fax*

The following documents may be filed in juvenile court by the use of a fax machine: petitions filed under sections 300, 342, 387, 388, 601, 602, 777, and 778. Other documents may be filed by the use of a fax machine if permitted by local rule as specified in (a).

(2) *Persons and agencies that may file by fax*

Only the following persons and agencies may file documents by the use of a fax machine, as stated in (c)(1):

(A) Any named party to the proceeding;

(B) Any attorney of record in the proceeding;

(C) The county child welfare department;

(D) The probation department;

(E) The office of the district attorney;

(F) The office of the county counsel; and

(G) A Court Appointed Special Advocate (CASA) volunteer appointed in the case.

(3) *Procedures for fax filing*

A person described in (c)(2) may file by fax directly to any juvenile court that has provided for fax filing by local rule. The local rule or other written instruction must provide the fax telephone number or numbers for filings and the business hours during which fax filings will be accepted.

(4) *Mandatory cover sheet*

A fax filing must be accompanied by *Fax Filing Cover Sheet* (form JV-520). The cover sheet must be the first page of the transferred document. The court is not required to retain or file a copy of the cover sheet.

(5) *Signatures*

Notwithstanding any provision of law to the contrary, a signature produced by fax transmission is an original signature.

(6) *Confidentiality requirements*

To secure the confidentiality of the documents subject to filing by fax, the following procedures are required:

(A) The clerk's office designated to receive such documents must have either a separate fax machine dedicated solely to the receipt of the documents described in (c)(1) or a fax machine that is set up with a protocol to preserve the confidentiality of the documents described in (c)(1); and

(B) Any document received for fax filing must be filed or submitted to the court immediately on receipt and must not be placed or stored where anyone not entitled to access may examine it.

(Subd (c) adopted and amended effective January 1, 2015; previously subd (b)–(g); previously amended effective January 1, 2007.)

Rule 5.522 amended effective January 1, 2015; adopted as rule 1406.5 effective January 1, 1999; previously amended and renumbered effective January 1, 2007.

Rule 5.524. Form of petition; notice of hearing

(a) Form of petition—dependency (§§ 332, 333)

The petition to declare a child a dependent of the court must be verified and may be dismissed without prejudice if not verified. The petition must contain the information stated in section 332.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1995, and January 1, 2006.)

(b) Form of petition—delinquency (§§ 656, 656.1, 656.5, 661)

The petition to declare a child a ward of the court must be verified and may be dismissed without prejudice if not verified. The petition must contain the information stated in sections 656, 656.1, 656.5, 661, and, if applicable, the intent to aggregate other offenses under section 726.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 2006.)

(c) Use of forms

Dependency petitions must be filed on a Judicial Council form. The filing party must use *Juvenile Dependency Petition (Version One)* (form JV-100) with the *Additional Children Attachment (Juvenile Dependency Petition)* (form JV-101) when appropriate, or *Juvenile Dependency Petition (Version Two)* (form JV-110) as prescribed by local rule or practice. Rules 1.31 and 1.32 govern the use of mandatory and optional forms, respectively.

(Subd (c) amended effective January 1, 2007; adopted as subd (b); previously amended and relettered effective January 1, 2006.)

(d) Amending the petition (§§ 348, 678)

Chapter 8 of title 6 of part 2 of the Code of Civil Procedure, beginning at section 469, applies to variances and amendments of petitions and proceedings in the juvenile court.

(Subd (d) amended and relettered effective January 1, 2006; adopted as subd (c).)

(e) Notice of hearing—dependency (§§ 290.1, 290.2, 297, 338)

(1) When the petition is filed, the probation officer or social worker must serve a notice of hearing under section 290.1, with a copy of the petition attached. On filing of the petition, the clerk must issue and serve notice as prescribed in section 290.2, along with a copy of the petition. CASA volunteers are entitled to the same notice as stated in sections 290.1 and 290.2.

(2) If the county and the court choose to allow notice by electronic mail of hearings under sections 290.1–295, the court must develop a process for obtaining consent from persons entitled to notice that complies with the notice statute and ensures that notice can be effectuated according to statutory timelines.

(Subd (e) amended effective July 1, 2016; adopted as subd (d); previously amended and relettered effective January 1, 2006; previously amended effective January 1, 2007.)

(f) Notice of hearing—delinquency (§§ 630, 630.1, 658, 659, 660)

(1) Immediately after the filing of a petition to detain a child, the probation officer or the prosecuting attorney must issue and serve notice as prescribed in section 630.

(2) When a petition is filed, the clerk must issue and serve a notice of hearing in accordance with sections 658, 659, and 660 with a copy of the petition attached.

(3) After reasonable notification by minor's counsel or his or her parent or guardian, the clerk must provide notice to the minor's attorney as stated in section 630.1.

(Subd (f) amended effective January 1, 2007; adopted effective January 1, 2006.)

(g) Waiver of service (§§ 290.2, 660)

A person may waive service of notice by a voluntary appearance noted in the minutes of the court, or by a written waiver of service filed with the clerk.

(Subd (g) amended and relettered effective January 1, 2006; adopted as subd (h).)

(h) Oral notice (§§ 290.1, 630)

Notice required by sections 290.1 and 630 may be given orally. The social worker or probation officer must file a declaration stating that oral notice was given and to whom.

(Subd (h) amended effective January 1, 2007; adopted as subd (j); previously amended and relettered effective January 1, 2006.)

Rule 5.524 amended effective July 1, 2016; adopted as rule 1407 effective January 1, 1991; previously amended effective January 1, 1992, January 1, 1995, January 1, 2001, and January 1, 2006; previously amended and renumbered as rule 5.524 effective January 1, 2007.

Rule 5.526. Citation to appear; warrants of arrest; subpoenas

(a) Citation to appear (§§ 338, 661)

In addition to the notice required under rule 5.524, the court may issue a citation directing a parent or guardian to appear at a hearing.

(1) The citation must state that the parent or guardian may be required to participate in a counseling program, and the citation may direct the child's present caregiver to bring the child to court.

(2) The citation must be personally served at least 24 hours before the time stated for the appearance.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Warrant of arrest (§§ 339, 662)

The court may order a warrant of arrest to issue against the parent, guardian, or present custodian of the child if:

(1) The citation cannot be served;

(2) The person served does not obey it; or

(3) The court finds that a citation will probably be ineffective.

(c) Protective custody or warrant of arrest for child (§§ 340, 663)

The court may order a protective custody warrant or a warrant of arrest for a child if the court finds that:

(1) The conduct and behavior of the child may endanger the health, person, welfare, or property of the child or others; or

(2) The home environment of the child may endanger the health, person, welfare, or property of the child.

(d) Subpoenas (§§ 341, 664)

On the court's own motion or at the request of the petitioner, child, parent, guardian, or present caregiver, the clerk must issue subpoenas requiring attendance and testimony of witnesses and the production of papers at a hearing. If a witness appears in response to a subpoena, the court may order the payment of witness fees as a county charge in the amount and manner prescribed by statute.

(Subd (d) amended effective January 1, 2006.)

Rule 5.526 amended and renumbered effective January 1, 2007; adopted as rule 1408 effective January 1, 1991; previously amended effective January 1, 2006.

Chapter 3. General Conduct of Juvenile Court Proceedings

Rule 5.530. Persons present
Rule 5.531. Appearance by telephone (§ 388; Pen. Code § 2625)
Rule 5.532. Court reporter; transcripts
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Rule 5.538. Conduct of proceedings held before a referee not acting as a temporary judge
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Rule 5.544. Prehearing motions (§ 700.1)
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Rule 5.552. Confidentiality of records (§§ 827, 828)
Rule 5.553. Juvenile case file of a deceased child
Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1 (g)(16))

Rule 5.530. Persons present

(a) Separate session; restriction on persons present (§§ 345, 675)

All juvenile court proceedings must be heard at a special or separate session of the court, and no other matter may be heard at that session. No person on trial, awaiting trial, or accused of a crime, other than a parent, de facto parent, guardian, or relative of the child, may be present at the hearing, except while testifying as a witness.

(Subd (a) amended effective January 1, 2005.)

(b) Persons present

The following persons are entitled to be present:

(1) The child or nonminor dependent;

(2) All parents, de facto parents, Indian custodians, and guardians of the child or, if no parent or guardian resides within the state or their places of residence are not known, any adult relative residing within the county or, if none, the adult relative residing nearest the court;

(3) Counsel representing the child or the parent, de facto parent, guardian, adult relative, or Indian custodian or the tribe of an Indian child;

(4) The probation officer or social worker;

(5) The prosecuting attorney, as provided in (c) and (d);

(6) Any CASA volunteer;

(7) In a proceeding described by rule 5.480, a representative of the Indian child's tribe;

(8) The court clerk;

(9) The official court reporter, as provided in rule 5.532;

(10) At the court's discretion, a bailiff; and

(11) Any other persons entitled to notice of the hearing under sections 290.1 and 290.2.

(Subd (b) amended effective July 1, 2013; previously amended effective January 1, 1995, January 1, 1997, January 1, 2005, January 1, 2007, and January 1, 2012.)

(c) Presence of prosecuting attorney—section 601–602 proceedings (§ 681)

In proceedings brought under section 602, the prosecuting attorney must appear on behalf of the people of the State of California. In proceedings brought under section 601, the prosecuting attorney may appear to assist in ascertaining and presenting the evidence if:

(1) The child is represented by counsel; and

(2) The court consents to or requests the prosecuting attorney's presence, or the probation officer requests and the court consents to the prosecuting attorney's presence.

(Subd (c) amended effective January 1, 2007.)

(d) Presence of petitioner's attorney—section 300 proceedings (§ 317)

In proceedings brought under section 300, the county counsel or district attorney must appear and represent the petitioner if the parent or guardian is represented by counsel and the juvenile court requests the attorney's presence.

(Subd (d) amended effective January 1, 2007.)

(e) Others who may be admitted (§§ 346, 676, 676.5)

Except as provided below, the public must not be admitted to a juvenile court hearing. The court may admit those whom the court deems to have a direct and legitimate interest in the case or in the work of the court.

(1) If requested by a parent or guardian in a hearing under section 300, and consented to or requested by the child, the court may permit others to be present.

(2) In a hearing under section 602:

(A) If requested by the child and a parent or guardian who is present, the court may admit others.

(B) Up to two family members of a prosecuting witness may attend to support the witness, as authorized by Penal Code section 868.5.

(C) Except as provided in section 676(b), members of the public must be admitted to hearings concerning allegations of the offenses stated in section 676(a).

(D) A victim of an offense alleged to have been committed by the child who is the subject of the petition, and up to two support persons chosen by the victim, are entitled to attend any hearing regarding the offense.

(E) Any persons, including the child, may move to exclude a victim or a support person and must demonstrate a substantial probability that overriding interests will be prejudiced by the presence of the individual sought to be excluded. On such motion, the court must consider reasonable alternatives to the exclusion and must make findings as required under section 676.5.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2001.)

(f) Participation of incarcerated parent in dependency proceedings (§§ 290.1–294, 316.2, 349, 361.5(e); Pen. Code § 2625)

The incarcerated parent of a child on behalf of whom a petition under section 300 has been filed may appear and participate in dependency proceedings as provided in this subdivision.

(1) Notice must be sent to an incarcerated parent of a detention hearing under section 319 as required by sections 290.1 and 290.2; a jurisdictional hearing under section 355 or a dispositional hearing under section 358 or 361 as required by section 291; a review hearing under section 366.21, 366.22, or 366.25 as required by section 293; or a permanency planning hearing under section 366.26 as required by section 294.

(A) Notice to an incarcerated parent of a jurisdictional hearing, a dispositional hearing, or a section 366.26 permanency planning hearing at which termination of parental rights is at issue must inform the incarcerated parent of his or her right to be physically present at the hearing and explain how the parent may secure his or her presence or, if he or she waives the right to be physically present, appearance and participation.

(B) Notice to an incarcerated parent of a detention hearing, a review hearing, or any other hearing in a dependency proceeding must inform the incarcerated parent of his or her options for requesting physical or telephonic appearance at and participation in the hearing.

(C) The county welfare department must use the prisoner location system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings to incarcerated parents.

(2) The court must order an incarcerated parent's temporary removal from the institution where he or she is confined and production before the court at the time appointed for any jurisdictional hearing held under section 355 or dispositional hearing held under section 358 or 361, and any permanency planning hearing held under section 366.26 in which termination of parental rights is at issue.

(3) For any other hearing in a dependency proceeding, including but not limited to a detention hearing or a review hearing, the court may order the temporary removal of the incarcerated parent from the institution where he or she is confined and the parent's production before the court at the time appointed for that hearing.

(4) No hearing described in (2) may be held without the physical presence of the incarcerated parent and the parent's attorney unless the court has received:

(A) A knowing waiver of the right to be physically present signed by the parent; or

(B) A declaration, signed by the person in charge of the institution in which the parent is incarcerated, or his or her designated representative, stating that the parent has, by express statement or action, indicated an intent not to be physically present at the hearing.

(5) When issuing an order under (2) or (3), the court must require that *Order for Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450) and a copy of *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) be attached to the notice of hearing and served on the parent, the parent's attorney, the person in charge of the institution, and the sheriff's department of the county in which the order is issued by the person responsible for giving notice of the hearing at issue not less than 15 days before the date of the hearing.

(6) The court may, at the request of any party or on its own motion, permit an incarcerated parent, who has waived his or her right to be physically present at a hearing described in (2) or who has not been ordered to appear before the court, to appear and participate in a hearing by videoconference consistent with the requirements of rule 5.531. If video technology is not available, the court may permit the parent to appear by telephone consistent with the requirements of rule 5.531. The court must inform the parent that, if no technology complying with rule 5.531 is available, the court may proceed without his or her appearance and participation.

(7) The presiding judge of the juvenile court in each county should convene representatives of the county welfare department, the sheriff's department, parents' attorneys, and other appropriate entities to develop:

(A) Local procedures or protocols to ensure an incarcerated parent's notification of, transportation to, and physical presence at court hearings involving proceedings affecting his or her child as required or authorized by Penal Code section 2625 and this rule unless he or she has knowingly waived the right to be physically present; and

(B) Local procedures or protocols, consistent with (f)(6) and rule 5.531, to facilitate the appearance and participation by videoconference or telephone of an incarcerated parent who has knowingly waived the right to be physically present.

(Subd (f) adopted effective January 1, 2012.)

Rule 5.530 amended effective July 1, 2013; adopted as rule 1410 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1995, January 1, 1997, January 1, 2001, January 1, 2005, and January 1, 2012.

Rule 5.531. Appearance by telephone (§ 388; Pen. Code § 2625)

(a) Application

The standards in (b) apply to any appearance or participation in court by telephone, videoconference, or other digital or electronic means authorized by law.

(b) Standards for local procedures or protocols

Local procedures or protocols must be developed to ensure the fairness and confidentiality of any proceeding in which a party is permitted by statute, rule of

court, or judicial discretion to appear by telephone. These procedures or protocols must, at a minimum:

(1) Ensure that the party appearing by telephone can participate in the hearing in real time, with no delay in aural or, if any, visual transmission or reception;

(2) Ensure that the statements of participants are audible to all other participants and court staff and that the statements made by a participant are identified as being made by that participant;

(3) Ensure that the proceedings remain confidential as required by law;

(4) Establish a deadline of no more than three court days before the proceeding for notice to the court by the party or party's attorney (if any) of that party's intent to appear by telephone, and permit that notice to be conveyed by any method reasonably calculated to reach the court, including telephone, fax, or other electronic means;

(5) Permit the party, on a showing of good cause, to appear by telephone even if he or she did not provide timely notice of intent to appear by telephone;

(6) Permit a party to appear in person for a proceeding at the time and place for which the proceeding was noticed, even if that party had previously notified the court of an intent to appear by telephone;

(7) Ensure that any hearing at which a party appears by telephone is recorded and reported to the same extent and in the same manner as if he or she had been physically present;

(8) Ensure that the party appearing by telephone is able to communicate confidentially with his or her attorney (if any) during the proceeding and provide timely notice to all parties of the steps necessary to secure confidential communication; and

(9) Provide for the development of the technological capacity to accommodate appearances by telephone that comply with the requirements of this rule.

(c) No independent right

Nothing in this rule confers on any person an independent right to appear by telephone, videoconference, or other electronic means in any proceeding.

Rule 5.531 adopted effective January 1, 2012.

Rule 5.532. Court reporter; transcripts

(a) Hearing before judge (§§ 347, 677)

If the hearing is before a judge or a referee acting as a temporary judge by stipulation, an official court reporter or other authorized reporting procedure must record all proceedings.

(Subd (a) amended effective January 1, 2007.)

(b) Hearing before referee (§§ 347, 677)

If the hearing is before a referee not acting as a temporary judge, the judge may direct an official court reporter or other authorized reporting procedure to record all proceedings.

(c) Preparation of transcript (§§ 347, 677)

If directed by the judge or if requested by a party or the attorney for a party, the official court reporter or other authorized transcriber must prepare a transcript of the proceedings within such reasonable time after the hearing as the judge designates and must certify that the proceedings have been correctly reported and transcribed. If directed by the judge, the official court reporter or authorized transcriber must file the transcript with the clerk of the court.

(Subd (c) amended effective January 1, 2007.)

Rule 5.532 amended and renumbered effective January 1, 2007; adopted as rule 1411 effective January 1, 1990.

Rule 5.534. General provisions—all proceedings

(a) De facto parents

On a sufficient showing, the court may recognize the child's present or previous custodian as a de facto parent and grant him or her standing to participate as a party in the dispositional hearing and any hearing thereafter at which the status of the dependent child is at issue. The de facto parent may:

(1) Be present at the hearing;

(2) Be represented by retained counsel or, at the discretion of the court, by appointed counsel; and

(3) Present evidence.

(Subd (a) relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2007, and January 1, 2014.)

(b) Relatives

(1) On a sufficient showing, the court may permit a relative of the child or youth to:

(A) Be present at the hearing; and

(B) Address the court.

(2) A relative of the child has the right to submit information about the child to the court at any time. Written information about the child may be submitted to the court using *Relative Information* (form JV-285) or in a letter to the court.

(3) When a relative is located through the investigation required by rule 5.637, the social worker or probation officer must give that relative:

(A) The written notice required by section 309 or 628 and the "Important Information for Relatives" document as distributed in California Department of Social Services All County Letter No. 09-86;

(B) A copy of *Relative Information* (form JV-285), with the county and address of the court, the child's name and date of birth, and the case number already entered in the appropriate caption boxes by the social worker; and

(C) A copy of *Confidential Information* (form JV-287).

(4) When form JV-285 or a relative's letter is received by the court, the clerk must provide the social worker or probation officer, all self-represented parties, and all attorneys with a copy of the completed form or letter.

(5) When form JV-287 is received by the court, the clerk must place it in a confidential portion of the case file.

(Subd (b) relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2007, January 1, 2011, and January 1, 2014.)

(c) Right to counsel (§§ 317, 633, 634, 700)

At each hearing, the court must advise any self-represented child, parent, or guardian of the right to be represented by counsel and, if applicable, of the right to have counsel appointed, subject to a claim by the court or the county for reimbursement as provided by law.

(Subd (c) relettered effective January 1, 2017; adopted as subd (g); previously amended effective July 1, 2002, January 1, 2007, and January 1, 2014.)

(d) Appointment of counsel (§§ 317, 353, 633, 634, 700)

(1) In cases petitioned under section 300:

(A) The court must appoint counsel for the child unless the court finds that the child would not benefit from the appointment and makes the findings required by rule 5.660(b); and

(B) The court must appoint counsel for any parent or guardian unable to afford counsel if the child is placed in out-of-home care or the recommendation of the petitioner is for out-of-home care, unless the court finds the parent or guardian has knowingly and intelligently waived the right to counsel.

(2) In cases petitioned under section 601 or 602:

(A) The court must appoint counsel for any child who appears without counsel, unless the child knowingly and intelligently waives the right to counsel. If the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court must appoint counsel for the child and order the parent or guardian to reimburse the county;

(B) The court may appoint counsel for a parent or guardian who desires but cannot afford counsel; and

(C) If the parent has retained counsel for the child and a conflict arises, the court must take steps to ensure that the child's interests are protected.

(Subd (d) relettered effective January 1, 2017; adopted as subd (h); previously amended effective July 1, 2002, January 1, 2007, and January 1, 2014.)

(e) Tribal representatives (25 U.S.C. §§ 1911, 1931–1934)

The tribe of an Indian child is entitled to intervene as a party at any stage of a dependency proceeding concerning the Indian child.

(1) The tribe may appear by counsel or by a representative of the tribe designated by the tribe to intervene on its behalf. When the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual or agency to appear as the tribe must be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.

(2) If the tribe of the Indian child does not intervene as a party, the court may permit an individual affiliated with the tribe or, if requested by the tribe, a representative of a program operated by another tribe or Indian organization to:

(A) Be present at the hearing;

(B) Address the court;

(C) Receive notice of hearings;

(D) Examine all court documents relating to the dependency case;

(E) Submit written reports and recommendations to the court; and

(F) Perform other duties and responsibilities as requested or approved by the court.

(Subd (e) relettered effective January 1, 2017; adopted as subd (i) effective January 1, 1997; previously amended effective July 1, 2002, and January 1, 2007.)

(f) Appointment of educational rights holder (§§ 319, 361, 366, 366.27, 726, 727.2; Gov. Code, §§ 7579.5−7579.6)

(1) If the court limits, even temporarily, the rights of a parent or guardian to make educational or developmental-services decisions for a child under rule 5.649, the court must immediately proceed under rule 5.650 to appoint a responsible adult as educational rights holder for the child.

(2) If a nonminor or nonminor dependent youth chooses not to make educational or developmental-services decisions for him- or herself or is deemed by the court to be incompetent, and the court also finds that the appointment of an educational rights holder would be in the best interests of the youth, then the court must immediately proceed under rule 5.650 to appoint or continue the appointment of a responsible adult as educational rights holder for the youth.

(Subd (f) relettered effective January 1, 2017; adopted as subd (j) effective January 1, 2008; previously amended effective January 1, 2014.)

(g) Advisement of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)

(1) The court must advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:

(A) The right to assert the privilege against self-incrimination;

(B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing;

(C) The right to use the process of the court to bring in witnesses; and

(D) The right to present evidence to the court.

(2) The child, parent, guardian, and their attorneys have:

(A) The right to receive probation officer or social worker reports; and

(B) The right to inspect the documents used by the preparer of the report.

(3) Unless prohibited by court order, the child, parent, guardian, and their attorneys also have the right to receive all documents filed with the court.

(Subd (g) amended and relettered effective January 1, 2017; adopted as subd (i); previously amended effective July 1, 2002, and January 1, 2007; previously relettered as subd (j) effective January 1, 1997, and as subd (k) effective January 1, 2008.

(h) Notice

At each hearing under section 300 et seq., the court must determine whether notice has been given as required by law and must make an appropriate finding noted in the minutes.

*(Subd (h) relettered effective January 1, 2017; adopted as subd (j); previously amended effective July 1, 2002, and January 1, 2007; previously relettered as subd (k) effective January 1, 1997, and as subd (*l*) effective January 1, 2008.)*

(i) Address of parent or guardian—notice (§ 316.1)

At the first appearance by a parent or guardian in proceedings under section 300 et seq., the court must order each parent or guardian to provide a mailing address.

(1) The court must advise that the mailing address provided will be used by the court, the clerk, and the social services agency for the purposes of notice of hearings and the mailing of all documents related to the proceedings.

(2) The court must advise that until and unless the parent or guardian, or the attorney of record for the parent or guardian, submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.

(3) *Notification of Mailing Address* (form JV-140) is the preferred method of informing the court and the social services agency of the mailing address of the parent or guardian and change of mailing address.

(A) The form must be delivered to the parent or guardian, or both, with the petition.

(B) The form must be available in the courtroom, in the office of the clerk, and in the offices of the social services agency.

(C) The form must be printed and made available in both English and Spanish.

(4) If the county and the court allow notice of hearings under sections 290.1–295 by electronic mail, persons who are entitled to notice and who want to receive notice of hearings by electronic mail must indicate their consent by filing *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)* (form EFS-005-JV/JV-141).

(Subd (i) relettered effective January 1, 2017; adopted as subd (k) effective January 1, 1994; previously relettered as subd (l) *effective January 1, 1997; previously relettered as*

subd (m) effective January 1, 2008; previously amended effective July 1, 2002, January 1, 2007, and July 1, 2016.)

(i) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)

For cases filed under section 300 et seq.:

(1) For any child who has been removed from the home, the court must ensure that notice of statutory review hearings, permanency hearings, and section 366.26 hearings has been provided to the current caregiver of the child, including foster parents, preadoptive parents, relative caregivers, and nonrelative extended family members. Notice of dispositional hearings also must be provided to these individuals when the dispositional hearing is serving as a permanency hearing under section 361.5(f).

(2) The current caregiver has the right to be heard in each proceeding listed in paragraph (1), including the right to submit information about the child to the court before the hearing. Written information about the child may be submitted to the court using the *Caregiver Information Form* (form JV-290) or in the form of a letter to the court.

(3) At least 10 calendar days before each hearing listed in paragraph (1), the social worker must provide to the current caregiver:

(A) A summary of his or her recommendations for disposition, and any recommendations for change in custody or status;

(B) *Caregiver Information Form* (form JV-290); and

(C) *Instruction Sheet for Caregiver Information Form* (form JV-290-INFO).

(4) If the caregiver chooses to provide written information to the court using form JV-290 or by letter, the caregiver must follow the procedures set forth below. The court may waive any element of this process for good cause.

(A) If filing in person, the caregiver must bring the original document and 8 copies to the court clerk's office for filing no later than five calendar days before the hearing.

(B) If filing by mail, the caregiver must mail the original document and 8 copies to the court clerk's office for filing no later than seven calendar days before the hearing.

(5) When form JV-290 or a caregiver letter is received by mail the court clerk must immediately file it.

(6) When form JV-290 or a caregiver letter is filed, the court clerk must provide the social worker, all unrepresented parties, and all attorneys with a copy of the completed form or letter immediately upon receipt. The clerk also must complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The clerk may use any technology designed to speed the distribution process, including drop boxes in the courthouse, e-mail, fax, or other electronic transmission, as defined in rule 2.250, to distribute the JV-290 form or letter and proof of service form.

(Subd (j) relettered effective January 1, 2017; adopted as subd (m) effective October 1, 2007; previously relettered as subd (n) effective January 1, 2008; previously amended effective January 1, 2016.)

Rule 5.534 amended effective January 1, 2017; adopted as rule 1412 effective January 1, 1991; previously amended and renumbered as rule 5.534 effective January 1, 2007; previously amended effective January 1, 1994, July 1, 1995, January 1, 1997, January 1, 2000, July 1, 2002, January 1, 2005, October 1, 2007, January 1, 2008, January 1, 2010, January 1, 2011, January 1, 2014, January 1, 2016, and July 1, 2016.

Advisory Committee Comment

Because the intent of subdivision (j) is to expand access to the courts for caregivers of children in out-of-home care, the rule should be liberally construed. To promote caregiver participation and input, judicial officers are encouraged to permit caregivers to orally address the court when caregivers would like to share information about the child. In addition, court clerks should allow filings by caregivers even if the caregiver has not strictly adhered to the requirements in the rule regarding number of copies and filing deadlines.

Rule 5.536. General provisions—proceedings held before referees

(a) Referees—appointment; powers (Cal. Const., art. VI, § 22)

One or more referees may be appointed under section 247 to perform subordinate judicial duties assigned by the presiding judge of the juvenile court.

(Subd (a) amended effective January 1, 2007.)

(b) Referee as temporary judge (Cal. Const., art. VI, § 21)

If the referee is an attorney admitted to practice in this state, the parties may stipulate under rule 2.816 that the referee is acting as a temporary judge with the same powers as a judge of the juvenile court. An official court reporter or other authorized reporting procedure must record all proceedings.

(Subd (b) amended effective January 1, 2007.)

Rule 5.536 amended and renumbered effective January 1, 2007; adopted as rule 1415 effective January 1, 1990.

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

(a) General conduct (§§ 248, 347, 677)

Proceedings heard by a referee not acting as a temporary judge must be conducted in the same manner as proceedings heard by a judge, except:

(1) An official court reporter or other authorized reporting procedure must record the proceedings if directed by the court; and

(2) The referee must inform the child and parent or guardian of the right to seek review by a juvenile court judge.

(Subd (a) amended effective January 1, 2007.)

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

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

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

(2) Furnish to the child (if the child is 14 or more years of age or, if younger, as requested) 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.

(3) 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.

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

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

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007.)

Rule 5.538 amended effective January 1, 2016; adopted as rule 1416 effective January 1, 1990; previously amended and renumbered as rule 5.538 effective January 1, 2007.

Rule 5.540. Orders of referees not acting as temporary judges

(a) Effective date of order (§ 250)

Except as provided in (b) and subject to the right of review provided for in rule 5.542, all orders of a referee become effective immediately and continue in effect unless vacated or modified on rehearing by order of a juvenile court judge.

(Subd (a) amended effective January 1, 2007.)

(b) Orders requiring express approval of judge (§§ 249, 251)

The following orders made by a referee do not become effective unless expressly approved by a juvenile court judge within two court days:

(1) Any order removing a child from the physical custody of the person legally entitled to custody; or

(2) Any order the presiding judge of the juvenile court requires to be expressly approved.

(Subd (b) amended effective January 1, 2007.)

(c) Finality date of order

An order of a referee becomes final 10 calendar days after service of a copy of the order and findings under rule 5.538, if an application for rehearing has not been

made within that time or if the judge of the juvenile court has not within the 10 days ordered a rehearing on the judge's own motion under rule 5.542.

(Subd (c) amended effective January 1, 2007.)

Rule 5.540 amended and renumbered effective January 1, 2007; adopted as rule 1417 effective January 1, 1990.

Rule 5.542. Rehearing of proceedings before referees

(a) Application for rehearing (§ 252)

An application for a rehearing of a proceeding before a referee not acting as a temporary judge may be made by the child, parent, or guardian at any time before the expiration of 10 calendar days after service of a copy of the order and findings. The application may be directed to all, or any specified part of, the order or findings and must contain a brief statement of the factual or legal reasons for requesting the rehearing.

(Subd (a) amended effective January 1, 2007.)

(b) If no formal record (§ 252)

A rehearing must be granted if proceedings before the referee were not recorded by an official court reporter or other authorized reporting procedure.

(Subd (b) amended effective January 1, 2007.)

(c) Hearing with court reporter (§ 252)

If the proceedings before the referee have been recorded by an official court reporter or other authorized reporting procedure, the judge of the juvenile court may, after reading the transcript of the proceedings, grant or deny the application for rehearing. If the application is not denied within 20 calendar days following the date of receipt of the application, or within 45 calendar days if the court for good cause extends the time, the application must be deemed granted.

(Subd (c) amended effective January 1, 2007.)

(d) Rehearing on motion of judge (§ 253)

Notwithstanding (a), at any time within 20 court days after a hearing before a referee, the judge, on the judge's own motion, may order a rehearing.

(Subd (d) amended effective January 1, 2007.)

(e) Hearing de novo (§ 254)

Rehearings of matters heard before a referee must be conducted de novo before a judge of the juvenile court. A rehearing of a detention hearing must be held within two court days after the rehearing is granted. A rehearing of other matters heard before a referee must be held within 10 court days after the rehearing is granted.

(Subd (e) amended effective January 1, 2007.)

(f) Advisement of appeal rights—rule 5.590

If the judge of the juvenile court denies an application for rehearing directed in whole or in part to issues arising during a contested jurisdiction hearing, the judge must advise, either orally or in writing, the child and the parent or guardian of all of the following:

(1) The right of the child, parent, or guardian to appeal from the court's judgment;

(2) The necessary steps and time for taking an appeal;

(3) The right of an indigent appellant to have counsel appointed by the reviewing court; and

(4) The right of an indigent appellant to be provided a free copy of the transcript.

(Subd (f) amended effective January 1, 2007.)

Rule 5.542 amended and renumbered effective January 1, 2007; adopted as rule 1418 effective January 1, 1991.

Rule 5.544. Prehearing motions (§ 700.1)

Unless otherwise ordered or specifically provided by law, prehearing motions and accompanying points and authorities must, absent a waiver, be served on the child and opposing counsel and filed with the court:

(1) At least 5 judicial days before the date the jurisdiction hearing is set to begin if the child is detained or the motion is one to suppress evidence obtained as a result of an unlawful search and seizure; or

(2) At least 10 judicial days before the date the jurisdiction hearing is set to begin if the child is not detained and the motion is other than one to suppress evidence obtained as a result of an unlawful search and seizure.

Prehearing motions must be specific, noting the grounds, and supported by points and authorities.

Rule 5.544 amended and renumbered effective January 1, 2007; adopted as rule 1419 effective January 1, 1991.

Rule 5.546. Prehearing discovery

(a) General purpose

This rule must be liberally construed in favor of informal disclosures, subject to the right of a party to show privilege or other good cause not to disclose specific material or information.

(Subd (a) amended effective January 1, 2007.)

(b) Duty to disclose police reports

After filing the petition, petitioner must promptly deliver to or make accessible for inspection and copying by the child and the parent or guardian, or their counsel, copies of the police, arrest, and crime reports relating to the pending matter. Privileged information may be omitted if notice of the omission is given simultaneously.

(Subd (b) amended effective January 1, 2007.)

(c) Affirmative duty to disclose

Petitioner must disclose any evidence or information within petitioner's possession or control favorable to the child, parent, or guardian.

(Subd (c) amended effective January 1, 2007.)

(d) Material and information to be disclosed on request

Except as provided in (g) and (h), petitioner must, after timely request, disclose to the child and parent or guardian, or their counsel, the following material and information within the petitioner's possession or control:

(1) Probation reports prepared in connection with the pending matter relating to the child, parent, or guardian;

(2) Records of statements, admissions, or conversations by the child, parent, or guardian;

(3) Records of statements, admissions, or conversations by any alleged coparticipant;

(4) Names and addresses of witnesses interviewed by an investigating authority in connection with the pending matter;

(5) Records of statements or conversations of witnesses or other persons interviewed by an investigating authority in connection with the pending matter;

(6) Reports or statements of experts made regarding the pending matter, including results of physical or mental examinations and results of scientific tests, experiments, or comparisons;

(7) Photographs or physical evidence relating to the pending matter; and

(8) Records of prior felony convictions of the witnesses each party intends to call.

(Subd (d) amended effective January 1, 2007.)

(e) Disclosure in section 300 proceedings

Except as provided in (g) and (h), the parent or guardian must, after timely request, disclose to petitioner relevant material and information within the parent's or guardian's possession or control. If counsel represents the parent or guardian, a disclosure request must be made through counsel.

(Subd (e) amended effective January 1, 2007.)

(f) Motion for prehearing discovery

If a party refuses to disclose information or permit inspection of materials, the requesting party or counsel may move the court for an order requiring timely disclosure of the information or materials. The motion must specifically and clearly designate the items sought, state the relevancy of the items, and state that a timely

request has been made for the items and that the other party has refused to provide them. Each court may by local rule establish the manner and time within which a motion under this subdivision must be made.

(Subd (f) amended effective January 1, 2007.)

(g) Limits on duty to disclose—protective orders

On a showing of privilege or other good cause, the court may make orders restricting disclosures. All material and information to which a party is entitled must be disclosed in time to permit counsel to make beneficial use of them.

(h) Limits on duty to disclose—excision

When some parts of the materials are discoverable under (d) and (e) and other parts are not discoverable, the nondiscoverable material may be excised and need not be disclosed if the requesting party or counsel has been notified that the privileged material has been excised. Material ordered excised must be sealed and preserved in the records of the court for review on appeal.

(Subd (h) amended effective January 1, 2007.)

(i) Conditions of discovery

An order of the court granting discovery under this rule may specify the time, place, and manner of making the discovery and inspection and may prescribe terms and conditions. Discovery must be completed in a timely manner to avoid the delay or continuance of a scheduled hearing.

(Subd (i) amended effective January 1, 2007.)

(j) Failure to comply; sanctions

If at any time during the course of the proceedings the court learns that a person has failed to comply with this rule or with an order issued under this rule, the court may order the person to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit a party from introducing in evidence the material not disclosed, dismiss the proceedings, or enter any other order the court deems just under the circumstances.

(Subd (j) amended effective January 1, 2007.)

(k) Continuing duty to disclose

If subsequent to compliance with these rules or with court orders a party discovers additional material or information subject to disclosure, the party must promptly notify the child and parent or guardian, or their counsel, of the existence of the additional matter.

(Subd (k) amended effective January 1, 2007.)

Rule 5.546 amended and renumbered effective January 1, 2007; adopted as rule 1420 effective January 1, 1990.

Rule 5.548. Granting immunity to witnesses

(a) Privilege against self-incrimination

If a person is called as a witness and it appears to the court that the testimony or other evidence being sought may tend to incriminate the witness, the court must advise the witness of the privilege against self-incrimination and of the possible consequences of testifying. The court must also inform the witness of the right to representation by counsel and, if indigent, of the right to have counsel appointed.

(Subd (a) amended effective January 1, 2007.)

(b) Authority of judge to grant immunity

If a witness refuses to answer a question or to produce evidence based on a claim of the privilege against self-incrimination, a judge may grant immunity to the witness under (c) or (d) and order the question answered or the evidence produced.

(Subd (b) amended effective January 1, 2007.)

(c) Request for immunity—section 602 proceedings

In proceedings under section 602, the prosecuting attorney may make a written or oral request on the record that the court order a witness to answer a question or produce evidence. The court must then proceed under Penal Code section 1324.

(1) After complying with an order to answer a question or produce evidence and if, but for those Penal Code sections or this rule, the witness would have been privileged to withhold the answer given or the evidence produced, no testimony or other information compelled under the order or information directly or indirectly derived from the testimony or other information may be

used against the witness in any criminal case, including any juvenile court proceeding under section 602.

(2) The prosecuting attorney may request an order granting the witness use or transactional immunity.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1998.)

(d) Request for immunity—section 300 or 601 proceedings

In proceedings under section 300 or 601, the prosecuting attorney or petitioner may make a written or oral request on the record that the judge order a witness to answer a question or produce evidence. They may also make the request jointly.

(1) If the request is not made jointly, the other party must be given the opportunity to show why immunity is not to be granted and the judge may grant or deny the request as deemed appropriate.

(2) If jointly made, the judge must grant the request unless the judge finds that to do so would be clearly contrary to the public interest. The terms of a grant of immunity must be stated in the record.

(3) After complying with the order and if, but for this rule, the witness would have been privileged to withhold the answer given or the evidence produced, any answer given, evidence produced, or information derived there from must not be used against the witness in a juvenile court or criminal proceeding.

(Subd (d) amended effective January 1, 2007.)

(e) No immunity from perjury or contempt

Notwithstanding (c) or (d), a witness may be subject to proceedings under the juvenile court law or to criminal prosecution for perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

(Subd (e) amended effective January 1, 2007.)

Rule 5.548 amended and renumbered effective January 1, 2007; adopted as rule 1421 effective January 1, 1990; previously amended effective January 1, 1998.

Rule 5.550. Continuances

(a) Cases petitioned under section 300 (§§ 316.2, 352, 354)

(1) The court must not continue a hearing beyond the time set by statute unless the court determines the continuance is not contrary to the interest of the child. In considering the child's interest, the court must give substantial weight to a child's needs for stability and prompt resolution of custody status, and the damage of prolonged temporary placements.

(2) Continuances may be granted only on a showing of good cause, and only for the time shown to be necessary. Stipulation between counsel of parties, convenience of parties, and pending criminal or family law matters are not in and of themselves good cause.

(3) If a child has been removed from the custody of a parent or guardian, the court must not grant a continuance that would cause the disposition hearing under section 361 to be completed more than 60 days after the detention hearing unless the court finds exceptional circumstances. In no event may the disposition hearing be continued more than six months after the detention hearing.

(4) In order to obtain a continuance, written notice with supporting documents must be filed and served on all parties at least two court days before the date set for hearing, unless the court finds good cause for hearing an oral motion.

(5) The court must state in its order the facts requiring any continuance that is granted.

(Subd (a) amended effective July 1, 2016; previously amended effective January 1, 1999, July 1, 2002, and January 1, 2007.)

(b) Cases petitioned under section 601 or 602 (§ 682)

(1) A continuance may be granted only on a showing of good cause and only for the time shown to be necessary. Stipulation between counsel or parties and convenience of parties are not in and of themselves good cause.

(2) In order to obtain a continuance, written notice with supporting documents must be filed and served on all parties at least two court days before the date set for the hearing, unless the court finds good cause for failure to comply with these requirements.

(3) The court must state in its order the facts requiring any continuance that is granted.

(4) If the child is represented by counsel, failure of counsel or the child to object to an order continuing a hearing beyond the time limit is deemed a consent to the continuance.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(c) Continuances of detention hearings (§§ 319, 322, 635, 636, 638)

(1) On the motion of the child, parent, or guardian, the court must continue the detention hearing for one court day or for a reasonable period to permit the moving party to prepare any relevant evidence on the issue of detention. Unless otherwise ordered by the court, the child must remain in custody pending the continued hearing.

(2) At the initial detention hearing, if the court continues the hearing under (c)(1) or for any other reason, or sets the matter for rehearing, the court must either find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare or order the child released to the custody of the parent or guardian. The court may enter this finding on a temporary basis, without prejudice to any party, and reevaluate the finding at the time of the continued detention hearing.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1998; previously amended effective July 1, 2002.)

Rule 5.550 amended effective July 1, 2016; adopted effective January 1, 1991; previously amended effective January 1, 1998, January 1, 1999, and July 1, 2002; previously amended and renumbered as rule 5.550 effective January 1, 2007.

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

(a) Definitions

For the purposes of this rule, "juvenile case file" includes:

(1) All documents filed in a juvenile court case;

(2) Reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers;

(3) Documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court;

(4) Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers;

(5) Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and

(6) Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001.)

(b) General provisions

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

(A) Court personnel;

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

(C) The child who is the subject of the proceeding;

(D) The child's parents;

(E) The child's guardians;

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

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

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

(I) Members of child protective agencies as defined in Penal Code section 11165.9; and

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

(2) The following individuals and entities may inspect the juvenile case file without a court order and may receive a copy of the juvenile case file pursuant to a court order:

(A) All persons and entities listed in Welfare and Institutions Code sections 827 and 828 who are not listed in (b)(1) above; and

(B) An Indian child's tribal representative if the tribe has intervened in the child's case.

(3) Authorization for any other person or entity to inspect, obtain, or copy juvenile case files may be ordered only by the juvenile court presiding judge or a judicial officer of the juvenile court.

(4) Juvenile case files may not be obtained or inspected by civil or criminal subpoena.

(5) When a petition is sustained for any offense listed in section 676, the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition that are contained in the juvenile case file must be available for public inspection, unless the court has prohibited disclosure of those records under that section.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2004, and January 1, 2007.)

(c) Petition

With the exception of those persons permitted to inspect juvenile court records without court authorization under sections 827 and 828, every person or agency seeking to inspect or obtain juvenile court records must petition the court for authorization using *Petition for Disclosure of Juvenile Court Records* (form JV-570).

(1) The specific records sought must be identified based on knowledge, information, and belief that such records exist and are relevant to the purpose for which they are being sought.

(2) Petitioner must describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the records.

(Subd (c) amended effective January 1, 2007; previously amended effective July 1, 1997.)

(d) Notice of petition for disclosure

(1) At least 10 days before the petition is submitted to the court, the petitioner must personally or by first-class mail serve *Request for Disclosure of Juvenile Case File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), and a blank copy of *Objection to Release of Juvenile Case File* (form JV-572) on the following:

(A) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action if the child's petition was filed under section 300;

(B) The district attorney if the child's petition was filed under section 601 or 602;

(C) The child;

(D) The attorney of record for the child who remains a ward or dependent of the court;

(E) The parents of the child if:

(i) The child is under 18 years of age; or

(ii) The child's petition was filed under section 300;

(F) The guardians of the child if:

(i) The child is under 18 years of age; or

(ii) The child's petition was filed under section 300;

(G) The probation department or child welfare agency, or both, if applicable;

(H) The Indian child's tribe; and

(I) The child's CASA volunteer.

(2) The petitioner must complete *Proof of Service—Request for Disclosure* (form JV-569) and file it with the court.

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

(A) Serve personally or by first-class mail to the last known address a copy of *Request for Disclosure of Juvenile Case File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), and a blank copy of *Objection to Release of Juvenile Case File* (form JV-572); and

(B) Complete *Proof of Service—Request for Disclosure* (form JV-569) and file it with the court.

(4) For good cause, the court may, on the motion of the person seeking the order or on its own motion, shorten the time for service of the petition for disclosure.

(Subd (d) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(e) Procedure

(1) The court must review the petition and, if petitioner does not show good cause, deny it summarily.

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

(3) Whether or not the court holds a hearing, if the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the juvenile court judicial officer must conduct an in camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted.

(4) In determining whether to authorize inspection or release of juvenile case files, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.

(5) If the court grants the petition, the court must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files. The confidentiality of juvenile case files is intended to protect the privacy rights of the child.

(6) The court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.

(7) If, after in-camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it.

(8) The court may issue protective orders to accompany authorized disclosure, discovery, or access.

(Subd (e) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(f) Reports of law enforcement agencies (§ 828)

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

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

(2) In the absence of a specific request, the law enforcement agency retaining the report may release information about a child reported to have escaped from a

secure detention facility if the agency determines that the information is necessary to assist in the apprehension of the child or the protection of members of the public from substantial physical harm.

(3) Under section 828, all others seeking to inspect or obtain such reports must petition the juvenile court for authorization, using *Petition to Obtain Report of Law Enforcement Agency* (form JV-575).

(Subd (f) relettered effective January 1, 2009; adopted as subd (f) effective January 1, 1994; previously relettered as subd (g) effective January 1, 2001; previously amended effective January 1, 2007.)

(g) School notification

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

(Subd (g) relettered effective January 1, 2009; adopted as subd (g) effective July 1, 1995; previously relettered as subd (h) effective January 1, 2001; previously amended effective January 1, 2007.)

(h) Other applicable statutes

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

(Subd (h) relettered effective January 1, 2009; adopted as subd (f); previously relettered as subd (g) effective January 1, 1994, and as subd (i) effective January 1, 2001; previously amended and relettered as subd (h) effective July 1, 1995; previously amended effective January 1, 2007.)

Rule 5.552 amended effective January 1, 2009; adopted as rule 1423 effective July 1, 1992; previously amended effective January 1, 1994, July 1, 1995, July 1, 1997, January 1, 2001, and January 1, 2004; previously amended and renumbered effective January 1, 2007.

Rule 5.553. Juvenile case file of a deceased child

When the juvenile case file of a deceased child is sought, the court must proceed as follows:

(1) Under section 827(a)(2) if the request is made by a member of the public; or

(2) Under section 16502.5 if the request is made by a county board of supervisors.

Rule 5.553 adopted effective January 1, 2009.

Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1 (g)(16))

(a) Applicability

(1) This rule applies to any hearing during which the termination of the juvenile court's jurisdiction over the following nonminors will be considered:

(A) A nonminor dependent as defined in section 11400(v);

(B) A ward or dependent of the juvenile court who is 18 years of age or older and subject to an order for a foster care placement; or

(C) A ward who was subject to an order for foster care placement at the time he or she attained 18 years of age, or a dependent of the juvenile court who is 18 years of age or older and is living in the home of the parent or former legal guardian.

(2) Nothing in the Welfare and Institutions Code or the California Rules of Court restricts the ability of the juvenile court to maintain dependency jurisdiction or delinquency jurisdiction over a person 18 years of age or older, who does not meet the eligibility requirements for status as a nonminor dependent and to proceed as to that person under the relevant sections of the Welfare and Institutions Code and California Rules of Court.

(Subd (a) amended effective January 1, 2014; previously amended effective July 1, 2012.)

(b) Setting a hearing

(1) A court hearing must be placed on the appearance calendar and completed before juvenile court jurisdiction is terminated.

(2) The hearing under this rule may be held during any regularly scheduled review hearing or a hearing on a petition filed under section 388 or section 778.

(3) Notice of the hearing must be given as required by section 295.

(4) Notice of the hearing to the parent of a nonminor dependent as defined in section 11400(v) is not required, unless the parent is receiving court-ordered family reunification services or the nonminor is living in the home of the parent or former legal guardian.

(5) If juvenile court jurisdiction was resumed after having previously been terminated, a hearing under this rule must be held if the nonminor dependent wants juvenile court jurisdiction terminated again. The social worker or probation officer is not required to file the 90-day Transition Plan, and the court need not make the findings described in (d)(1)(L)(iii) or (d)(2)(E)(vi).

(6) The hearing must be continued for no more than five court days for the submission of additional information as ordered by the court if the court determines that the report, the Transitional Independent Living Plan, the Transitional Independent Living Case Plan, if required, or the 90-day Transition Plan submitted by the social worker or probation officer does not provide the information required by (c) and the court is unable to make the findings and orders required by (d).

(Subd (b) amended effective January 1, 2017; previously amended effective July 1, 2012, and January 1, 2014.)

(c) Reports

(1) The report prepared by the social worker or probation officer for a hearing under this rule must, in addition to any other elements required by law, include:

(A) Whether remaining under juvenile court jurisdiction is in the nonminor's best interests and the facts supporting the conclusion reached;

(B) The specific criteria in section 11403(b) met by the nonminor that make him or her eligible to remain under juvenile court jurisdiction as a nonminor dependent as defined in section 11400(v);

(C) For a nonminor to whom the Indian Child Welfare Act applies, when and how the nonminor was provided with information about the right to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor;

(D) Whether the nonminor has applied for title XVI Supplemental Security Income benefits and, if so, the status of that application, and whether remaining under juvenile court jurisdiction until a final decision has been issued is in the nonminor's best interests;

(E) Whether the nonminor has applied for Special Immigrant Juvenile status or other immigration relief and, if so, the status of that application, and whether an active juvenile court case is required for that application;

(F) When and how the nonminor was provided with information about the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent, and the social worker's or probation officer's assessment of the nonminor's understanding of those benefits;

(G) When and how the nonminor was informed that if juvenile court jurisdiction is terminated, the court maintains general jurisdiction over him or her for the purpose of resuming jurisdiction and he or she has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she has attained the age of 21 years;

(H) When and how the nonminor was informed that if juvenile court dependency jurisdiction or transition jurisdiction is continued over him or her, he or she has the right to have that jurisdiction terminated;

(I) If the social worker or probation officer has reason to believe that the nonminor will not appear at the hearing, documentation of the basis for that belief, including:

(i) Documentation of the nonminor's statement that he or she does not wish to appear in person or by telephone for the hearing; or

(ii) Documentation of reasonable efforts to find the nonminor when his or her location is unknown;

(J) Verification that the nonminor was provided with the information, documents, and services as required under section 391(e); and

(K) When and how a nonminor who is under delinquency jurisdiction was provided with the notices and information required under section 607.5.

(2) The social worker or probation officer must file with the report a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365).

(3) The social worker or probation officer must also file with the report the nonminor's:

(A) Transitional Independent Living Case Plan when recommending continuation of juvenile court jurisdiction;

(B) Most recent Transitional Independent Living Plan; and

(C) Completed 90-day Transition Plan.

(4) The social worker's or probation officer's report and all documents required by (2)–(3) must be filed with the court at least 10 calendar days before the hearing, and the social worker or probation officer must provide copies of the report and other documents to the nonminor, the nonminor's parent, and all attorneys of record. If the nonminor is under juvenile court jurisdiction as a nonminor dependent, the social worker or probation officer is not required to provide copies of the report and other documents to the nonminor dependent's parent, unless the parent is receiving court-ordered family reunification services.

(Subd (c) amended effective January 1, 2017; previously amended effective July 1, 2012, and January 1, 2014.)

(d) Findings and orders

The court must, in addition to any other determinations required by law, make the following findings and orders and include them in the written documentation of the hearing:

(1) *Findings*

(A) Whether the nonminor had the opportunity to confer with his or her attorney about the issues currently before the court;

(B) Whether remaining under juvenile court jurisdiction is in the nonminor's best interests and the facts in support of the finding made;

(C) Whether the nonminor meets one or more of the eligibility criteria in section 11403(b) to remain in foster care as a nonminor dependent under juvenile court jurisdiction and, if so, the specific criteria in section 11403(b) met by the nonminor;

(D) For a nonminor to whom the Indian Child Welfare Act applies, whether the nonminor was provided with information about the right to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her;

(E) Whether the nonminor has an application pending for title XVI Supplemental Security Income benefits, and if so, whether it is in the nonminor's best interests to continue juvenile court jurisdiction until a final decision has been issued to ensure that the nonminor receives continued assistance with the application process;

(F) Whether the nonminor has an application pending for Special Immigrant Juvenile status or other immigration relief, and whether an active juvenile court case is required for that application;

(G) Whether the nonminor understands the potential benefits of remaining in foster care under juvenile court jurisdiction;

(H) Whether the nonminor has been informed that if juvenile court jurisdiction is continued, he or she may have the right to have juvenile court jurisdiction terminated and that the court will maintain general jurisdiction over him or her for the purpose of resuming dependency jurisdiction or assuming or resuming transition jurisdiction over him or her as a nonminor dependent;

(I) Whether the nonminor has been informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she has attained the age of 21 years;

(J) Whether the nonminor was provided with the information, documents, and services as required under section 391(e) and, if not, whether juvenile court jurisdiction should be continued to ensure that all information, documents, and services are provided;

(K) Whether a nonminor who is under delinquency jurisdiction was provided with the notices and information required under section 607.5; and

(L) Whether the nonminor's:

(i) Transitional Independent Living Case Plan, if required, includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects the agreements made between the nonminor and social worker or probation officer to obtain independent living skills, and sets out the benchmarks that indicate how both will know when independence can be achieved;

(ii) Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills needed to prepare for independence and successful adulthood on leaving foster care; and

(iii) 90-day Transition Plan is a concrete individualized plan that specifically covers the following areas: housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

(M) For a nonminor who does not appear in person or by telephone for the hearing, whether:

(i) The nonminor expressed a wish not to appear for the hearing; or

(ii) The nonminor's location remains unknown and, if so, whether reasonable efforts were made to find the nonminor.

(N) For a nonminor who has attained 21 years of age the court is only required to find that:

(i) Notice was given as required by law.

(ii) The nonminor was provided with the information, documents, and services required under section 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with the court.

(iii) The 90-day Transition Plan is a concrete, individualized plan that specifically covers the following areas: housing, health insurance, education, local opportunities for mentoring and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

(iv) The nonminor has attained 21 years of age and is no longer subject to the jurisdiction of the court under section 303.

(2) *Orders*

(A) For a nonminor who meets one or more of the eligibility criteria in section 11403(b) to remain in placement under dependency jurisdiction as a nonminor dependent or under transition jurisdiction as a nonminor dependent, the court must order the continuation of juvenile court jurisdiction unless the court finds that:

(i) The nonminor does not wish to remain under juvenile court jurisdiction as a nonminor dependent;

(ii) The nonminor is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; or

(iii) Reasonable efforts were made to locate the nonminor whose current location is unknown.

(B) When juvenile court jurisdiction is continued for the nonminor to remain in placement as a nonminor dependent:

(i) Order a permanent plan consistent with the nonminor's Transitional Independent Living Plan or Transitional Independent Living Case Plan;

(ii) Continue the nonminor's status as an Indian child for the purposes of the ongoing application of the Indian Child Welfare

Act unless he or she has elected not to have his or her status as an Indian child continued; and

(iii) Set a status review hearing under rule 5.903 within six months of the date of his or her most recent status review hearing.

(C) For a nonminor who does not meet and does not intend to meet the eligibility requirements for nonminor dependent status but who is otherwise eligible to and will remain under juvenile court jurisdiction in a foster care placement, the court must set an appropriate statutory review hearing within six months of the date of the nonminor's most recent status review hearing.

(D) For a nonminor whose current location is unknown, the court may enter an order for termination of juvenile court jurisdiction only after finding that reasonable efforts were made to locate the nonminor;

(E) For a nonminor who does not meet one or more of the eligibility criteria of section 11403(b) and is not otherwise eligible to remain under juvenile court jurisdiction or, alternatively, who meets one or more of the eligibility criteria of section 11403(b) but either does not wish to remain under the jurisdiction of the juvenile court as a nonminor dependent or is not participating in a reasonable and appropriate Transitional Independent Living Case Plan, the court may order the termination of juvenile court jurisdiction only after entering the following findings:

(i) The nonminor was provided with the information, documents, and services as required under section 391(e);

(ii) The nonminor was informed of the options available to him or her to assist with the transition from foster care to independence;

(iii) The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she has reached 21 years of age;

(iv) The nonminor was provided with a copy of *How to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO), *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466), *Confidential Information—Request*

to Return to Juvenile Court Jurisdiction and Foster Care (form JV-468), and an endorsed filed copy of the *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365);

(v) The nonminor had an opportunity to confer with his or her attorney regarding the issues currently before the court;

(vi) The nonminor's 90-day Transition Plan includes specific options regarding housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

(F) For a nonminor who has attained 21 years of age and is no longer subject to the jurisdiction of the juvenile court under section 303, the court must enter an order that juvenile court jurisdiction is dismissed and that the attorney for the nonminor dependent is relieved 60 days from the date of the order.

(Subd (d) amended effective January 1, 2017; previously amended effective July 1, 2012, July 1, 2013, January 1, 2014, and January 1, 2016.)

Rule 5.555 amended effective January 1, 2017; adopted effective January 1, 2012; previously amended effective July 1, 2012, July 1, 2013, January 1, 2014, and January 1, 2016.

Chapter 4. Subsequent Petitions and Modifications

Rule 5.560. General provisions
Rule 5.565. Hearing on subsequent and supplemental petitions (§§ 342, 364, 386, 387)
Rule 5.570. Request to change court order (petition for modification)
Rule 5.575. Joinder of Agencies
Rule 5.580. Hearing on violation of probation (§ 777)

Rule 5.560. General provisions

(a) General authority of the court (§ 385)

Subject to the procedural requirements prescribed by this chapter, an order made by the court may at any time be changed, modified, or set aside.

(Subd (a) amended effective January 1, 2001.)

(b) Subsequent petitions (§§ 297, 342, 360(b), 364)

All procedures and hearings required for an original petition are required for a subsequent petition. Petitioner must file a subsequent petition if:

(1) A child has previously been found to be a person described by section 300 and the petitioner alleges new facts or circumstances, other than those sustained in the original petition, sufficient to again describe the child as a person under section 300 based on these new facts or circumstances;

(2) At or after the disposition hearing the court has ordered that a parent or guardian retain custody of the dependent child and the petitioner receives information providing reasonable cause to believe the child is now, or once again, described by section 300(a), (d), or (e); or

(3) The family is unwilling or unable to cooperate with services previously ordered under section 301.

(Subd (b) amended effective July 1, 2007; previously amended effective January 1, 2001, January 1, 2006, and January 1, 2007.)

(c) Supplemental petition (§§ 297, 387)

A supplemental petition must be used if petitioner concludes that a previous disposition has not been effective in the protection of a child declared a dependent under section 300 and seeks a more restrictive level of physical custody. For purposes of this chapter, a more restrictive level of custody, in ascending order, is

(1) Placement in the home of the person entitled to legal custody;

(2) Placement in the home of a noncustodial parent;

(3) Placement in the home of a relative or friend;

(4) Placement in a foster home; or

(5) Commitment to a private institution.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2001, and January 1, 2006.)

(d) Petition for modification hearing (§§ 297, 388, 778)

A petition for modification hearing must be used if there is a change of circumstances or new evidence that may require the court to:

(1) Change, modify, or set aside an order previously made; or

(2) Terminate the jurisdiction of the court over the child.

(Subd (d) amended effective January 1, 2007; adopted as subd (e); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

(e) Filing of petition (§§ 297, 388, 778)

A petition for modification hearing may be filed by:

(1) The probation officer, the parent, the guardian, the child, the attorney for the child, or any other person having an interest in a child who is a ward if the requested modification is not for a more restrictive level of custody;

(2) The social worker, regarding a child who is a dependent, if the requested modification is not for a more restrictive level of custody; or

(3) The parent, the guardian, the child, the attorney for the child, or any other person having an interest in a child who is a dependent.

(Subd (e) amended effective January 1, 2007; adopted as subd (f); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

(f) Clerical errors

Clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time on the court's own motion or on motion of any party and may be entered nunc pro tunc.

(Subd (f) relettered effective January 1, 2001; adopted as subd (g).)

Rule 5.560 amended effective July 1, 2007; adopted as rule 1430 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2001, and January 1, 2006.

Rule 5.565. Hearing on subsequent and supplemental petitions (§§ 342, 364, 386, 387)

(a) Contents of subsequent and supplemental petitions (§§ 342, 364, 387)

A subsequent petition and a supplemental petition must be verified and, to the extent known to the petitioner, contain the information required in an original petition as described in rule 5.524. A supplemental petition must also contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the protection of the child or, in the case of a dependent child placed with a relative, that the placement is not appropriate in view of the criteria in section 361.3.

(Subd (a) amended effective January 1, 2007; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1999, January 1, 2001, and January 1, 2006.)

(b) Setting the hearing (§§ 334, 342, 364, 386, 387)

When a subsequent or supplemental petition is filed, the clerk must immediately set it for hearing within 30 days of the filing date. The hearing must begin within the time limits prescribed for jurisdiction hearings on original petitions under rule 5.670.

(Subd (b) amended effective January 1, 2007; adopted as subd (c); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 1992, July 1, 1995, and January 1, 2006.)

(c) Notice of hearing (§§ 290.1, 290.2, 292, 297)

For petitions filed under sections 342 or 387, notice must be provided in accordance with sections 290.1, 290.2, and 291. Notice for petitions filed under section 364 must be provided as stated in section 292.

(Subd (c) adopted effective January 1, 2006.)

(d) Initial hearing (§ 387)

Chapter 12, article 1 of these rules applies to the case of a child who is the subject of a supplemental or subsequent petition.

(Subd (d) amended effective July 1, 2010; adopted as subd (d); previously amended and relettered as subd (c) effective January 1, 2001; previously amended and relettered effective January 1, 2006; previously amended effective January 1, 2007.)

(e) Requirement for bifurcated hearing

The hearing on a subsequent or supplemental petition must be conducted as follows:

(1) The procedures relating to jurisdiction hearings prescribed in chapter 12, article 2 apply to the determination of the allegations of a subsequent or supplemental petition. At the conclusion of the hearing on a subsequent petition the court must make a finding that the allegations of the petition are or are not true. At the conclusion of the hearing on a supplemental petition the court must make findings that:

(A) The factual allegations are or are not true; and

(B) The allegation that the previous disposition has not been effective is or is not true.

(2) The procedures relating to disposition hearings prescribed in chapter 12, article 3 apply to the determination of disposition on a subsequent or supplemental petition. If the court finds under a subsequent petition that the child is described by section 300(a), (d), or (e), the court must remove the child from the physical custody of the parent or guardian, if removal was not ordered under the previous disposition.

(Subd (e) amended effective July 1, 2010; adopted as subd (e); previously amended and relettered as subd (d) effective January 1, 2001; previously relettered effective January 1, 2006; previously amended effective January 1, 2007.)

(f) Supplemental petition (§ 387)—permanency planning

If a dependent child was returned to the custody of a parent or guardian at the 12-month review or the 18-month review or at an interim review between 12 and 18 months and a 387 petition is sustained and the child removed once again, the court must set a hearing under section 366.26 unless the court finds there is a substantial probability of return within the next 6 months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period.

(Subd (f) amended effective January 1, 2007; adopted as subd (f); relettered as subd (e) effective January 1, 2001; previously amended and relettered effective January 1, 2006.)

Rule 5.565 amended effective July 1, 2010; adopted as rule 1431 effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1995, January 1, 1999, July 1, 1999, January 1, 2001, and January 1, 2006; previously amended and renumbered effective January 1, 2007.

Rule 5.570. Request to change court order (petition for modification)

(a) Contents of petition (§§ 388, 778)

A petition for modification must be liberally construed in favor of its sufficiency. The petition must be verified and, to the extent known to the petitioner, must contain the following:

(1) The name of the court to which the petition is addressed;

(2) The title and action number of the original proceeding;

(3) The name and age of the child, nonminor, or nonminor dependent;

(4) The address of the child, nonminor, or nonminor dependent, unless confidential under (c);

(5) The name and address of the parent or guardian of the child or nonminor;

(6) The date and general nature of the order sought to be modified;

(7) A concise statement of any change of circumstance or new evidence that requires changing the order or, for requests under section 388(c)(1)(B), a concise statement of the relevant action or inaction of the parent or guardian;

(8) A concise statement of the proposed change of the order;

(9) A statement of the petitioner's relationship or interest in the child, nonminor, or nonminor dependent, if the petition is made by a person other than the child, nonminor, or nonminor dependent; and

(10) A statement whether or not all parties agree to the proposed change.

(Subd (a) amended effective January 1, 2014; previously amended effective July 1, 2002, January 1, 2007, January 1, 2009, and January 1, 2010.)

(b) 388 petition

A petition under Welfare and Institutions Code section 388 must be made on form *Request to Change Court Order* (form JV-180).

(Subd (b) adopted effective January 1, 2007.)

(c) Confidentiality

The addresses and telephone numbers of the person requesting to change the court order; the child, nonminor, or nonminor dependent; and the caregiver may be kept confidential by filing *Confidential Information (Request to Change Court Order)* (form JV-182) with form JV-180. Form JV-182 must be kept in the court file under seal, and only the court, the agency, and the attorney for the child, nonminor, or nonminor dependent may have access to this information.

(Subd (c) amended effective January 1, 2014; adopted effective January 1, 2007.)

(d) Denial of hearing

The court may deny the petition ex parte if:

(1) The petition filed under section 388(a) or section 778(a) fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction or fails to show that the requested modification would promote the best interest of the child, nonminor, or nonminor dependent.

(2) The petition filed under section 388(b) fails to demonstrate that the requested modification would promote the best interest of the dependent child;

(3) The petition filed under section 388(b) or 778(b) requests visits with a nondependent child and demonstrates that sibling visitation is contrary to the safety and well-being of any of the siblings;

(4) The petition filed under section 388(b) or 778(b) requests visits with a nondependent sibling who remains in the custody of a mutual parent who is not subject to the court's jurisdiction; or

(5) The petition filed under section 388(c) fails to state facts showing that the parent has failed to visit the child or that the parent has failed to participate regularly and make substantive progress in a court-ordered treatment plan or

fails to show that the requested termination of services would promote the best interest of the child.

(Subd (d) amended effective January 1, 2016; adopted as subd (b); previously amended and relettered as subd (d) effective January 1, 2007; previously amended effective January 1, 2010, and January 1, 2014.)

(e) Grounds for grant of petition (§§ 388, 778)

(1) If the petition filed under section 388(a) or section 778(a) states a change of circumstance or new evidence and it appears that the best interest of the child, nonminor, or nonminor dependent may be promoted by the proposed change of order or termination of jurisdiction, the court may grant the petition after following the procedures in (f), (g), and (h), or (i).

(2) If the petition is filed under section 388(b) and it appears that the best interest of the child, nonminor, or nonminor dependent may be promoted by the proposed recognition of a sibling relationship or other requested orders, the court may grant the petition after following the procedures in (f), (g), and (h).

(3) If the petition is filed under section 388(b), the request is for visitation with a sibling who is not a dependent of the court and who is in the custody of a parent subject to the court's jurisdiction, and that sibling visitation is not contrary to the safety and well-being of any of the siblings, the court may grant the request after following the procedures in (f), (g), and (h).

(4) If the petition is filed under section 778(b), the request is for visitation with a sibling who is not a dependent of the court and who is in the custody of a parent subject to the court's jurisdiction, and that sibling visitation is not contrary to the safety and well being of the ward or any of the siblings, the court may grant the request after following the procedures in (f), (g), and (i).

(5) For a petition filed under section 388(c)(1)(A), the court may terminate reunification services during the time periods described in section 388(c)(1) only if the court finds by a preponderance of evidence that reasonable services have been offered or provided, and, by clear and convincing evidence, that the change of circumstance or new evidence described in the petition satisfies a condition in section 361.5(b) or (e). The court may grant the petition after following the procedures in (f), (g), and (h).

(6) For a petition filed under section 388(c)(1)(B), the court may terminate reunification services during the time periods described in section 388(c)(1) only if the court finds by a preponderance of evidence that reasonable

services have been offered or provided, and, by clear and convincing evidence, that action or inaction by the parent or guardian creates a substantial likelihood that reunification will not occur. Such action or inaction includes, but is not limited to, failure to visit the child or failure to participate regularly and make substantive progress in a court-ordered treatment program. In determining whether the parent or guardian has failed to visit the child or to participate regularly or make progress in a court-ordered treatment plan, the court must consider factors including, but not limited to, the parent or guardian's incarceration, institutionalization, or participation in a residential substance abuse treatment program. The court may grant the petition after following the procedures in (f), (g), and (h).

(7) If the petition filed under section 388(a) is filed before an order terminating parental rights and is seeking to modify an order that reunification services need not be provided under section 361.5(b)(4), (5), or (6) or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the court may modify the orders only if the court finds by clear and convincing evidence that the proposed change is in the best interests of the child. The court may grant the petition after following the procedures in (f), (g), and (h).

(Subd (e) amended effective January 1, 2016; adopted as subd (c); previously amended and relettered as subd (e) effective January 1, 2007; previously amended effective January 1, 2010, and January 1, 2014.)

(f) Hearing on petition

If all parties stipulate to the requested modification, the court may order modification without a hearing. If there is no such stipulation and the petition has not been denied ex parte under section (d), the court must either:

(1) order that a hearing on the petition be held within 30 calendar days after the petition is filed; or

(2) order a hearing for the parties to argue whether an evidentiary hearing on the petition should be granted or denied. If the court then grants an evidentiary hearing on the petition, that hearing must be held within 30 calendar days after the petition is filed.

(Subd (f) amended effective January 1, 2016; adopted as subd (d); previously relettered as subd (f) effective January 1, 2007; previously amended effective July 1, 2002, and January 1, 2010.)

(g) Notice of petition and hearing (§§ 388, 778)

The clerk must cause notice of the hearing to be given to the persons and in the same manner prescribed by rule 5.524. The caregiver of the child, nonminor, or nonminor dependent and the tribe of an Indian child must be similarly notified. The parent or legal guardian of a nonminor dependent must not be notified unless the nonminor dependent requests that he or she receive notice or the parent or legal guardian is receiving court-ordered family reunification services.

(Subd (g) amended effective January 1, 2014; repealed and adopted as subd (e); previously amended effective January 1, 1992, July 1, 1995, July 1, 2000, and July 1, 2002; previously amended and relettered as subd (g) effective January 1, 2007.)

(h) Conduct of hearing (§ 388)

(1) The petitioner requesting the modification under section 388 has the burden of proof.

(A) If the request is for the removal of the child from the child's home, the petitioner must show by clear and convincing evidence that the grounds for removal in section 361(c) exist.

(B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided.

(C) If the request is to modify an order that reunification services were not ordered under section 361.5(b)(4), (5), or (6) or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the petitioner must show by clear and convincing evidence that the proposed change is in the best interests of the child.

(D) All other requests require a preponderance of the evidence to show that the child's welfare requires such a modification

(E) If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

(2) The hearing must be conducted as a dispositional hearing under rules 5.690 and 5.695 if:

(A) The request is for termination of court-ordered reunification services; or

(B) There is a due process right to confront and cross-examine witnesses.

Otherwise, proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.

(Subd (h) amended effective January 1, 2016; adopted as subd (f); previously amended and relettered as subd (h) effective January 1, 2007; previously amended effective July 1, 2000, July 1, 2002, January 1, 2003, January 1, 2010, and January 1, 2014.)

(i) Conduct of hearing (§ 778)

(1) The petitioner requesting the modification under section 778(a) has the burden of proving by a preponderance of the evidence that the ward's welfare requires the modification. Proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.

(2) If the request is for sibling visitation under section 778(b), the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

(Subd (i) amended effective January 1, 2016; adopted as subd (g); previously amended effective July 1, 2002; previously amended and relettered as subd (i) effective January 1, 2007.)

(j) Petitions for juvenile court to resume jurisdiction over nonminors (§§ 388(e), 388.1)

A petition filed by or on behalf of a nonminor requesting that the court resume jurisdiction over the nonminor as a nonminor dependent is not subject to this rule. Petitions filed under section 388(e) or section 388.1 are subject to rule 5.906.

(Subd (j) amended effective January 1, 2016; adopted effective January 1, 2014.)

Rule 5.570 amended effective January 1, 2016; adopted as rule 1432 effective January 1, 1991; previously amended and renumbered as rule 5.570 effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1995, July 1, 2000, July 1, 2002, January 1, 2003, January 1, 2009, January 1, 2010, and January 1, 2014.

Rule 5.575. Joinder of Agencies

(a) Basis for joinder (§§ 362, 365, 727)

The court may, at any time after a petition has been filed, following notice and a hearing, join in the proceedings any agency (as defined in section 362) that the court determines has failed to meet a legal obligation to provide services to a child or a nonminor or nonminor dependent youth for whom a petition has been filed under section 300, 601, or 602. The court may not impose duties on an agency beyond those required by law.

(Subd (a) amended effective January 1, 2014; previously amended effective January 1, 2007.)

(b) Notice and Hearing

On application by a party, counsel, or CASA volunteer, or on the court's own motion, the court may set a hearing and require notice to the agency or provider subject to joinder.

(1) Notice of the hearing must be given to the agency on *Notice of Hearing on Joinder—Juvenile* (form JV-540). The notice must clearly describe the legal obligation at issue, the facts and circumstances alleged to constitute the agency's failure to meet that obligation, and any issues or questions the court expects the agency to address at the hearing.

(2) The hearing must be set to occur within 30 calendar days of the signing of the notice by the court. The hearing will proceed under the provisions of rule 5.570(h) or (i), as appropriate.

(3) The clerk must cause the notice to be served on the agency and all parties, attorneys of record, the CASA volunteer, any other person or entity entitled to notice under section 291 or 658, and, if the hearing might address educational or developmental-services issues, the educational rights holder by first-class mail within 5 court days of the signing of the notice.

(4) Nothing in this rule prohibits agencies from meeting before the hearing to coordinate the delivery of services. The court may request, using section 8 of

form JV-540, that agency representatives meet before the hearing and that the agency or agencies submit a written response to the court at least 5 court days before the hearing.

(Subd (b) amended effective January 1, 2014; previously amended effective January 1, 2006, and January 1, 2007.)

Rule 5.575 amended effective January 1, 2014; adopted as rule 1434 effective January 1, 2002; previously amended effective January 1, 2006; amended and renumbered effective January 1, 2007.

Rule 5.580. Hearing on violation of probation (§ 777)

(a) Notice of hearing (§§ 656, 658, 660)

Notice of a hearing to be held under section 777 must be issued and served as provided in sections 658, 660, and 777 and prepared:

(1) By the probation officer if the child has been declared a ward under section 601; or

(2) By the probation officer or the district attorney if the child is a ward or is on probation under section 602, and the alleged violation of probation is not a crime.

(Subd (a) amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2006.)

(b) Motion to dismiss

If the probation officer files the notice of hearing, before jeopardy attaches the prosecuting attorney may move the court to dismiss the notice and request that the matter be referred to the probation officer for appropriate action under section 777(a)(3).

(Subd (b) adopted effective January 1, 2001.)

(c) Detention hearing

If the child has been brought into custody, the procedures described in rules 5.524 and 5.752 through 5.764 must be followed.

(Subd (c) amended effective January 1, 2007; adopted as subd (d) effective January 1, 2001; amended and relettered effective January 1, 2006.)

(d) Report of probation officer

Before every hearing the probation officer must prepare a report on those matters relevant to a determination of whether the child has violated a condition of probation. The report must be furnished to all parties at least 48 hours, excluding noncourt days, before the beginning of the hearing unless the child is represented by counsel and waives the right to service of the report.

(Subd (d) amended and relettered and amended effective January 1, 2006; adopted as subd (b); amended and relettered as subd (e) effective January 1, 2001.)

(e) Evidence considered

The court must consider the report prepared by the probation officer and other relevant and material evidence offered by the parties to the proceeding.

(1) The court may admit and consider reliable hearsay evidence as defined by section 777(c).

(2) The probation officer or prosecuting attorney must prove the alleged violation by a preponderance of the evidence.

(Subd (e) amended and relettered effective January 1, 2006; adopted as subd (e); amended and relettered as subd (f) effective January 1, 2001.)

Rule 5.580 amended and renumbered effective January 1, 2007; adopted as rule 1433 effective January 1, 1990; previously amended effective January 1, 1992, January 1, 2001, and January 1, 2006.

Chapter 5. Appellate Review

Title 5, Family and Juvenile Rules—Division 3, Juvenile Rules—Chapter 5, Appellate Review; amended effective July 1, 2010; adopted effective July 1, 2007.

Rule 5.585. Rules governing appellate review
Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases
Rule 5.595. Stay pending appeal

Rule 5.585. Rules governing appellate review

The rules in title 8, chapter 5 govern appellate review of judgments and orders in cases under Welfare and Institutions Code section 300, 601, or 602.

Rule 5.585 adopted effective July 1, 2010.

Advisory Committee Comment

Rules 8.450 and 8.452 describe how a party, including the petitioner, child, and parent or guardian, must proceed if seeking appellate court review of findings and orders of the juvenile court made at a hearing at which the court orders that a hearing under Welfare and Institutions Code section 366.26 be held.

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a) Advisement of right to appeal

If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of:

(1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal;

(2) The necessary steps and time for taking an appeal;

(3) The right of an indigent appellant to have counsel appointed by the reviewing court; and

(4) The right of an indigent appellant to be provided with a free copy of the transcript.

(Subd (a) amended and relettered effective July 1, 2010; adopted as subd (d) effective January 1, 1990; previously amended effective January 1, 2007.)

(b) Advisement of requirement for writ petition to preserve appellate rights when court orders hearing under section 366.26

When the court orders a hearing under Welfare and Institutions Code section 366.26, the court must advise all parties and, if present, the child's parent, guardian, or adult relative, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under Welfare and Institutions Code section 366.26, the party is required to seek an extraordinary writ by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ.

(1) The advisement must be given orally to those present when the court orders the hearing under Welfare and Institutions Code section 366.26.

(2) Within one day after the court orders the hearing under Welfare and Institutions Code section 366.26, the advisement must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under Welfare and Institutions Code section 366.26.

(3) The advisement must include the time for filing a notice of intent to file a writ petition.

(4) Copies of *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) must be available in the courtroom and must accompany all mailed notices informing the parties of their rights.

(Subd (b) amended effective July 1, 2010; adopted as subd (e) effective January 1, 1995; previously amended effective January 1, 2007.)

(c) Advisement requirements for appeal of order to transfer to tribal court

When the court grants a petition transferring a case to tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), and rule 5.483, the court must advise the parties orally and in writing, that an appeal of the order must be filed before the transfer to tribal jurisdiction is finalized, and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

(Subd (c) adopted effective January 1, 2016.)

Rule 5.590 amended effective January 1, 2016; adopted as rule 1435 effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, and July 1, 1999; previously amended and renumbered as rule 5.585 effective January 1, 2007; previously amended and renumbered as rule 5.590 effective July 1, 2010.

Advisory Committee Comment

Subdivision (a). The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

Subdivision (b). Welfare and Institutions Code section 366.26(*l*) establishes important limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26, including requirements for the filing of a petition for an extraordinary writ and limitations on the issues that can be raised on appeal.

Rule 5.595. Stay pending appeal

The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.

Rule 5.595 amended effective July 1, 2010; adopted as rule 1436 effective January 1, 1993; previously amended effective January 1, 1994, January 1, 1995, and January 1, 2006; previously amended and renumbered effective January 1, 2007.

Chapter 6. Emancipation

Rule 5.605. Emancipation of minors

Rule 5.605. Emancipation of minors

(a) Petition

A petition for declaration of emancipation of a minor must be submitted on *Petition for Declaration of Emancipation of Minor, Order Prescribing Notice, Declaration of Emancipation, and Order Denying Petition* (form MC-300). Only the minor may petition the court for emancipation, and the petition may be filed in the county in

which the minor can provide a verifiable residence address. The petitioner must complete and attach to the petition *Emancipation of Minor—Income and Expense Declaration* (form MC-306).

(Subd (a) amended effective January 1, 2007.)

(b) Dependents and wards of the juvenile court

Petitions to emancipate a child who is a dependent or ward of the juvenile court must be filed and heard in juvenile court.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1995.)

(c) Court

The petition to emancipate a minor other than a dependent or ward of the juvenile court must be filed and will be heard in juvenile court or other superior court department so designated by local rule or by order of the presiding judge.

(Subd (c) amended effective January 1, 2007.)

(d) Filing fee

Unless waived, the petitioner must pay the filing fee as specified. The ability or inability to pay the filing fee is not in and of itself evidence of the financial responsibility of the minor as required for emancipation.

(Subd (d) amended effective January 1, 2007.)

(e) Declaration of emancipation without hearing

If the court finds that all notice and consent requirements have been met or waived, and that emancipation is not contrary to the best interest of the petitioner, the court may grant the petition without a hearing. The presiding judge of the superior court must develop a protocol for the screening, evaluation, or investigation of petitions.

(Subd (e) amended effective January 1, 2007.)

(f) Time limits

The clerk of the court in which the petition is filed must immediately provide or direct the petitioner to provide the petition to the court. Within 30 days from the

filing of the petition, the court must (1) grant the petition, (2) deny the petition, or (3) set a hearing on the petition to be conducted within 30 days thereafter. The clerk must immediately provide the petitioner with an endorsed-filed copy of the court's order.

(Subd (f) amended effective January 1, 2007.)

(g) Notice

If the court orders the matter set for hearing, the clerk must notify the district attorney of the time and date of the hearing, which must be within 30 days of the order prescribing notice and setting for hearing. The petitioner is responsible for notifying all other persons to whom the court requires notice.

(Subd (g) amended effective January 1, 2007.)

Rule 5.605 amended and renumbered effective January 1, 2007; adopted as rule 1437 effective July 1, 1994; previously amended effective January 1, 1995.

Chapter 7. Intercounty Transfers

Rule 5.610. Transfer-out hearing
Rule 5.612. Transfer-in hearing
Rule 5.613. Transfer of nonminor dependents
Rule 5.614. Courtesy supervision (§§ 380, 755)
Rule 5.616. Interstate Compact on the Placement of Children

Rule 5.610. Transfer-out hearing

(a) Determination of residence—special rule on intercounty transfers (§§ 375, 750)

(1) For purposes of rules 5.610 and 5.612, the residence of the child is the residence of the person who has the legal right to physical custody of the child according to prior court order, including:

(A) A juvenile court order under section 361.2; and

(B) An order appointing a guardian of the person of the child.

(2) If there is no order determining custody, both parents are deemed to have physical custody.

(3) The juvenile court may make a finding of paternity under rule 5.635. If there is no finding of paternity, the mother is deemed to have physical custody.

(4) For the purposes of transfer of wardship, residence of a ward may be with the person with whom the child resides with approval of the court.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(b) Verification of residence

The residence of the person entitled to physical custody may be verified by declaration of a social worker or probation officer in the transferring or receiving county.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2004, and January 1, 2007.)

(c) Transfer to county of child's residence (§§ 375, 750)

(1) After making its jurisdictional finding, the court may order the case transferred to the juvenile court of the child's residence if:

(A) The petition was filed in a county other than that of the child's residence; or

(B) The child's residence was changed to another county after the petition was filed.

(2) If the court decides to transfer a delinquency case, the court must order the transfer before beginning the disposition hearing without adjudging the child to be a ward.

(3) If the court decides to transfer a dependency case, the court may order the transfer before or after the disposition hearing.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(d) Transfer on subsequent change in child's residence (§§ 375, 750)

If, after the child has been placed under a program of supervision, the residence is changed to another county, the court may, on an application for modification under rule 5.570, transfer the case to the juvenile court of the other county.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(e) Conduct of hearing

(1) The request for transfer must be made on *Motion for Transfer Out* (form JV-548), which must include all required information.

(2) After the court determines the identity and residence of the child's custodian, the court must consider whether transfer of the case would be in the child's best interest. The court may not transfer the case unless it determines that the transfer will protect or further the child's best interest.

(Subd (e) amended effective January 1, 2017; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993, January 1, 2004, and January 1, 2007.)

(f) Date of transfer-in hearing

(1) If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court: within 5 court days of the transfer-out order if the child is in custody, and within 10 court days of the transfer-out order if the child is out of custody. The sending court must state on the record the date, time, and location of the hearing in the receiving court.

(2) The website for every court must include up-to-date contact information for the court clerks handling dependency and delinquency matters, as well as up-to-date information on when and where transfer-in hearings are held.

(Subd (f) adopted effective January 1, 2017.)

(g) Order of transfer (§§ 377, 752)

The order of transfer must be entered on *Juvenile Court Transfer-Out Orders* (form JV-550), which must include all required information and findings.

(Subd (g) amended and relettered effective January 1, 2017; repealed and adopted as subd (f) effective January 1, 1990; previously amended effective January 1, 1993, January 1, 2004, and January 1, 2007.)

(h) Modification of form JV-550

Juvenile Court Transfer Orders (form JV-550) may be modified as follows:

(1) Notwithstanding the mandatory use of form JV-550, the form may be modified for use by a formalized regional collaboration of courts to facilitate the efficient processing of transfer cases among those courts if the modification has been approved by the Judicial Council of California.

(2) The mandatory form must be used by a regional collaboration when transferring a case to a court outside the collaboration or when accepting a transfer from a court outside the collaboration.

(Subd (h) relettered January 1, 2017; adopted as subd (g) effective January 1, 2007; previously amended January 1, 2015.)

(i) Transport of child and transmittal of documents (§§ 377, 752)

(1) If the child is ordered transported in custody to the receiving county, the child must be delivered to the receiving county at least two business days before the transfer-in hearing, and the clerk of the court of the transferring county must prepare a certified copy of the complete case file so that it may be transported with the child to the court of the receiving county.

(2) If the child is not ordered transported in custody, the clerk of the transferring court must transmit to the clerk of the court of the receiving county within five court days a certified copy of the complete case file.

(3) The file may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.

(Subd (i) amended and relettered effective January 1, 2017; repealed and adopted as subd (g); previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, and January 1, 2004; previously amended and relettered as subd (h) effective January 1, 2007.)

(j) Appeal of transfer order (§§ 379, 754)

The order of transfer may be appealed by the transferring or receiving county and notice of appeal must be filed in the transferring county, under rule 8.400. Notwithstanding the filing of a notice of appeal, the receiving county must assume jurisdiction of the case on receipt and filing of the order of transfer.

(Subd (j) relettered effective January 1, 2017; repealed and adopted as subd (h); previously amended effective January 1, 1992, and January 1, 2004; previously amended and relettered as subd (i) effective January 1, 2007.)

Rule 5.610 amended effective January 1, 2017; adopted as rule 1425 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, January 1, 2004, and January 1, 2015.

Advisory Committee Comment

Juvenile court judicial officers throughout the state have expressed concern that in determining whether or not to transfer a juvenile court case, the best interest of the subject child is being overlooked or at least outweighed by a desire to shift the financial burdens of case management and foster care. The advisory committee has clarified rule 5.610 in order to stress that in considering an intercounty transfer, as in all matters relating to children within its jurisdiction, the court has a mandate to act in the best interest of the subject children.

Juvenile Court Transfer-Out Orders (form JV-550) was adopted for mandatory use commencing January 1, 1992. Although the finding regarding the best interest of the child was noted on the original form, the language has been emphasized on the amended form.

Rule 5.612. Transfer-in hearing

(a) Procedure on transfer (§§ 378, 753)

On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. The clerk of the receiving court must confirm the transfer-in hearing date scheduled by the sending court and ensure that date is on the receiving court's calendar. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file.

(Subd (a) amended effective January 1, 2017; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1999, January 1, 2004, and January 1, 2007.)

(b) Conduct of hearing

At the transfer-in hearing, the court must:

(1) Advise the child and the parent or guardian of the purpose and scope of the hearing;

(2) Provide for the appointment of counsel if appropriate; and

(3) If the child was transferred to the county in custody, determine whether the child must be further detained under rule 5.667.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(c) Subsequent proceedings

The proceedings in the receiving court must commence at the same phase as when the case was transferred. The court may continue the hearing for an investigation and report to a date not to exceed 10 court days if the child is in custody or 15 court days if the child is not detained in custody.

(Subd (c) amended effective January 1, 2004; previously amended effective July 1, 1999.)

(d) Limitation on more restrictive custody (§§ 387, 777)

If a disposition order has already been made in the transferring county, a more restrictive level of physical custody may not be ordered in the receiving county, except after a hearing on a supplemental petition under rule 5.565.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(e) Setting six-month review (§ 366)

When an order of transfer is received and filed relating to a child who has been declared a dependent, the court must set a date for a six-month review within six months of the disposition or the most recent review hearing.

(Subd (e) amended effective January 1, 2004.)

(f) Change of circumstances or additional facts (§§ 388, 778)

If the receiving court believes that a change of circumstances or additional facts indicate that the child does not reside in the receiving county, a transfer-out hearing

must be held under rules 5.610 and 5.570. The court may direct the department of social services or the probation department to seek a modification of orders under section 388 or 778 and under rule 5.570.

(Subd (f) amended effective January 1, 2007; adopted effective January 1, 1992; previously amended effective July 1, 1999, and January 1, 2004.)

Rule 5.612 amended effective January 1, 2017; adopted as rule 1426 effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1999, and January 1, 2004; previously amended and renumbered as rule 5.612 effective January 1, 2007.

Rule 5.613. Transfer of nonminor dependents

(a) Purpose

This rule applies to requests to transfer the county of jurisdiction of a nonminor dependent as allowed by Welfare and Institutions Code section 375. This rule sets forth the procedures that a court is to follow when it seeks to order a transfer of a nonminor dependent and those to be followed by the court receiving the transfer. All other intercounty transfers of juveniles are subject to rules 5.610 and 5.612.

(b) Transfer-out hearing

(1) *Determination of residence—special rule on intercounty transfers (§§ 17.1, 375)*

(A) For purposes of this rule, the residence of a nonminor dependent who is placed in a planned permanent living arrangement may be either the county in which the court that has jurisdiction over the nonminor is located or the county in which the nonminor has resided continuously for at least one year as a nonminor dependent and the nonminor dependent has expressed his or her intent to remain.

(B) If a nonminor dependent's dependency jurisdiction has been resumed, or if transition jurisdiction has been assumed or resumed by the juvenile court that retained general jurisdiction over the nonminor under section 303, the county that the nonminor dependent is residing in may be deemed the county of residence of the nonminor dependent. The court may make this determination if the nonminor has established a continuous physical presence in the county for one year as a nonminor and has expressed his or her intent to remain in that county after the court grants the petition to resume jurisdiction. The period of

continuous physical presence includes any period of continuous residence immediately before filing the petition.

(2) *Verification of residence*

The residence of a nonminor may be verified by declaration of a social worker or probation officer in the transferring or receiving county.

(3) *Transfer to county of nonminor's residence (§ 375)*

If the court is resuming dependency jurisdiction or assuming or resuming transition jurisdiction of a nonminor for whom the court has retained general jurisdiction under section 303(b) as a result of a petition filed under section 388(e), after granting the petition, the court may order the transfer of the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1) and the court finds that the transfer is in the minor's best interest.

(4) *Transfer on change in nonminor's residence (§ 375)*

If a nonminor dependent under the dependency or transition jurisdiction of the court is placed in a planned permanent living arrangement in a county other than the county with jurisdiction over the nonminor, the court may, on an application for modification under rule 5.570, transfer the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1).

(5) *Conduct of hearing*

(A) The request for transfer must be made on *Motion for Transfer Out* (form JV-548), which must include all required information.

(B) After the court determines whether a nonminor has established residency in another county as required in (b)(1), the court must consider whether transfer of the case would be in the nonminor's best interest. The court may not transfer the case unless it determines that the nonminor supports the transfer and that the transfer will protect or further the nonminor's best interest.

(C) If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court, which must be within 10 court days of the transfer-out order. The sending court must

state on the record the date, time, and location of the hearing in the receiving court.

(6) *Order of transfer (§ 377)*

The order of transfer must be entered on *Juvenile Court Transfer-Out Orders—Nonminor Dependent* (form JV-552), which must include all required information and findings.

(7) *Modification of form JV-552*

Juvenile Court Transfer-Out Orders—Nonminor Dependent (form JV-552) may be modified as follows:

(A) Notwithstanding the mandatory use of form JV-552, the form may be modified for use by a formalized regional collaboration of courts to facilitate the efficient processing of transfer cases among those courts if the modification has been approved by the Judicial Council.

(B) The mandatory form must be used by a regional collaboration when transferring a case to a court outside the collaboration or when accepting a transfer from a court outside the collaboration.

(8) *Transmittal of documents (§ 377)*

The clerk of the transferring court must transmit to the clerk of the court of the receiving county no later than five court days from the date of the transfer-out order a certified copy of the entire nonminor file and, at a minimum, all documents associated with the last status review hearing held before the nonminor reached majority, including the court report and all findings and orders. The files may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.

(9) *Appeal of transfer order (§ 379)*

The order of transfer may be appealed by the transferring or receiving county, and notice of appeal must be filed in the transferring county, under rule 8.400. Notwithstanding the filing of a notice of appeal, the receiving county must assume jurisdiction of the case on receipt and filing of the order of transfer.

(c) Transfer-in hearing

(1) *Procedure on transfer (§ 378)*

On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file. The clerk of the receiving court must confirm the transfer-in hearing date scheduled by the sending court and ensure that date is on the receiving court's calendar.

(2) *Conduct of hearing*

At the transfer-in hearing, the court must:

(A) Advise the nonminor of the purpose and scope of the hearing; and

(B) Provide for the appointment of counsel, if appropriate.

(3) *Subsequent proceedings*

The proceedings in the receiving court must commence at the same phase as when the case was transferred. The court may continue the hearing for an investigation and a report to a date not to exceed 15 court days.

(4) *Setting six-month review (§ 366.31)*

When an order of transfer is received and filed relating to a nonminor dependent, the court must set a date for a six-month review within six months of the most recent review hearing or, if the sending court transferred the case immediately after assuming or resuming jurisdiction, within six months of the date a voluntary reentry agreement was signed.

(5) *Change of circumstances or additional facts (§§ 388, 778)*

If the receiving court believes that a change of circumstances or additional facts indicate that the nonminor does not reside in the receiving county, a transfer-out hearing must be held under this rule and rule 5.570. The court may direct the department of social services or the probation department to seek a modification of orders under section 388 or section 778 and under rule 5.570.

Rule 5.613 adopted effective January 1, 2017.

Rule 5.614. Courtesy supervision (§§ 380, 755)

The court may authorize a child placed on 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 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.

Rule 5.614 amended and renumbered effective January 1, 2007; adopted as rule 1427 effective January 1, 1990.

Rule 5.616. Interstate Compact on the Placement of Children

(a) Applicability of rule (Fam. Code, § 7900 et seq.)

This rule implements the purposes and provisions of the Interstate Compact on the Placement of Children (ICPC, or the compact). California juvenile courts must apply this rule when placing children who are dependents or wards of the juvenile court and for whom placement is indicated in any other state, the District of Columbia, or the U.S. Virgin Islands.

(1) This rule applies to expedited placements as described in (h).

(2) This rule does not apply to placements made under the Interstate Compact for Juveniles (Welf. & Inst. Code, § 1400 et seq.).

(Subd (a) amended effective January 1, 2013; previously amended effective January 1, 2007.)

(b) Definitions (Fam. Code, § 7900 et seq.; ICPC Regulations)

(1) "Placement" is defined in article 2(d) of the compact. It includes placements with a relative, as defined in Regulation No. 3, paragraph 4, item 56; a legal guardian of the child; a placement recipient who is not related to the child; or a residential facility or group home as defined in Regulation No. 4.

(A) A court's directing or making an award of custody to a parent of the child or placing a child with his or her parent is not a placement requiring compliance with this rule.

(B) The following situations each constitute a placement, and the compact must be applied:

(i) An order causing a child to be sent or brought to a person, other than a parent, in a compact jurisdiction without a specific date of return to the sending jurisdiction;

(ii) An order causing a child to be sent or brought to a person, other than a parent, in a compact jurisdiction with a return date more than 30 days from the start of the visit or beyond the ending date of a school vacation period, under Regulation No. 9;

(iii) An out-of-state placement for the purpose of an anticipated adoption, whether independent, private, or public;

(iv) An out-of-state placement with a related or unrelated caregiver in a licensed or approved foster home;

(v) An out-of-state placement with relatives, except when a parent or relative sends or brings the child to the relative's home in the receiving state, as defined in article 8(a) of the ICPC; or

(vi) An out-of-state group home or residential placement of any child, including a child adjudicated delinquent.

(2) "Child," for the purposes of ICPC placement, includes nonminor dependents up to age 21. If a California nonminor dependent is to be placed out of state, the placing county may request supervision from the receiving state, but such services are discretionary. If the receiving state will not supervise the nonminor dependent, the sending county must make other supervision arrangements, which may include contracting with a private agency to provide the supervision.

(3) "Parent," as used in this rule, does not include de facto parents or legal guardians.

(4) ICPC Regulations Nos. 3, 4, 5, 9, 10, 11, and 12 contain additional definitions that apply to California ICPC cases, except where inconsistent with this rule or with California law.

(Subd (b) amended effective January 1, 2014; previously amended effective January 1, 2007, and January 1, 2013.)

(c) Compact requirements (Fam. Code, § 7901; ICPC Regulations)

Whenever the juvenile court makes a placement in another jurisdiction included in the compact or reviews a placement plan, the court must adhere to the provisions and regulations of the compact.

(1) Cases in which out-of-state placement is proposed in order to place a child for public adoption, in foster care, or with relatives, and where the criteria for expedited placement are not met, must meet all requirements of Regulation No. 2, except where inconsistent with California law.

(2) Expedited placement cases must meet the requirements in (h) and of Regulation No. 7, except where the requirements of Regulation No. 7 are inconsistent with California law.

(3) Cases in which out-of-state placement is proposed in order to place a child in a residential facility or group home must meet all the requirements of Regulation No. 4, except where inconsistent with California law.

(Subd (c) amended effective January 1, 2014; previously amended effective January 1, 2007, and January 1, 2013.)

(d) Notice of intention; authorization (Fam. Code, § 7901)

A sending jurisdiction must provide to the designated receiving jurisdiction written notice of intention to place the child, using Form ICPC-100A: Interstate Compact on the Placement of Children Request.

(1) The representative of the receiving jurisdiction may request and receive additional information as the representative deems necessary.

(2) The child must not be placed until the receiving jurisdiction has determined that the placement is not contrary to the interest of the child and has so notified the sending jurisdiction in writing.

(Subd (d) amended effective January 1, 2013; previously amended effective January 1, 2007.)

(e) Placement of delinquent children in institutional care (Fam. Code, §§ 7901, art. 6, and 7908; ICPC Reg. No. 4, § 2)

A child declared a ward of the court under Welfare and Institutions Code section 602 may be placed in an institution in another jurisdiction under the compact only when:

(1) Before the placement, the court has held a properly noticed hearing at which the child, parent, and guardian have had an opportunity to be heard;

(2) The court has found that equivalent facilities for the child are not available in the sending jurisdiction; and

(3) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship for the child or his or her family.

(Subd (e) amended effective January 1, 2014; previously amended effective January 1, 2007, and January 1, 2013.)

(f) Relocation of Family Units (ICPC Reg. No. 1)

(1) The ICPC applies to family relocation cases when the child has been placed and continues to live with a family approved by California, the family relocates to another state with the child, and supervision by California is ongoing.

(2) The ICPC does not apply when the family with whom the child is placed relocates to another state and there will be no ongoing supervision by the sending state or the relocation will be temporary (90 days or less) and will not recur.

(3) Additional procedural requirements for cases involving relocation of family units are in ICPC Regulation No. 1.

(Subd (f) adopted effective January 1, 2013.)

(g) Placing a Child With an Out-of-State Parent (Fam. Code, §§ 7901, art. 5(b), and 7906; ICPC Reg. No. 2, § 3)

When a child will be placed with his or her parent in another state, compliance with the requirements of the ICPC is not required. However, the court has discretion to take the steps it deems necessary to ensure the child's safety and well-being in that placement. Those steps may include:

(1) Directing the child welfare agency to request an independent, non-ICPC home study or courtesy check;

(2) Directing the child welfare agency to enter into a contract with a public or private agency in the receiving state to obtain a home study or other needed information;

(3) Directing the child welfare agency to enter into an informal agreement with a public or private agency in the receiving state, or requesting a courtesy check from such an agency, to obtain needed information; or

(4) Any other steps that the court deems necessary to ensure the child's safety and well-being.

(Subd (g) adopted effective January 1, 2013.)

(h) Expedited placement (ICPC Reg. No. 7)

When seeking expedited approval of an out-of-state placement of a child with a relative or guardian, a California court may designate a proposed placement as an expedited placement by using procedures described in this section.

(1) Expedited placement under Regulation No. 7 does not apply to any situation in which a California child is being placed with his or her parent in another state.

(2) Before the court orders an expedited placement, the court must make express findings that the child is a dependent child removed from and no longer residing in the home of a parent and now being considered for placement in another state with a stepparent, grandparent, adult aunt or uncle, adult sibling, or legal guardian. In addition, the court must find that the child to be placed meets at least one of the following criteria:

(A) Unexpected dependency due to the sudden or recent incarceration, incapacitation, or death of a parent or guardian. *Incapacitation* means the parent or guardian is unable to care for the child due to the parent's medical, mental, or physical condition;

(B) The child is 4 years of age or younger;

(C) The child is part of a group of siblings who will be placed together, where one or more of the siblings is 4 years of age or younger;

(D) The child to be placed, or any of the child's siblings in a sibling group to be placed, has a substantial relationship with the proposed placement resource as defined in section 5(c) of Regulation No. 7; or

(E) The child is in an emergency placement.

(3) Before the court orders an expedited placement, the child welfare agency must provide to the court, at a minimum, the documents required by section 7(a) and (b) of Regulation No. 7:

(A) A signed statement of interest from the potential placement, or a written statement from the assigned case manager affirming that the potential placement resource confirms appropriateness for the ICPC expedited placement decision process. The statement must include all items listed in Regulation No. 7, section 7(a); and

(B) A statement from the assigned case manager or other child welfare agency representative stating that he or she knows of no reason why the child could not be placed with the proposed placement and that the agency has completed and is prepared to send all required paperwork.

(4) On findings of the court under (h)(2) and (3) that the child meets the criteria for an expedited placement and that the required statements have been provided to the court, the case must proceed as follows:

(A) The court must enter an order for expedited placement, stating on the record or in the written order the factual basis for that order. If the court is also requesting provisional approval of the proposed placement, the court must so order, and must state on the record or in the written order the factual basis for that request.

(B) The court's findings and orders must be noted in a written order using *Expedited Placement Under the Interstate Compact on the Placement of Children: Findings and Orders* (form JV-567), which must include the name, address, e-mail address, telephone number, and fax number of the clerk of court or designated court administrator.

(C) The order must be transmitted by the court to the sending agency of the court's jurisdiction within 2 business days of the hearing or consideration of the request.

(D) The sending child welfare agency must be ordered to transmit to the county ICPC Liaison in the sending jurisdiction within 3 business days of receipt of the order the following:

(i) A copy of the completed *Expedited Placement Under the Interstate Compact on the Placement of Children: Findings and Orders* (form JV-567); and

(ii) A completed Interstate Compact on the Placement of Children Request (form ICPC-100A), along with form ICPC-101, the statements required under section (h)(3), above, and all required supporting documentation.

(E) Within 2 business days after receipt of the paperwork, the county ICPC Liaison of the sending jurisdiction must transmit the documents described in (D) to the compact administrator of the receiving jurisdiction with a request for an expedited placement decision, as well as any request for provisional placement.

(5) The compact administrator of the receiving jurisdiction must determine immediately, and no later than 20 business days after receipt, whether the placement is approved and must transmit the completed written report and form ICPC 100A, as required by Regulation 7, section 9, to the county ICPC Liaison in the sending jurisdiction.

(6) The transmission of any documentation, request for information, or decision may be by overnight mail, fax, e-mail, or other recognized, secure method of communication. The receiving state may also request original documents or certified copies if it considers them necessary for a legally sufficient record.

(7) When California is the sending state and there appears to be a lack of compliance with Regulation No. 7 requirements by state officials or the local child welfare agency in the receiving state regarding the expedited placement request, the California judicial officer may communicate directly with the judicial officer in the receiving state.

(A) This communication may be by telephone, e-mail, or any other recognized, secure communication method.

(B) The California judicial officer may do any one or more of the following:

(i) Contact the appropriate judicial officer in the receiving state to discuss the situation and possible solutions.

(ii) Provide, or direct someone else to provide, the judicial officer of the receiving state with copies of relevant documents and court orders.

(iii) Request assistance with obtaining compliance.

(iv) Use *Request for Assistance With Expedited Placement Under the Interstate Compact on the Placement of Childr*en (form JV-565) to communicate the request for assistance to the receiving state judicial officer. When this form is used, a copy should be provided to the county ICPC Liaison in the sending jurisdiction.

(8) All other requirements, exceptions, timelines, and instructions for expedited placement cases, along with procedures for provisional approval or denial of a placement and for removal of a child from the placement, are stated in Regulation No. 7.

(Subd (h) relettered and amended effective January 1, 2013; adopted as subd (f); previously amended effective January 1, 2007.)

(i) Authority of sending court or agency to place child; timing (ICPC Reg. No. 2, § 8(d), and Reg. No. 4, § 8)

(1) When the receiving state has approved a placement resource, the sending court has the final authority to determine whether to use the approved placement resource. The sending court may delegate that decision to the sending state child welfare agency or probation department.

(2) For proposed placements of children for adoption, in foster care, or with relatives, the receiving state's approval expires six months from the date form ICPC-100A was signed by the receiving state.

(3) For proposed placements of children in residential facilities or group homes, the receiving state's approval expires 30 calendar days from the date form ICPC-100A was signed by the receiving state. The 30-day time frame can be extended by mutual agreement between the sending and receiving states.

(Subd (i) amended effective January 1, 2014; adopted effective January 1, 2013.)

(j) Ongoing jurisdiction

If a child is placed in another jurisdiction under the terms of the compact, the sending court must not terminate its jurisdiction until the child is adopted, reaches majority, or is emancipated, or the dependency is terminated with the concurrence of the receiving state authority.

(Subd (g) relettered effective January 1, 2013; adopted as subd (g); previously amended effective January 1, 2007.)

Rule 5.616 amended effective January 1, 2014; adopted as rule 1428 effective January 1, 1999; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2013.

Advisory Committee Comment

Urgency of ICPC Matters. Implementation of the ICPC has long frustrated judicial officers and other professionals. The overriding concern is that the process takes too long, and children cannot wait. In all ICPC actions, there should be a sense of urgency, and all professionals involved should take action as quickly as possible.

Subdivision (h)(7). Judicial officers requesting assistance under subdivision (h)(7) from the receiving state judge or judicial officer should be cognizant of ethical concerns raised by such ex parte communication. These concerns can be addressed in various ways, including but not limited to using form JV-565, obtaining a stipulation from all parties to permit judge-to-judge phone or e-mail contact, or conducting the discussion by phone with parties and a court reporter present.

Validity of California Placements in Receiving Jurisdictions. When a California child is placed with an out-of-state parent, and the placement is consistent with California law, the receiving jurisdiction may consider the placement invalid if it does not comply with the law of the receiving jurisdiction. In this situation, the receiving jurisdiction would have no obligation to provide services.

Regulations and Forms. The ICPC regulations and forms can be found on the website of the Association of Administrators of the Interstate Compact on the Placement of Children at *http://icpc.aphsa.org/*.

Chapter 8. Restraining Orders, Custody Orders, and Guardianships General Court Authority

Rule 5.620. Orders after filing under section 300
Rule 5.625. Orders after filing of petition under section 601 or 602
Rule 5.630. Restraining orders

Rule 5.620. Orders after filing under section 300

(a) Exclusive jurisdiction (§ 304)

Once a petition has been filed alleging that a child is described by section 300, and until the petition is dismissed or dependency is terminated, the juvenile court has

exclusive jurisdiction to hear proceedings relating to the custody of the child and visitation with the child and establishing a guardianship for the child.

(Subd (a) amended effective January 1, 2016.)

(b) Restraining orders (§ 213.5)

After a petition has been filed under section 300, and until the petition is dismissed or dependency is terminated, the court may issue restraining orders as provided in rule 5.630. A temporary restraining order must be prepared on *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250). An order after hearing must be prepared on *Restraining Order—Juvenile* (form JV-255).

(Subd (b) amended effective January 1, 2014; previously amended effective January 1, 2007.)

(c) Custody and visitation (§ 361.2)

If the court sustains a petition, finds that the child is described by section 300, and removes physical custody from a parent or guardian, it may order the child placed in the custody of a previously noncustodial parent as described in rule 5.695(a)(7)(A) or (B).

(1) This order may be entered at the dispositional hearing, at any subsequent review hearing under rule 5.708(k), or on granting a request under section 388 for custody and visitation orders.

(2) If the court orders legal and physical custody to the previously noncustodial parent and terminates dependency jurisdiction under rule 5.695(a)(7)(A), the court must proceed under rule 5.700.

(3) If the court orders custody to the noncustodial parent subject to the continuing supervision of the court, the court may order services provided to either parent or to both parents under section 361.2(b)(3). If the court orders the provision of services, it must review its custody determination at each subsequent hearing held under section 366 and rule 5.708.

(Subd (c) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(d) Appointment of a legal guardian of the person (§§ 360, 366.26)

If the court finds that the child is described by section 300, it may appoint a legal guardian at the disposition hearing as described in rule 5.695(b), or at the hearing under section 366.26 as described in rule 5.735. The juvenile court maintains jurisdiction over the guardianship, and petitions to terminate or modify such guardianships must be heard in juvenile court under rule 5.740(c).

(Subd (d) amended effective January 1, 2007.)

(e) Termination or modification of previously established guardianships (§ 728)

At any time after the filing of a petition under section 300 and until the petition is dismissed or dependency is terminated, the court may terminate or modify a guardianship of the person previously established by the juvenile court or the probate court. If the social worker recommends to the court, by filing *Juvenile Dependency Petition (Version One)* (form JV-100) and *Request to Change Court Order* (form JV-180), that an existing guardianship be modified or terminated, the court must order the appropriate county agency to file the recommended motion.

(1) The hearing on the motion may be held simultaneously with any regularly scheduled hearing regarding the child. Notice requirements under Probate Code section 1511 apply.

(2) If the court terminates or modifies a previously established probate guardianship, the court must provide notice of the order to the probate court that made the original appointment. The clerk of the probate court must file the notice in the probate file and send a copy of the notice to all parties of record identified in that file.

(Subd (e) amended effective January 1, 2007.)

Rule 5.620 amended effective January 1, 2016; adopted as rule 1429.1 effective January 1, 2000; previously amended and renumbered as rule 5.620 effective January 1, 2007; previously amended effective January 1, 2014.

Rule 5.625. Orders after filing of petition under section 601 or 602

(a) Restraining orders (§ 213.5)

After a petition has been filed under section 601 or 602, and until the petition is dismissed or wardship is terminated, the court may issue restraining orders as provided in rule 5.630. A temporary restraining order must be prepared on *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250). An order after hearing must be prepared on *Restraining Order—Juvenile* (form JV-255).

(Subd (a) amended effective January 1, 2014; previously amended effective January 1, 2003, and January 1, 2007.)

(b) Appointment of a legal guardian of the person (§ 728)

At any time during wardship of a person under 18 years, the court may appoint a guardian, or may terminate or modify a previously established guardianship, in accordance with the requirements in rule 5.815.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (c); previously amended effective January 1, 2003.)

Rule 5.625 amended effective January 1, 2014; adopted as rule 1429.3 effective January 1, 2000; previously amended effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Rule 5.630. Restraining orders

(a) Court's authority

After a petition has been filed under section 300, 601, or 602, and until the petition is dismissed or dependency or wardship is terminated, or the ward is no longer on probation, the court may issue restraining orders as provided in section 213.5.

(Subd (a) amended effective January 1, 2012.)

(b) Application for restraining orders

(1) Application for restraining orders may be made orally at any scheduled hearing regarding the child who is the subject of a petition under section 300, 601, or 602, or may be made by written application, or may be made on the court's own motion.

(2) The written application must be submitted on *Request for Restraining Order—Juvenile* (form JV-245).

(3) A person requesting a restraining order in writing must submit to the court with the request a completed *Confidential CLETS Information Form* (form CLETS-001) under rule 1.51.

(Subd (b) amended effective January 1, 2012; previously amended effective January 1, 2003, January 1, 2004, and January 1, 2007.)

(c) Definition of abuse

The definition of abuse in Family Code section 6203 applies to restraining orders issued under Welfare and Institutions Code section 213.5.

(Subd (c) adopted effective January 1, 2012.)

(d) Applications—procedure

The application may be submitted without notice, and the court may grant the petition and issue a temporary order.

(1) In determining whether or not to issue the temporary restraining order without notice, the court must consider all documents submitted with the application and may review the contents of the juvenile court file regarding the child.

(2) The temporary restraining order must be prepared on *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) and must state on its face the date of expiration of the order.

(Subd (d) amended effective January 1, 2014; adopted as subd (c); previously amended and relettered as subd (f) effective January 1, 2003; previously amended effective January 1, 2007; previously amended and relettered effective January 1, 2012.)

(e) Continuance

(1) The court may grant a continuance under Welfare and Institutions Code section 213.5.

(2) Either *Request and Order to Continue Hearing (Temporary Restraining Order—Juvenile*) (form JV-251) or a new *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) must be used for this purpose.

(Subd (e) amended effective July 1, 2016; adopted as subd (g) effective January 1, 2003; amended and relettered effective January 1, 2012; previously amended effective January 1, 2004, January 1, 2007, and January 1, 2014.)

(f) Hearing on application for restraining order

(1) Proof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these.

(2) The order after hearing must be prepared on *Restraining Order—Juvenile* (form JV-255) and must state on its face the date of expiration of the order.

(Subd (f) amended effective January 1, 2014; adopted as subd (d); previously amended effective January 1, 2007; previously amended and relettered as subd (h) effective January 1, 2003, and as subd (f) effective January 1, 2012.)

(g) Service of restraining order

When service of *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) or *Restraining Order—Juvenile* (form JV-255) is made, it must be served with a blank *Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) and *How Do I Turn In, Sell, or Store My Firearms?* (form DV-800-INFO/JV-252-INFO). Failure to serve form JV-252 or JV-252-INFO does not make service of form JV-250 or form JV-255 invalid.

(Subd (g) amended effective July 1, 2014; adopted effective January 1, 2012; previously amended effective January 1, 2014.)

(h) Firearm relinquishment

The firearm relinquishment procedures in rule 5.495 apply to restraining orders issued under section 213.5.

(Subd (h) adopted effective July 1, 2014.)

(i) Expiration of restraining order

If the juvenile case is dismissed, the restraining order remains in effect until it expires or is terminated.

(Subd (i) relettered effective July 1, 2014; adopted as subd (h) effective January 1, 2012.)

(j) Criminal records search (§ 213.5 and Stats. 2001, ch. 572, § 7)

(1) Except as provided in (3), before any hearing on the issuance of a restraining order the court must ensure that a criminal records search is or has been conducted as described in Family Code section 6306(a). Before deciding

whether to issue a restraining order, the court must consider the information obtained from the search.

(2) If the results of the search indicate that an outstanding warrant exists against the subject of the search, or that the subject of the search is currently on parole or probation, the court must proceed under section 213.5(k)(3).

(3) The requirements of (1) and (2) must be implemented in those courts identified by the Judicial Council as having resources currently available for these purposes. All other courts must implement the requirements to the extent that funds are appropriated for this purpose in the annual Budget Act.

(Subd (j) relettered effective July 1, 2014; adopted as subd (i) effective January 1, 2003; previously amended effective January 1, 2007, and January 1, 2012.)

(k) Modification of restraining order

(1) A restraining order may be modified on the court's own motion or in the manner provided for in Welfare and Institutions Code section 388 and rule 5.560.

(2) A termination or modification order must be made on *Change to Restraining Order After Hearing* (form JV-257). A new *Restraining Order—Juvenile* (form JV-255) may be prepared in addition to form JV-257.

(Subd (k) relettered effective July 1, 2014; adopted as subd (j) effective January 1, 2012; previously amended effective January 1, 2014.)

Rule 5.630 amended effective July 1, 2016; adopted as rule 1429.5 effective January 1, 2000; amended and renumbered effective January 1, 2007; previously amended effective January 1, 2003, January 1, 2004, January 1, 2012, January 1, 2014, and July 1, 2014.

Chapter 9. Parentage

Rule 5.635. Parentage
Rule 5.637. Family Finding (§§ 309(e), 628(d))

Rule 5.635. Parentage

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

The juvenile court has a duty to inquire about and to attempt to determine the parentage of each child who is the subject of a petition filed under section 300, 601, or 602. The court may establish and enter a judgment of parentage under the Uniform Parentage Act. (Fam. Code, § 7600 et seq.) Once a petition has been filed to declare a child a dependent or ward, and until the petition is dismissed or dependency or wardship is terminated, the juvenile court with jurisdiction over the action has exclusive jurisdiction to hear an action filed under Family Code section 7630.

(Subd (a) amended effective January 1, 2015; previously amended effective January 1, 2001, January 1, 2006, and January 1, 2007.)

(b) Parentage inquiry (§§ 316.2, 726.4)

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

(1) Has there been a judgment of parentage?

(2) Was the mother married or did she have a registered domestic partner at or after the time of conception?

(3) Did the mother believe she was married or believe she had a registered domestic partner at or after the time of conception?

(4) Was the mother cohabiting with another adult at the time of conception?

(5) Has the mother received support payments or promises of support for the child or for herself during her pregnancy or after the birth of the child?

(6) Has a man formally or informally acknowledged paternity, including the execution and filing of a voluntary declaration of paternity under Family Code section 7570 et seq., and agreed to have his name placed on the child's birth certificate?

(7) Have genetic tests been administered, and, if so, what were the results?

(8) Has the child been raised jointly with another adult or in any other co-parenting arrangement?

(Subd (b) amended effective January 1, 2015; adopted effective January 1, 2001; previously amended effective January 1, 2006, and January 1, 2007.)

(c) Voluntary declaration

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, the declaration establishes the paternity of a child and has the same force and effect as a judgment of paternity by a court. A man is presumed to be the father of the child under Family Code section 7611 if the voluntary declaration has been properly executed and filed.

(Subd (c) amended effective January 1, 2015; adopted effective January 1, 2001; previously amended effective January 1, 2006, July 1, 2006, and January 1, 2007.)

(d) Issue raised; inquiry

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

(1) The court must ask the parent or the person alleging parentage, and others present, whether any parentage finding has been made, and, if so, what court made it, or whether a voluntary declaration has been executed and filed under the Family Code;

(2) The court must direct the court clerk to prepare and transmit *Parentage Inquiry—Juvenile* (form JV-500) to the local child support agency requesting an inquiry regarding whether parentage has been established through any superior court order or judgment or through the execution and filing of a voluntary declaration under the Family Code;

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

(4) The juvenile court must take judicial notice of the prior determination of parentage.

(Subd (d) amended effective January 1, 2015; adopted as subd (b); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006, and January 1, 2007.)

(e) No prior determination

If the local child support agency states, or if the court determines through statements of the parties or other evidence, that there has been no prior determination of parentage of the child, the juvenile court must take appropriate steps to make such a determination.

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

(2) To determine parentage, the juvenile court may order the child and any alleged parents to submit to genetic tests and proceed under Family Code section 7550 et seq.

(3) The court may make its determination of parentage or nonparentage based on the testimony, declarations, or statements of the alleged parents. The court must advise any alleged parent that if parentage is determined, the parent will have responsibility for the financial support of the child, and, if the child receives welfare benefits, the parent may be subject to an action to obtain support payments.

(Subd (e) amended effective January 1, 2015; adopted as subd (c); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006, and January 1, 2007.)

(f) Notice to office of child support enforcement

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

(Subd (f) amended effective January 1, 2015; adopted as subd (d); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006, and January 1, 2007.)

(g) Dependency and delinquency; notice to alleged parents

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

(1) The petition has been dismissed;

(2) Dependency or wardship has been terminated;

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

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

(Subd (g) amended effective January 1, 2015; adopted as subd (e); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006, and January 1, 2007.)

(h) Dependency and delinquency; alleged parents (§§ 316.2, 726.4)

If a person appears at a hearing in dependency matter or at a hearing under section 601 or 602 and requests a judgment of parentage on form JV-505, the court must determine:

(1) Whether that person is the biological parent of the child; and

(2) Whether that person is the presumed parent of the child, if that finding is requested.

(Subd (h) amended effective January 1, 2007; adopted as subd (f) effective January 1, 1999; previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

Rule 5.635 amended effective January 1, 2015; adopted as rule 1413 effective July 1, 1995; previously amended effective January 1, 1999, January 1, 2001, January 1, 2006, July 1, 2006, and January 1, 2007.

Rule 5.637. Family Finding (§§ 309(e), 628(d))

(a) Within 30 days of a child's removal from the home of his or her parent or guardian, if the child is in or at risk of entering foster care, the social worker or probation officer must use due diligence in conducting an investigation to identify, locate, and notify all the child's adult relatives.

(b) The social worker or probation officer is not required to notify a relative whose personal history of family or domestic violence would make notification inappropriate.

Rule 5.637 adopted effective January 1, 2011.

Advisory Committee Comment

This rule restates the requirements of section 103 of the federal Fostering Connections to Success and Increasing Adoptions Act (Pub. L. No. 110-351, § 103 (Oct. 7, 2008) 122 Stat. 3949, 3956, codified at 42 U.S.C. § 671(a)(29)) as implemented by California Assembly Bill 938 (Com. on Judiciary; Stats. 2009, ch. 261, codified at Welf. & Inst. Code §§ 309(e) and 628(d)). These statutes enacted elements of the child welfare practice known as Family Finding and Engagement, which has been recommended to improve outcomes for children by the Judicial Council's California Blue Ribbon Commission on Children in Foster Care and the California Child Welfare Council. *(See* Cal. Blue Ribbon Com. on Children in Foster Care, *Fostering a New Future for California's Children*, pp. 30–31 (Admin. Off. of Cts., May 2009) (final report and action plan), *www.courts.ca.gov; Permanency Committee Recommendations to the Child Welfare Council*, pp. 1–4 (Sept. 10, 2009), *www.chhs.ca.gov.)*

Chapter 10. Medication, Mental Health, and Education

Rule 5.640. Psychotropic medications
Rule 5.645. Mental health or condition of child; court procedures
Rule 5.649. Right to make educational or developmental-services decisions
Rule 5.650. Appointed educational rights holder
Rule 5.651. Educational and developmental-services decisionmaking rights
Rule 5.652. Access to pupil records for truancy purposes

Rule 5.640. Psychotropic medications

(a) Definition (§§ 369.5(d), 739.5(d))

For the purposes of this rule, "psychotropic medication" means those medications prescribed to affect the central nervous system to treat psychiatric disorders or illnesses. They may include, but are not limited to, anxiolytic agents,

antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

(Subd (a) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(b) Authorization to administer (§§ 369.5, 739.5)

(1) Once a child is declared a dependent child of the court and is removed from the custody of the parents or guardian, only a juvenile court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child.

(2) Once a child is declared a ward of the court, removed from the custody of the parents or guardian, and placed into foster care, as defined in Welfare and Institutions Code section 727.4, only a juvenile court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child.

(3) The court must grant or deny the application using *Order on Application for Psychotropic Medication* (form JV-223).

(Subd (b) amended effective July 1, 2016; previously amended effective January 1, 2009.)

(c) Procedure to obtain authorization

(1) To obtain authorization to administer psychotropic medication to a dependent child of the court who is removed from the custody of the parents or guardian, or to a ward of the court who is removed from the custody of the parents or guardian and placed into foster care, the following forms must be completed and filed with the court:

(A) *Application for Psychotropic Medication* (form JV-220); and

(B) *Physician's Statement—Attachment* (form JV-220(A)) unless the request is to continue the same medication and maximum dosage by the same physician that completed the most recent JV-220(A); then the physician may complete *Physician's Request to Continue Medication—Attachment* (form JV-220(B)).

(2) The child, caregiver, parents, child's Indian tribe, and Court Appointed Special Advocate, if any, may provide input on the medications being prescribed.

(A) Input can be by *Child's Opinion About the Medicine* (form JV-218) or *Statement About Medicine Prescribed* (form JV-219); letter; talking to the judge at a court hearing; or through the social worker, probation officer, attorney of record, or Court Appointed Special Advocate.

(B) If form JV-218 or form JV-219 is filed, it must be filed within four court days after receipt of notice of the pending application for psychotropic medication. If a hearing is set on the application, form JV-218 and form JV-219 may be filed at any time before, or at, the hearing.

(C) Input from a Court Appointed Special Advocate can also be by a court report under local rule.

(3) *Input on Application for Psychotropic Medication* (form JV-222) may be filed by a parent or guardian, his or her attorney of record, a child's attorney of record, a child's Child Abuse Prevention and Treatment Act guardian ad litem appointed under rule 5.662 of the California Rules of Court, or the Indian child's tribe. If form JV-222 is filed, it must be filed within four court days of receipt of notice of the application.

(4) Additional information may be provided to the court through the use of local forms that are consistent with this rule.

(5) Local county practice and local rules of court determine the procedures for completing and filing the forms and for the provision of notice, except as otherwise provided in this rule. The person or persons responsible for providing notice as required by local court rules or local practice protocols are encouraged to use the most expeditious manner of service possible to ensure timely notice.

(6) *Application for Psychotropic Medication* (form JV-220) may be completed by the prescribing physician, medical office staff, child welfare services staff, probation officer, or the child's caregiver. If the applicant is the social worker or probation officer, he or she must complete all items on form JV-220. The physician prescribing the administration of psychotropic medication for the child must complete and sign *Physician's Statement—Attachment* (form JV-220(A)) or if it is a request to continue the same medication by the same physician that completed the most recent JV-220(A), then the physician may complete and sign *Physician's Request to Continue Medication—Attachment* (form JV-220(B)).

(7) The court must approve, deny, or set the matter for a hearing within seven court days of the receipt of the completed JV-220 and JV-220(A) or (B).

(8) Notice must be provided to the parents or legal guardians, their attorneys of record, the child's attorney of record, the child's Child Abuse Prevention and Treatment Act guardian ad litem, the child's current caregiver, the child's Court Appointed Special Advocate, if any, and where a child has been determined to be an Indian child, the Indian child's tribe (see also 25 U.S.C. § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3). If the child is living in a group home, notice to the caregiver must be by notice to the group home administrator, or to the administrator's designee, as defined in California Code of Regulations, regulation 84064.

Notice must be provided as follows:

(A) Notice to the parents or legal guardians and their attorneys of record must include:

(i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child and the name of the psychotropic medication;

(ii) A statement that an *Application for Psychotropic Medication* (form JV-220) and a *Physician's Statement—Attachment* (form JV-220(A)) or *Physician's Request to Continue Medication—Attachment* (form JV-220(B)) are pending before the court;

(iii) A copy of *Guide to Psychotropic Medication Forms* (form JV-217-INFO);

(iv) A blank copy of *Statement About Medicine Prescribed* (form JV-219); and

(v) A blank copy of *Input on Application for Psychotropic Medication* (form JV-222).

(B) Notice to the child's current caregiver and Court Appointed Special Advocate, if one has been appointed, must include only:

(i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the

administration of psychotropic medication to the child and the name of the psychotropic medication;

(ii) A statement that an *Application for Psychotropic Medication* (form JV-220) and a *Physician's Statement—Attachment* (form JV-220(A)) or *Physician's Request to Continue Medication—Attachment* (form JV-220(B)) are pending before the court;

(iii) A copy of *Guide to Psychotropic Medication Forms* (form JV-217-INFO);

(iv) A blank copy of *Child's Opinion About the Medicine* (form JV-218); and

(v) A blank copy of *Statement About Medicine Prescribed* (form JV-219).

(C) Notice to the child's attorney of record and any Child Abuse Prevention and Treatment Act guardian ad litem for the child must include:

(i) A completed copy of *Application for Psychotropic Medication* (form JV-220);

(ii) A completed copy of *Physician's Statement—Attachment* (form JV-220(A)) or *Physician's Request to Continue Medication—Attachment* (form JV-220(B));

(iii) A copy of *Guide to Psychotropic Medication Forms* (form JV-217-INFO) or information on how to obtain a copy of the form;

(iv) A blank copy of *Input on Application for Psychotropic Medication* (form JV-222) or information on how to obtain a copy of the form.; and

(v) A blank copy of *Child's Opinion About the Medicine* (form JV-218) or information on how to obtain a copy of the form.

(D) Notice to the Indian child's tribe must include:

(i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child, and the name of the psychotropic medication;

(ii) A statement that an *Application for Psychotropic Medication* (form JV-220) and a *Physician's Statement—Attachment* (form JV-220(A)) or *Physician's Request to Continue Medication—Attachment* (form JV-220(B)) are pending before the court;

(iii) A copy of *Guide to Psychotropic Medication Forms* (form JV-217-INFO) or information on how to obtain a copy of the form;

(iv) A blank copy of *Input on Application for Psychotropic Medication* (form JV-222) or information on how to obtain a copy of the form; and

(v) A blank copy of *Child's Opinion About the Medicine* (form JV-218) or information on how to obtain a copy of the form.

(vi) A blank copy of *Statement About Medicine Prescribed* (form JV-219) or information on how to obtain a copy of the form.

(E) Proof of notice of the application regarding psychotropic medication must be filed with the court using *Proof of Notice of Application* (form JV-221).

(9) If all the required information is not included in the request for authorization, the court must order the applicant to provide the missing information and set a hearing on the application.

(10) The court may grant the application without a hearing or may set the matter for hearing at the court's discretion. If the court sets the matter for a hearing, the clerk of the court must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys of record, the dependent child if 12 years of age or older, a ward of the juvenile court of any age, the child's attorney of record, the child's current caregiver, the child's social worker or probation officer, the social worker's or probation officer's attorney of record, the child's Child Abuse Prevention and Treatment Act guardian ad litem, the child's Court Appointed Special Advocate, if any, and the Indian child's tribe at least two court days before the hearing. Notice must be provided to the child's probation officer and the district attorney, if the child is a ward of the juvenile court.

(Subd (c) amended effective July 1, 2016; previously amended effective January 1, 2007, January 1, 2008, January 1, 2009, and January 1, 2014.)

(d) Conduct of hearing on application

At the hearing on the application, the procedures described in rule 5.570 and section 349 must be followed. The court may deny, grant, or modify the application for authorization. If the court grants or modifies the application for authorization, the court must set a date for review of the child's progress and condition. This review must occur at every status review hearing and may occur at any other time at the court's discretion.

(Subd (d) amended effective July 1, 2016; previously amended effective January 1, 2007.)

(e) Delegation of authority (§ 369.5)

After consideration of an application and attachments and a review of the case file, the court may order that the parent be authorized to approve or deny the administration of psychotropic medication. The order must be based on the following findings, which must be included in the order: (1) the parent poses no danger to the child, and (2) the parent has the capacity to understand the request and the information provided and to authorize the administration of psychotropic medication to the child, consistent with the best interest of the child.

(Subd (e) amended effective January 1, 2008.)

(f) Continued treatment

If the court grants the request or modifies and then grants the request, the order for authorization is effective until terminated or modified by court order or until 180 days from the order, whichever is earlier.

(Subd (f) amended effective July 1, 2016.)

(g) Progress review

(1) After approving any application for authorization, regardless of whether the approval is made at a hearing, the court must set a progress review.

(2) A progress review must occur at every status review hearing and may occur at any other time at the court's discretion.

(3) If the progress review is held at the time of the status review hearing, notice under section 293 or 295 must include a statement that the hearing will also be a progress review on previously ordered psychotropic medication, and must include a blank copy of *Child's Opinion About the Medicine* (form JV-

218) and a blank copy of *Statement About Medicine Prescribed* (form JV-219).

(4) If the progress review is not held at the time of the status review hearing, notice must be provided as required under section 293 or 295; must include a statement that the hearing will be a progress review on previously ordered psychotropic medication; and must include a blank copy of *Child's Opinion About the Medicine* (form JV-218) and a blank copy of *Statement About Medicine Prescribed* (form JV-219).

(5) Before each progress review, the social worker or probation officer must file a completed *County Report About Psychotropic Medication* (form JV-224) at least 10 calendar days before the hearing. If the progress review is set at the same time as a status review hearing, form JV-224 must be attached to and filed with the report.

(6) The child, caregiver, parents, and Court Appointed Special Advocate, if any, may provide input at the progress review as stated in (c)(2).

(7) At the progress review, the procedures described in section 349 must be followed.

(Subd (g) adopted effective July 1, 2016.)

(h) Copy of order to caregiver

(1) Upon the approval or denial of the application, the county child welfare agency, probation department, or other person or entity who submitted the request must provide the child's caregiver with a copy of the court order approving or denying the request.

(2) The copy of the order must be provided in person or mailed within two court days of when the order is signed.

(3) If the court approves the request, the copy of the order must include the last two pages of form JV-220(A) and all medication information sheets (medication monographs) that were attached to form JV-220(A).

(4) If the child resides in a group home, a copy of the order, the last two pages of form JV-220(A), and all medication information sheets (medication monographs) that were attached to the JV-220(A) must be provided to the group home administrator, or to the administrator's designee, as defined in California Code of Regulations, regulation 84064.

(5) If the child changes placement, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A), and the medication information sheets (medication monographs) that were attached to form JV-220(A).

(Subd (h) adopted effective July 1, 2016.)

(i) Emergency treatment

(1) Psychotropic medications may be administered without court authorization in an emergency situation. An emergency situation occurs when:

(A) A physician finds that the child requires psychotropic medication to treat a psychiatric disorder or illness; and

(B) The purpose of the medication is:

(i) To protect the life of the child or others, or

(ii) To prevent serious harm to the child or others, or

(iii) To treat current or imminent substantial suffering; and

(C) It is impractical to obtain authorization from the court before administering the psychotropic medication to the child.

(2) Court authorization must be sought as soon as practical but in no case more than two court days after the emergency administration of the psychotropic medication.

(Subd (i) relettered effective July 1, 2016; adopted as subd (g); previously amended effective January 1, 2007, and January 1, 2008.)

(j) Section 601–602 wardships; local rules

A local rule of court may be adopted providing that authorization for the administration of such medication to a child declared a ward of the court under sections 601 or 602 and removed from the custody of the parent or guardian for placement in a facility that is not considered a foster-care placement may be similarly restricted to the juvenile court. If the local court adopts such a local rule, then the procedures under this rule apply; any reference to social worker also applies to probation officer.

(Subd (j) amended and relettered effective July 1, 2016; adopted as subd (i); previously relettered as subd (h) effective January 1, 2008; previously amended effective January 1, 2007, and January 1, 2009.)

(k) Public health nurses

Information may be provided to public health nurses as governed by Civil Code section 56.103.

(Subd (k) adopted effective July 1, 2016.)

Rule 5.640 amended effective July 1, 2016; adopted as rule 1432.5 effective January 1, 2001; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2003, January 1, 2008, January 1, 2009, and January 1, 2014.

Rule 5.645. Mental health or condition of child; court procedures

(a) Doubt concerning the mental health of a child (§§ 357, 705, 6550, 6551)

Whenever the court believes that the child who is the subject of a petition filed under section 300, 601, or 602 is mentally disabled or may be mentally ill, the court may stay the proceedings and order the child taken to a facility designated by the court and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. The professional in charge of the facility must submit a written evaluation of the child to the court.

(Subd (a) amended effective January 1, 2007.)

(b) Findings regarding a mental disorder (§ 6551)

Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150) applies.

(1) If the professional reports that the child is not in need of intensive treatment, the child must be returned to the juvenile court on or before the expiration of the 72-hour period, and the court must proceed with the case under section 300, 601, or 602.

(2) If the professional in charge of the facility finds that the child is in need of intensive treatment for a mental disorder, the child may be certified for not more than 14 days of involuntary intensive treatment according to the

conditions of sections 5250(c) and 5260(b). The stay of the juvenile court proceedings must remain in effect during this time.

(A) During or at the end of the 14 days of involuntary intensive treatment, a certification may be sought for additional treatment under sections commencing with 5270.10 or for the initiation of proceedings to have a conservator appointed for the child under sections commencing with 5350. The juvenile court may retain jurisdiction over the child during proceedings under sections 5270.10 et seq. and 5350 et seq.

(B) For a child subject to a petition under section 602, if the child is found to be gravely disabled under sections 5300 et seq., a conservator is appointed under those sections, and the professional in charge of the child's treatment or of the treatment facility determines that proceedings under section 602 would be detrimental to the child, the juvenile court must suspend jurisdiction while the conservatorship remains in effect. The suspension of jurisdiction may end when the conservatorship is terminated, and the original 602 matter may be calendared for further proceedings.

(Subd (b) amended effective January 1, 2007.)

(c) Findings regarding mental retardation (§ 6551)

Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150) applies.

(1) If the professional finds that the child is mentally retarded and recommends commitment to a state hospital, the court may direct the filing in the appropriate court of a petition for commitment of a child as a mentally retarded person to the State Department of Developmental Services for placement in a state hospital.

(2) If the professional finds that the child is not mentally retarded, the child must be returned to the juvenile court on or before the expiration of the 72-hour period, and the court must proceed with the case under section 300, 601, or 602.

(3) The jurisdiction of the juvenile court must be suspended while the child is subject to the jurisdiction of the appropriate court under a petition for commitment of a mentally retarded person, or under remand for 90 days for intensive treatment or commitment ordered by that court.

(Subd (c) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(d) Doubt as to capacity to cooperate with counsel (§§ 601, 602; Pen. Code, § 1367)

(1) If the court finds that there is substantial evidence that a child who is the subject of a petition filed under section 601 or 602 lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her, the court must suspend the proceedings and conduct a hearing regarding the child's competence. Evidence is substantial if it raises a reasonable doubt about the child's competence to stand trial.

(A) The court must appoint an expert to examine the child to evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the child's competency.

(B) To be appointed as an expert, an individual must be a:

(i) Licensed psychiatrist who has successfully completed four years of medical school and either four years of general psychiatry residency, including one year of internship and two years of child and adolescent fellowship training, or three years of general psychiatry residency, including one year of internship and one year of residency that focus on children and adolescents and one year of child and adolescent fellowship training; or

(ii) Clinical, counseling, or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation and who is licensed as a psychologist.

(C) The expert, whether a licensed psychiatrist or psychologist, must:

(i) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

(ii) Have expertise in the cultural and social characteristics of children and adolescents;

(iii) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;

(iv) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

(v) Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents; and

(vi) Be proficient in the language preferred by the child, or if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the child.

(2) Nothing in this rule precludes involvement of clinicians with other professional qualifications from participation as consultants or witnesses or in other capacities relevant to the case.

(3) Following the hearing on competence, the court must proceed as directed in section 709.

(Subd (d) amended effective January 1, 2012; previously amended effective January 1, 2007.)

Rule 5.645 amended effective January 1, 2012; adopted as rule 1498 effective January 1, 1999; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2009.

Advisory Committee Comment

Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop and adopt rules regarding the qualification of experts to determine competency for purposes of juvenile adjudication. Upon a court finding of incompetency based on a developmental disability, the regional center determines eligibility for services under Division 4.5 of the Lanterman Developmental Disabilities Services (Welf. & Inst. Code, § 4500 et seq.).

Rule 5.649. Right to make educational or developmental-services decisions

The court must identify the educational rights holder for the child on form JV-535 at each hearing in a dependency or delinquency proceeding. Unless his or her rights have been limited by the court under this rule, the parent or guardian holds the educational and developmental-services decisionmaking rights for his or her child. In addition, a nonminor or nonminor dependent youth holds the rights to make educational and developmental-services decisions for himself or herself unless rule 5.650(b) applies.

(a) Order (§§ 361, 366, 366.27, 366.3, 726, 727.2; 20 U.S.C. § 1415; 34 C.F.R. § 300.300)

At the dispositional hearing and each subsequent review or permanency hearing, the court must determine whether the rights of a parent or guardian to make educational or developmental-services decisions for the child should be limited.

If necessary to protect a child who is adjudged a dependent or ward of the court under section 300, 601, or 602, the court may limit a parent's or guardian's rights to make educational or developmental-services decisions for the child by making appropriate, specific orders on *Order Designating Educational Rights Holder* (form JV-535).

(b) Temporary order (§ 319)

At the initial hearing on a petition filed under section 325 or at any time before a child is adjudged a dependent or the petition is dismissed, the court may, on making the findings required by section 319(g)(1), use form JV-535 to temporarily limit a parent's or guardian's rights to make educational or developmental-services decisions for the child. An order made under section 319(g) expires on dismissal of the petition, but in no circumstances later than the conclusion of the hearing held under section 361.

If the court does temporarily limit the parent's or guardian's rights to make educational or developmental-services decisions, the court must, at the dispositional hearing, reconsider the need to limit those rights and must identify the authorized educational rights holder on form JV-535.

(c) No delay of initial assessment

The child's initial assessment to determine any need for special education or developmental services need not be delayed to obtain parental or guardian consent or for the appointment of an educational rights holder if one or more of the following circumstances is met:

(1) The court has limited, even temporarily, the educational or developmental-services decisionmaking rights of the parent or guardian, and consent for an initial assessment has been given by an individual appointed by the court to represent the child;

(2) The local educational agency or regional center, after reasonable efforts, cannot locate the parent or guardian; or

(3) Parental rights have been terminated or the guardianship has been set aside.

(d) Judicial Determination

If the court determines that the child is in need of any assessments, evaluations, or services—including special education, mental health, developmental, and other related services—the court must direct an appropriate person to take the necessary steps to request those assessments, evaluations, or services.

(e) Filing of order

Following the dispositional hearing and each statutory review hearing, the party that has requested a modification, limitation, or restoration of educational or developmental-services decisionmaking rights must complete form JV-535 and any required attachments to reflect the court's orders and submit the completed form within five court days for the court's review and signature. If no request is made, the child's or youth's attorney must complete and file the form. The court may direct the appropriate party to attach *Attachment to Order Designating Educational Rights Holder* (form JV-535(A)) to document the court's findings and orders.

Rule 5.649 adopted effective January 1, 2014.

Rule 5.650. Appointed educational rights holder

(a) Order and appointment (§§ 319, 361, 366, 366.27, 366.3, 726, 727.2; Gov. Code, §§ 7579.5–7579.6; 20 U.S.C. § 1415; 34 C.F.R. § 300.519)

Whenever it limits, even temporarily, the rights of a parent or guardian to make educational or developmental-services decisions for a child, the court must use form JV-535 to appoint a responsible adult as educational rights holder or to document that one of the following circumstances exists:

(1) The child is a dependent child or ward of the court and has a court-ordered permanent plan of placement in a planned permanent living arrangement. The caregiver may, without a court order, exercise educational decisionmaking

rights under Education Code section 56055 and developmental-services decisionmaking rights under section 361 or 726, and is not prohibited from exercising those rights by section 361, 726, or 4701.6(b), or by 34 Code of Federal Regulations section 300.519 or 303.422; or

(2) The court cannot identify a responsible adult to serve as the child's educational rights holder under section 319, 361, or 726 or under Education Code section 56055; and

(A) The child is a dependent child or ward of the court and is or may be eligible for special education and related services or already has a valid individualized education program, and the court:

(i) Refers the child to the local educational agency for the appointment of a surrogate parent under section 361 or 726, Government Code section 7579.5, and title 20 United States Code section 1415; and

(ii) Will, with the input of any interested person, make developmental-services decisions for the child; or

(B) The appointment of a surrogate parent is not warranted, and the court will, with the input of any interested person, make educational and developmental-services decisions for the child.

(C) If the court must temporarily make educational or developmental-services decisions for a child before disposition, it must order that every effort be made to identify a responsible adult to make future educational or developmental-services decisions for the child.

(Subd (a) amended and relettered effective January 1, 2014; adopted as subd (b) effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)

(b) Nonminor and nonminor dependent youth (§§ 361, 726, 366.3)

The court may, using form JV-535, appoint or continue the appointment of an educational rights holder to make educational or developmental-services decisions for a nonminor or nonminor dependent youth if:

(1) The youth has chosen not to make educational or developmental-services decisions for himself or herself or is deemed by the court to be incompetent; and

(2) With respect to developmental-services decisions, the court also finds that the appointment or continuance of a rights holder would be in the best interests of the youth.

(Subd (b) adopted effective January 1, 2014.)

(c) Limits on appointment (§§ 319, 361, 726; Ed. Code, § 56055; Gov. Code, § 7579.5(i)–(j); 34 C.F.R. §§ 300.519, 303.422)

(1) The court must determine whether a responsible adult relative, nonrelative extended family member, or other adult known to the child is available and willing to serve as the educational rights holder and, if one of those adults is available and willing to serve, should consider appointing that person before appointing or temporarily appointing a responsible adult not known to the child.

(2) The court may not appoint any individual as the educational rights holder if that person is excluded under, or would have a conflict of interest as defined by, section 361(a) or 726(c), Education Code section 56055, Government Code section 7579.5(i)–(j), 20 United States Code section 1415(b)(2), or 34 Code of Federal Regulations section 300.519 or 303.422.

(Subd (c) amended effective January 1, 2014; adopted effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Referral for appointment of surrogate parent (§§ 361, 726; Gov. Code, § 7579.5; 20 U.S.C. § 1415)

(1) If the court has limited a parent's or guardian's right to make educational decisions for a child and cannot identify a responsible adult to act as the educational rights holder, and the child is or may be eligible for special education and related services or already has an individualized education program, the court must use form JV-535 to refer the child to the responsible local educational agency for prompt appointment of a surrogate parent under Government Code section 7579.5.

(2) If the court refers a child to the local educational agency for appointment of a surrogate parent, the court must order that *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent* (form JV-536) be attached to form JV-535 and served by first-class mail on the local educational agency no later than five court days from the date the order is signed.

(3) The court must direct the local educational agency that when the agency receives form JV-535 requesting prompt appointment of a surrogate parent, the agency must make reasonable efforts to identify and appoint a surrogate parent within 30 calendar days of service of the referral.

(A) Whenever the local educational agency appoints a surrogate parent for a dependent or ward under Government Code section 7579.5(a)(1), it must notify the court on form JV-536 within five court days of the appointment and, at the same time, must send copies of the notice to the child's attorney and to the social worker or probation officer identified on the form.

(B) If the local educational agency does not appoint a surrogate parent within 30 days of receipt of a judicial request, it must notify the court within the next five court days on form JV-536 of the following:

(i) Its inability to identify and appoint a surrogate parent; and

(ii) Its continuing reasonable efforts to identify and appoint a surrogate parent.

(4) Whenever a surrogate parent resigns or the local educational agency terminates the appointment of a surrogate parent, replaces a surrogate parent, or appoints another surrogate parent, it must notify the court, the child's attorney, and the social worker or probation officer on form JV-536 within five court days of the resignation, termination, replacement, or appointment. The child's attorney, the social worker, or the probation officer may request a hearing for appointment of a new educational rights holder by filing *Request for Hearing Regarding Child's Access to Services* (form JV-539) and must provide notice of the hearing as provided in (g)(2). The court may, on its own motion, direct the clerk to set a hearing.

(Subd (d) amended effective January 1, 2014; adopted as subd (b); previously amended and relettered effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)

(e) Transfer of parent's or guardian's educational or developmental-services decisionmaking rights to educational rights holder

When the court appoints an educational rights holder after limiting a parent's or guardian's educational or developmental-services decisionmaking rights, those parental decisionmaking rights—including the right to notice of educational or developmental-services meetings and activities, to participation in educational or

developmental-services meetings and activities, and to decisionmaking authority regarding the child's education or developmental services, including the authority under sections 4512 and 4701.6, Education Code section 56028, 20 United States Code sections 1232g and 1401(23), and 34 Code of Federal Regulations section 300.30—are transferred to the educational rights holder unless the court specifies otherwise in its order.

(1) When returning a child to a parent or guardian, the court must consider the child's educational and developmental-services needs. The parent's or guardian's educational and developmental-services decisionmaking rights are reinstated when the court returns custody to the parent or guardian unless the court finds specifically that continued limitation of parental decisionmaking rights is necessary to protect the child.

(2) If the court appoints a guardian for the child under rule 5.735 or 5.815, all of the parent's or previous guardian's educational and developmental-services decisionmaking rights transfer to the newly appointed guardian unless the court determines that limitation of the new guardian's decisionmaking rights is necessary to protect the child.

(Subd (e) amended effective January 1, 2014; adopted effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)

(f) Authority and responsibilities (§§ 317, 319, 360, 361, 635, 706.5, 726, 4514, 4646–4648, 4700–4731, 5328; Ed. Code, §§ 56055, 56340, 56345; Gov. Code, §§ 7579.5, 95014−95020; 34 C.F.R. § 300.519)

(1) The educational rights holder acts as and holds the rights of the parent or guardian with respect to all decisions regarding the child's education and developmental services, and is entitled:

(A) To access records and to authorize the disclosure of information to the same extent as a parent or guardian under the Family Educational Rights and Privacy Act (FERPA), 20 United States Code section 1232g;

(B) To be given notice of and participate in all meetings or proceedings relating to school discipline;

(C) To advocate for the interests of a child or youth with exceptional needs in matters relating to:

(i) The identification and assessment of those needs;

(ii) Instructional or service planning and program development—including the development of an individualized family service plan, an individualized educational program, an individual program plan, or the provision of other services and supports, as applicable;

(iii) Placement in the least restrictive program appropriate to the child's or youth's educational or developmental needs;

(iv) The review or revision of the individualized family service plan, the individualized education program, or the individual program plan; and

(v) The provision of a free, appropriate public education.

(D) To attend and participate in the child's or youth's individualized family service plan, individualized education program, individual program plan, and other educational or service planning meetings; to consult with persons involved in the provision of the child's or youth's education or developmental services; and to sign any written consent to educational or developmental services and plans; and

(E) Notwithstanding any other provision of law, to consent to the child's or youth's individualized family service plan, individualized education program, or individual program plan, including any related nonemergency medical services, mental health treatment services, and occupational or physical therapy services provided under sections 7570–7587 of the Government Code.

(2) The educational rights holder is responsible for investigating the child's or youth's educational and developmental-services needs, determining whether those needs are being met, and acting on behalf of the child or youth in all matters relating to the provision of educational or developmental services, as applicable, to ensure:

(A) The stability of the child's or youth's school placement. At any hearing following a change of educational placement, the educational rights holder must submit a statement to the court indicating whether the proposed change of placement is in the child's or youth's best interest and whether any efforts have been made to keep the pupil in the school of origin;

(B) Placement in the least restrictive educational program appropriate to the child's or youth's individual needs;

(C) The child's or youth's access to academic resources, services, and extracurricular and enrichment activities;

(D) The child's or youth's access to any educational and developmental services and supports needed to meet state standards for academic achievement and functional performance or, with respect to developmental services, to promote community integration, an independent, productive, and normal life, and a stable and healthy environment;

(E) The prompt and appropriate resolution of school disciplinary matters;

(F) The provision of any other elements of a free, appropriate public education; and

(G) The provision of any appropriate early intervention or developmental services required by law, including the California Early Intervention Services Act or the Lanterman Developmental Disabilities Services Act.

(3) The educational rights holder is also responsible for:

(A) Meeting with the child or youth at least once and as often as necessary to make educational or developmental-services decisions that are in the best interest of the child or youth;

(B) Being culturally sensitive to the child or youth;

(C) Complying with all federal and state confidentiality laws, including, but not limited to, sections 362.5, 827, 4514, and 5328, as well as Government Code section 7579.5(f);

(D) Participating in, and making decisions regarding, all matters affecting the child's or youth's educational or developmental-services needs—including, as applicable, the individualized family service planning process, the individualized education program planning process, the individual program planning process, the fair hearing process (including mediation and any other informal dispute resolution meetings), and as otherwise specified in the court order—in a manner consistent with the child's or youth's best interest; and

(E) Maintaining knowledge and skills that ensure adequate representation of the child's or youth's needs and interests with respect to education and developmental services.

(4) Before each statutory review hearing, the educational rights holder must do one or more of the following:

(A) Provide information and recommendations concerning the child's or youth's educational or developmental-services needs to the assigned social worker or probation officer;

(B) Make written recommendations to the court concerning the child's or youth's educational or developmental-services needs;

(C) Attend the review hearing and participate in any part of the hearing that concerns the child's or youth's education or developmental services.

(5) The educational rights holder may provide the contact information for the child's or youth's attorney to the local educational agency.

(Subd (f) amended effective January 1, 2014; adopted effective January 1, 2008.)

(g) Term of service; resignation (§§ 319, 361, 726; Gov. Code § 7579.5)

(1) An appointed educational rights holder must make educational or developmental-services decisions for the child or youth until:

(A) The dismissal of the petition or the conclusion of the dispositional hearing, if the rights holder is appointed under section 319(g);

(B) The rights of the parent or guardian to make educational or developmental-services decisions for the child are fully restored;

(C) The dependent or ward reaches 18 years of age, unless he or she chooses not to make his or her own educational or developmental-services decisions or is deemed incompetent by the court, in which case the court may, if it also finds that continuation would be in the best interests of the youth, continue the appointment until the youth reaches 21 years of age or the court's jurisdiction is terminated;

(D) The court appoints another responsible adult as educational rights holder for the child or youth under this rule;

(E) The court appoints a successor guardian or conservator; or

(F) The court designates an identified foster parent, relative caregiver, or nonrelative extended family member to make educational or developmental-services decisions because:

(i) Reunification services have been terminated and the child is placed in a planned permanent living arrangement with the identified caregiver under section 366.21(g)(5), 366.22, 366.26, 366.3(i), 727.3(b)(5), or 727.3(b)(6); and

(ii) The foster parent, relative caregiver, or nonrelative extended family member is not otherwise excluded from making education or developmental-services decisions by the court, by section 361 or 726, or by 34 Code of Federal Regulations section 300.519 or 303.422.

(2) If an appointed educational rights holder resigns his or her appointment, he or she must give notice to the court and to the child's attorney and may use *Educational Rights Holder Statement* (form JV-537) to provide this notice. Once notice is received, the child's or youth's attorney, or the social worker or probation officer may request a hearing for appointment of a new educational rights holder by filing form JV-539.

The attorney for the party requesting the hearing must provide notice of the hearing to

(A) The parents or guardians, unless otherwise indicated on the most recent form JV-535, parental rights have been terminated, or the child has reached 18 years of age;

(B) Each attorney of record;

(C) The social worker or probation officer;

(D) The CASA volunteer; and

(E) All other persons or entities entitled to notice under section 293.

The hearing must be set within 14 days of receipt of the request for hearing. The court may, on its own motion, direct the clerk to set a hearing.

(Subd (g) amended effective January 1, 2014; adopted effective January 1, 2008.)

(h) Service of order

Whenever the order identifies or appoints a new or different educational rights holder or includes any other changes, the clerk will provide a copy of the completed and signed form JV-535, form JV-535(A) if attached, and any received form JV-536 or JV-537 to:

(1) The child, if 10 years of age or older, or youth;

(2) The attorney for the child or youth;

(3) The social worker or probation officer;

(4) The Indian child's tribe, if applicable, as defined in rule 5.502;

(5) The local foster youth educational liaison, as defined in Education Code section 48853.5;

(6) The county office of education foster youth services coordinator;

(7) The regional center service coordinator, if applicable; and

(8) The educational rights holder.

The completed and signed form must be provided no later than five court days from the date the order is signed. The clerk must also ensure that any immediately preceding educational rights holder, surrogate parent, or authorized representative, if any, is notified that the previous court order has been vacated and their appointment terminated.

The clerk will make copies of the form available to the parents or guardians, unless otherwise indicated on the form, parental rights have been terminated, or the child has reached 18 years of age and reunification services have been terminated; to the CASA volunteer; and, if requested, to all other persons or entities entitled to notice under section 293.

(Subd (h) amended effective January 1, 2014; adopted effective January 1, 2008.)

(i) Education and training of educational rights holder

If the educational rights holder, including a parent or guardian, 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.

(Subd (i) amended effective January 1, 2015; adopted effective January 1, 2008; previously amended effective January 1, 2014.)

(j) Notice of and participation in hearings

(1) The educational rights holder must receive notice of all regularly scheduled juvenile court hearings and other judicial hearings that might affect the child's or youth's education and developmental services, including joint assessment hearings under rule 5.512 and joinder proceedings under rule 5.575.

(2) The educational rights holder may use form JV-537 to explain any educational or developmental-services needs to the court. The court must permit the educational rights holder to attend and participate in those portions of a court hearing, nonjudicial hearing, or mediation that concern education or developmental services.

(Subd (j) amended effective January 1, 2014; adopted effective January 1, 2008.)

Rule 5.650 amended effective January 1, 2015; adopted as rule 1499 effective July 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2004, January 1, 2008, and January 1, 2014.

Advisory Committee Comment

Under the Individuals With Disabilities Education Act (IDEA), the court may appoint a surrogate parent to speak and act on behalf of a pupil in all matters relating to the identification, evaluation, and educational placement of the child and to the provision of the child's free, appropriate public education. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519.) Under Welfare and Institutions Code sections 361 and 726, the court must appoint a responsible adult as an educational representative or rights holder to make decisions regarding the child's educational or developmental-services needs when the parent's rights to make those decisions have been limited. A court-appointed educational rights holder is responsible for protecting the child's rights and interests with respect to educational or developmental services, including any special education and related services.

If the court limits the parent's decisionmaking rights and cannot identify a responsible adult to appoint as educational rights holder, and the appointment of a surrogate parent is not warranted, sections 361 and 726 authorize the court to make educational or developmental-services decisions for the child with the input of interested persons. If, however, the court cannot identify a responsible adult to appoint as educational rights holder and there is reason to believe that the child needs special education and related services, the court must refer the child to the local educational agency (LEA) for the appointment of a surrogate parent. Sections 361 and 726 do not authorize the court to make *educational* decisions for a child in these circumstances. The surrogate parent appointed by the LEA acts as a parent for the purpose of making decisions with respect to special education and related services and the provision of a free, appropriate public education on behalf of the child. (Gov. Code, § 7579.5(c); Ed. Code, § 56028; 34 C.F.R. § 300.30(b)(2); see 20 U.S.C. §§ 1401(9), 1414(d).) If, however, the LEA does not appoint a surrogate parent in a timely manner, the court has the authority to join the LEA in the dependency proceedings under section 362 and rule 5.575. In the period between the setting of the joinder hearing and the appointment of a surrogate parent by the LEA, the court may make educational decisions for the child under the general authority granted by section 362(a). The appointment of a surrogate parent notwithstanding, the court holds the authority under sections 361 and 726 to make *developmental-services* decisions if it cannot identify a responsible adult to do so.

Rule 5.651. Educational and developmental-services decisionmaking rights

(a) Applicability (§§ 213.5, 319(g), 358, 358.1, 361(a), 362(a), 364, 366.21, 366.22, 366.23, 366.26, 366.27(b), 366.3(e), 726, 727.2(e), 4500 et seq., 11404.1; Ed. Code, §§ 48645 et seq., 48850 et seq., 49069.5, 56028, 56055, and 56155 et seq.; Gov. Code, §§ 7573–7579.6; 20 U.S.C. § 1400 et seq.; 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq.)

This rule incorporates all rights with respect to education or developmental services recognized or established by state or federal law and applies:

(1) To any child, or any nonminor or nonminor dependent youth, for whom a petition has been filed under section 300, 601, or 602 until the petition is dismissed or the court has terminated dependency, delinquency, or transition jurisdiction over that person; and

(2) To every judicial hearing related to, or that might affect, the child's or youth's education or receipt of developmental services.

(Subd (a) amended effective January 1, 2014.)

(b) Conduct of hearings

(1) To the extent the information is available, at the initial or detention hearing the court must consider:

(A) Who holds educational and developmental-services decisionmaking rights, and identify the rights holder or holders;

(B) Whether the child or youth is enrolled in, and is attending, the child's or youth's school of origin, as that term is defined in Education Code section 48853.5(f);

(C) If the child or youth is at risk of removal from or is no longer attending the school of origin, whether:

(i) In accordance with the child's or youth's best interest, the educational liaison, as described in Education Code section 48853.5(b), (d), and (e), in consultation with, and with the agreement of, the child or youth and the parent, guardian, or other person holding educational decisionmaking rights, recommends the waiver of the child's or youth's right to attend the school of origin;

(ii) Before making any recommendation to move a foster child or youth from his or her school of origin, the educational liaison provided the child or youth and the person holding the right to make educational decisions for the child or youth with a written explanation of the basis for the recommendation and how this recommendation serves the foster child's or youth's best interest as provided in Education Code section 48853.5(e)(7);

(iii) If the child or youth is no longer attending the school of origin, the local educational agency obtained a valid waiver of the child's or youth's right to continue in the school of origin under Education Code section 48853.5(e)(1) before moving the child or youth from that school; and

(iv) The child or youth was immediately enrolled in the new school as provided in Education Code section 48853.5(e)(8).

(D) In a dependency proceeding, whether the parent's or guardian's educational or developmental-services decisionmaking rights should be temporarily limited and an educational rights holder temporarily appointed using form JV-535; and

(E) Taking into account other statutory considerations regarding placement, whether the out-of-home placement:

(i) Is the environment best suited to meet the exceptional needs of a child or youth with disabilities and to serve the child's or youth's best interest if he or she has a disability; and

(ii) Promotes educational stability through proximity to the child's or youth's school of origin.

(2) At the dispositional hearing and at all subsequent hearings described in (a)(2), the court must:

(A) Consider and determine whether the child's or youth's educational, physical, mental health, and developmental needs, including any need for special education and related services, are being met;

(B) Identify the educational rights holder on form JV-535; and

(C) Direct the rights holder to take all appropriate steps to ensure that the child's or youth's educational and developmental needs are met.

The court's findings and orders must address the following:

(D) Whether the child's or youth's educational, physical, mental health, and developmental-services needs are being met;

(E) What services, assessments, or evaluations, including those for developmental services or for special education and related services, the child or youth may need;

(F) Who must take the necessary steps for the child or youth to receive any necessary assessments, evaluations, or services;

(G) If the child's or youth's educational placement changed during the period under review, whether:

(i) The child's or youth's educational records, including any evaluations of a child or youth with a disability, were transferred to the new educational placement within two business days of the request for the child's or youth's enrollment in the new educational placement; and

(ii) The child or youth is enrolled in and attending school.

(H) Whether the parent's or guardian's educational or developmental-services decisionmaking rights should be limited or, if previously limited, whether those rights should be restored.

(i) If the court finds that the parent's or guardian's educational or developmental-services decisionmaking rights should not be limited or should be restored, the court must explain to the parent or guardian his or her rights and responsibilities in regard to the child's education and developmental services as provided in rule 5.650(e), (f), and (j); or

(ii) If the court finds that the parent's or guardian's educational or developmental-services decisionmaking rights should be or remain limited, the court must designate the holder of those rights. The court must explain to the parent or guardian why the court is limiting his or her educational or developmental-services decisionmaking rights and must explain the rights and responsibilities of the educational rights holder as provided in rule 5.650(e), (f), and (j); and

(I) Whether, in the case of a nonminor or nonminor dependent youth who has chosen not to make educational or developmental-services decisions for himself or herself or has been deemed incompetent, it is in the best interests of the youth to appoint or to continue the appointment of an educational rights holder.

(Subd (b) amended effective January 1, 2014.)

(c) Reports for hearings related to, or that may affect, education or developmental services

This subdivision applies at all hearings, including dispositional and joint assessment hearings. The court must ensure that, to the extent the information was available, the social worker or the probation officer provided the following information in the report for the hearing:

(1) The child's or youth's age, behavior, educational level, and developmental status and any discrepancies between that person's age and his or her level of achievement in education or level of cognitive, physical, and emotional development;

(2) The child's or youth's educational, physical, mental health, or developmental needs;

(3) Whether the child or youth is participating in developmentally appropriate extracurricular and social activities;

(4) Whether the child or youth is attending a comprehensive, regular, public or private school;

(5) Whether the child or youth may have physical, mental, or learning-related disabilities or other characteristics indicating a need for developmental services or special education and related services as provided by state or federal law;

(6) If the child is 0 to 3 years old, whether the child may be eligible for or is already receiving early intervention services or services under the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) and, if the child is already receiving services, the specific nature of those services;

(7) If the child is between 3 and 5 years old and is or may be eligible for special education and related services, whether the child is receiving the early educational opportunities provided by Education Code section 56001 and, if so, the specific nature of those opportunities;

(8) Whether the child or youth is receiving special education and related services or any other services through a current individualized education program and, if so, the specific nature of those services;

(i) A copy of the current individualized education program should be attached to the report unless disclosure would create a risk of harm. In that case, the report should explain the risk.

(9) Whether the child or youth is receiving services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and, if so, the specific nature of those services;

(i) A copy of any current Section 504 plan should be attached to the report unless disclosure would create a risk of harm. In that case, the report should explain the risk.

(10) Whether the child or youth is or may be eligible for developmental services or is already receiving developmental services and, if that person is already receiving services, the specific nature of those services;

(i) A copy of any current individualized family service plan or individual program plan should be attached to the report unless disclosure would create a risk of harm. In that case, the report should explain the risk.

(11) Whether the parent's or guardian's educational or developmental-services decisionmaking rights have been or should be limited or restored;

(12) If the social worker or probation officer recommends that the court limit the parent's or guardian's rights to make educational or developmental-services decisions, the reasons those rights should be limited and the actions that the parent or guardian may take to restore those rights if they are limited;

(13) If the parent's or guardian's educational or developmental-services decisionmaking rights have been limited, the identity of the designated or appointed educational rights holder or surrogate parent;

(14) Recommendations and case plan goals to meet the child's or youth's identified educational, physical, mental health, and developmental-services needs, including all related information listed in section 16010(a) as required by section 16010(b);

(15) Whether any orders to direct an appropriate person to take the necessary steps for the child to receive assessments, evaluations, or services, including those for developmental services or for special education and related services, are requested; and

(16) In the case of a joint assessment, separate statements by the child welfare department and the probation department, each addressing whether the child or youth may have a disability and whether the child or youth needs developmental services or special education and related services or qualifies for any assessment or evaluation required by state or federal law.

(Subd (c) amended effective January 1, 2014.)

(d) Continuance, stay, or suspension (§§ 357, 358, 702, 705)

If the court continues the dispositional hearing under rule 5.686 or 5.782 or stays the proceedings or suspends jurisdiction under rule 5.645, the child must continue to receive all services or accommodations required by state or federal law.

(Subd (d) amended effective January 1, 2014.)

(e) Change of placement affecting the child's or youth's educational stability (§§ 16010, 16010.6; Ed. Code §§ 48850–48853.5)

This subdivision applies to all changes of placement, including the initial placement and any subsequent change of placement.

(1) At any hearing to which this rule applies that follows a decision to change the child's or youth's placement to a location that could lead to removal from the school of origin, the placement agency must demonstrate that, and the court must determine whether:

(A) The social worker or probation officer notified the court, the child's or youth's attorney, and the educational rights holder or surrogate parent, no more than one court day after making the placement decision, of the proposed placement decision.

(B) If the child or youth had a disability and an active individualized education program before removal, the social worker or probation officer, at least 10 days before the change of placement, notified in writing the local educational agency that provided a special education program for the child or youth before removal and the receiving special education local plan area, as described in Government Code section 7579.1, of the impending change of placement.

(2) After receipt of the notice in (1):

(A) The child's or youth's attorney must, as appropriate, discuss the proposed placement change and its effect on the child's or youth's right to attend the school of origin with the child or youth and the person who holds educational rights. The child's or youth's attorney may request a hearing by filing form JV-539. If requesting a hearing, the attorney must:

(i) File form JV-539 no later than two court days after receipt of the notice in (1); and

(ii) Provide notice of the hearing date, which will be no later than five court days after the form was filed, to the parents or guardians, unless otherwise indicated on form JV-535, parental rights have been terminated, or the youth has reached 18 years of age and reunification services have been terminated; the social worker or probation officer; the educational rights holder or surrogate parent; the foster youth educational liaison; the Court

Appointed Special Advocate (CASA) volunteer; and all other persons or entities entitled to notice under section 293.

(B) The person who holds educational rights may request a hearing by filing form JV-539 no later than two court days after receipt of the notice in (1). After receipt of the form, the clerk must notify the persons in (e)(2)(A)(ii) of the hearing date.

(C) The court on its own motion may direct the clerk to set a hearing.

(3) If removal from the school of origin is disputed, the child or youth must be allowed to remain in the school of origin pending this hearing and pending the resolution of any disagreement between the child or youth, the parent, guardian, or educational rights holder, and the local educational agency.

(4) If the court sets a hearing, the social worker or probation officer must provide a report no later than two court days after the hearing is set that includes the information required by (b)(1)(C) as well as the following:

(A) Whether the foster child or youth has been allowed to continue his or her education in the school of origin to the extent required by Education Code section 48853.5(e)(1);

(B) Whether a dispute exists regarding the request of a foster child or youth to remain in the school of origin and whether the foster child or youth has been allowed to remain in the school of origin pending resolution of the dispute;

(C) Information addressing whether the information-sharing and other requirements in section 16501.1(c)(4) and Education Code section 49069.5 have been met;

(D) Information addressing how the proposed change serves the best interest of the child or youth;

(E) The responses of the child, if over 10 years old, or youth; the child's or youth's attorney; the parent, guardian, or other educational rights holder; the foster youth educational liaison; and the child's or youth's CASA volunteer to the proposed change of placement, specifying whether each person agrees or disagrees with the proposed change and, if any person disagrees, stating the reasons; and

(F) A statement from the social worker or probation officer confirming that the child or youth has not been segregated in a separate school, or in a separate program within a school, because the child or youth is placed in foster care.

(Subd (e) amended effective January 1, 2014.)

(f) Court review of proposed change of placement affecting the right to attend the school of origin

(1) At a hearing set under (e)(2), the court must:

(A) Determine whether the placement agency and other relevant parties and advocates have fulfilled their obligations under section 16000(b), 16010(a), and 16501.1(f)(8);

(B) Determine whether the proposed school placement meets the requirements of this rule and Education Code sections 48853.5 and 49069.5, and whether the placement is in the best interest of the child or youth;

(C) Determine what actions are necessary to ensure the protection of the child's or youth's educational and developmental-services rights; and

(D) Make any findings and orders needed to enforce those rights, which may include an order to set a hearing under section 362 to join the necessary agencies regarding provision of services, including the provision of transportation services, so that the child or youth may remain in his or her school of origin.

(2) When considering whether it is in the child's or youth's best interest to remove him or her from the school of origin, the court must consider the following:

(A) Whether the parent, guardian, or other educational rights holder believes that removal from the school of origin is in the child's or youth's best interest;

(B) How the proposed change of placement will affect the stability of the child's or youth's school placement and the child's or youth's access to academic resources, services, and extracurricular and enrichment activities;

(C) Whether the proposed school placement would allow the child or youth to be placed in the least restrictive educational program; and

(D) Whether the child or youth has the educational and developmental services and supports, including those for special education and related services, necessary to meet state academic achievement standards.

(3) The court may make its findings and orders on *Findings and Orders Regarding Transfer From School of Origin* (form JV-538).

(Subd (f) amended effective January 1, 2014.)

Rule 5.651 amended effective January 1, 2014; adopted effective January 1, 2008.

Advisory Committee Comment

A child or youth in, or at risk of entering, foster care has a statutory right to a meaningful opportunity to meet the state's academic achievement standards. To protect this right, the juvenile court, advocates, placing agencies, care providers, educators, and service providers must work together to maintain stable school placements and ensure that the child or youth is placed in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to other pupils. This rule, sections 362 and 727, and rule 5.575 provide procedures for coordinating the provision of services to ensure that the child's or youth's educational and developmental-services needs are met.

Congress has found that improving the educational performance of children with disabilities is an essential prerequisite to ensuring their equality of opportunity, full participation in education, and economic self-sufficiency. Children and youth in foster care are disproportionately represented in the population of pupils with disabilities and face systemic challenges to attaining self-sufficiency. Children and youth in foster care have rights arising out of federal and state law, including the IDEA, the ADA, and section 504 of the Rehabilitation Act of 1973. To comply with federal requirements regarding the identification of children and youth with disabilities and the provision of services to those children and youth who qualify, the court, parent or guardian, placing agency, attorneys, CASA volunteer, local educational agencies, and educational rights holders must affirmatively address the child's or youth's educational and developmental-services needs. The court must continually inquire about the educational and developmental-services needs of the child or youth and the progress being made to enforce any rights the child or youth has under these laws.

Rule 5.652. Access to pupil records for truancy purposes

(a) Conditions of access (Ed. Code, § 49076)

Education Code section 49076 authorizes a school district to permit access to pupil records, including accurate copies, to any judicial officer or probation officer without consent of the pupil's parent or guardian and without a court order for the purposes of:

(1) Conducting a truancy mediation program for the pupil; or

(2) Presenting evidence in a truancy proceeding under section 681(b).

(Subd (a) amended effective January 1, 2007.)

(b) Written certification

The judicial officer or probation officer may request pupil records but must certify in writing that the requested information will be used only for purposes of truancy mediation or a truancy petition. A judicial officer or probation officer must complete and file *Certified Request for Pupil Records—Truancy* (form JV-530) and serve it with *Local Educational Agency Response to JV-530* (form JV-531), by first-class mail to the local educational agency.

(Subd (b) amended effective January 1, 2007.)

(c) Local educational agency response

Form JV-531 must be completed by the local educational agency and returned to the requesting judicial officer or probation officer within 15 calendar days of receipt of the request with copies of any responsive pupil records attached. After receipt the judicial officer or probation officer must file form JV-531 and the attached pupil records in the truancy proceedings.

(1) The school district must inform by telephone or other means, or provide written notification to, the child's parent or guardian within 24 hours of the release of the information.

(2) If a parent's or guardian's educational rights have been terminated, the school must notify the child's surrogate parent, relative, or other individual responsible for the child's education.

(Subd (c) amended effective January 1, 2007.)

Rule 5.652 amended and renumbered effective January 1, 2007; adopted as rule 1499.5 effective July 1, 2002.

Chapter 11. Advocates for Parties

Rule 5.655. Program requirements for Court Appointed Special Advocate programs
Rule 5.660. Attorneys for parties (§§ 317, 317.5, 317.6, 353, 366.26, 16010.6)
Rule 5.661. Representation of the child on appeal
Rule 5.662. Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for a child subject to a juvenile dependency petition
Rule 5.663. Responsibilities of children's counsel in delinquency proceedings (§§ 202, 265, 633, 634, 634.6, 679, 700)
Rule 5.664. Training requirements for children's counsel in delinquency proceedings (§ 634.3)

Rule 5.655. Program requirements for Court Appointed Special Advocate programs

(a) General provisions

A Court Appointed Special Advocate (CASA) program must comply with this rule to be eligible to receive Judicial Council funding. The Judicial Council may consider compliance with the guidelines delineated in the *CASA Program Policies and Procedures Manual* when determining eligibility for and amount of program funding.

(Subd (a) adopted effective January 1, 2005.)

(b) Definitions

(1) A CASA program is the local child advocate program that adheres to this rule; has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers for appointment by the court to help define the best interest of children in juvenile court dependency and wardship proceedings; and has completed one development grant year and one "start-up" year.

(2) Judicial Council staff may create a *CASA Program Policies and Procedures Manual* containing recommended program policies and procedures. If Judicial Council staff create a manual, it will be developed in collaboration with the California CASA Association and California CASA program directors. The protocols will address program and fiscal management, and the recruitment, screening, selection, training, and supervision of lay volunteers.

(3) A CASA volunteer is a person who has been recruited, screened, selected, and trained, who is being supervised and supported by a local CASA program, and who has been appointed by the juvenile court as a sworn officer of the court to help define the best interest of a child or children in juvenile court dependency and wardship proceedings.

(4) A "dependency proceeding" is a legal action brought on behalf of an allegedly abused, neglected, or abandoned child under section 300 et seq. The action is designed to protect children, preserve and reunify families, and find permanent homes for children who cannot be returned to their parents. Dependency proceedings include actions to appoint a legal guardian, terminate parental rights, and facilitate adoptions for dependent children of the juvenile court.

(5) A "wardship proceeding" is a legal action involving a child under the age of 18 years who is alleged to be:

(A) A person described under section 601 (who is beyond parental control or habitually disobedient or truant); or

(B) A person described under section 602 (who has violated any state or federal law or any city or county ordinance).

(Subd (b) amended effective January 1, 2016; adopted as subd (a); previously amended and relettered as subd (b) effective January 1, 2005; previously amended effective January 1, 2007.)

(c) Recruiting, screening, and selecting CASA volunteers

(1) A CASA program must adopt and adhere to a written plan for the recruitment of potential CASA volunteers. The program staff, in its recruitment effort, must address the demographics of the jurisdiction by making all reasonable efforts to ensure that individuals representing all racial, ethnic, linguistic, and economic sectors of the community are recruited and made available for appointment as CASA volunteers.

(2) A CASA program must adopt and adhere to the following minimum written procedures for screening potential CASA volunteers under section 102(e):

(A) A written application that generates minimum identifying data; information regarding the applicant's education, training, and experience; minimum age requirements; and current and past employment.

(B) Notice to the applicant that a formal security check will be made, including inquiries through appropriate law enforcement agencies, regarding any criminal record, driving record, or other record of conduct that would disqualify the applicant from service as a CASA volunteer. The security check must include fingerprinting. Refusal to consent to a formal security check is grounds for rejecting an applicant.

(C) A minimum of three completed references regarding the character, competence, and reliability of the applicant and his or her suitability for assuming the role of a CASA volunteer.

(D) A personal interview or interviews by a person or persons approved by the presiding juvenile court judge or designee, to probe the essential areas of concern with respect to the qualities of an effective CASA volunteer. A written, confidential record of the interview and the interviewer's assessments and observations must be made and retained in the advocate's file.

(3) If a CASA program allows its volunteers to transport children, the program must ensure that each volunteer transporting children:

(A) Possesses a valid and current driver's license;

(B) Possesses personal automobile insurance that meets the minimum state personal automobile insurance requirements;

(C) Obtains permission from the child's guardian or custodial agency; and

(D) Provides the CASA program with a Department of Motor Vehicles driving record report annually.

(4) A CASA program must adopt a written preliminary procedure for selecting CASA candidates to enter the CASA training program. The selection procedure must state that any applicant found to have been convicted of or to have current charges pending for a felony or misdemeanor involving a sex offense, child abuse, or child neglect must not be accepted as a CASA volunteer. This policy must be stated on the volunteer application form.

(5) An adult otherwise qualified to act as a CASA must not be discriminated against based on marital status, socioeconomic factors, race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability or because of any other characteristic listed or defined in

Government Code section 11135 or Welfare and Institutions Code section 103.

(Subd (c) amended effective January 1, 2010; adopted as subd (b); previously amended effective January 1, 1995, and January 1, 2007; previously amended and relettered effective January 1, 2005.)

(d) Initial training of CASA volunteers (§ 102(d))

A CASA program must adopt and adhere to a written plan for the initial training of CASA volunteers.

(1) The initial training curriculum must include at least 30 hours of formal instruction. This curriculum must include mandatory training topics as listed in section 102(d). The curriculum may also include additional appropriate topics.

(2) The final selection process is contingent on the successful completion of the initial training program, as determined by the presiding judge of the juvenile court or designee.

(Subd (d) amended effective January 1, 2007; adopted as subd (c); previously amended effective January 1, 1995; previously amended and relettered effective January 1, 2005.)

(e) Oath

At the completion of training, and before assignment to any child's case, the CASA volunteer must take a court-administered oath describing the duties and responsibilities of the advocate under section 103(f). The CASA volunteer must also sign a written affirmation of that oath. The signed affirmation must be retained in the volunteer's file.

(Subd (e) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered effective January 1, 2005.)

(f) Duties and responsibilities

CASA volunteers serve at the discretion of the court having jurisdiction over the proceeding in which the volunteer has been appointed. A CASA volunteer is an officer of the court and is bound by all court rules under section 103(e). A CASA program must develop and adopt a written description of duties and responsibilities, consistent with local court rules.

(Subd (f) amended effective January 1, 2007; adopted as subd (e); previously amended effective January 1, 1995; previously amended and relettered effective January 1, 2005.)

(g) Prohibited activities

A CASA program must develop and adopt a written description of activities that are prohibited for CASA volunteers. The specified prohibited activities must include:

(1) Taking a child to the CASA volunteer's home;

(2) Giving legal advice or therapeutic counseling;

(3) Giving money or expensive gifts to the child or family;

(4) Being related to any parties involved in a case or being employed in a position and/or agency that might result in a conflict of interest; and

(5) Any other activities prohibited by the local juvenile court.

(Subd (g) adopted effective January 1, 2005.)

(h) The appointment of CASA volunteers

The CASA program director must develop, with the approval of the presiding juvenile court judge, a written procedure for the selection of cases and the appointment of CASA volunteers for children in juvenile court proceedings.

(Subd (h) amended and relettered effective January 1, 2005; adopted as subd (f); previously amended effective January 1, 1995.)

(i) Oversight, support, and supervision of CASA volunteers

A CASA program must adopt and adhere to a written plan, approved by the presiding juvenile court judge, for the oversight, support, and supervision of CASA volunteers in the performance of their duties. The plan must:

(1) Include a grievance procedure that covers grievances by any person against a volunteer or CASA program staff and grievances by a volunteer against a CASA program or program staff. The grievance procedure must:

(A) Be incorporated into a document that contains a description of the roles and responsibilities of CASA volunteers. This document must be provided:

(i) When a copy of the court order that appointed the CASA volunteer is provided to any adult involved with the child's case, including but not limited to, teachers, foster parents, therapists, and health-care workers; and

(ii) To any person, including a volunteer, who has a grievance against a volunteer or a CASA program employee.

(B) Include a provision that documentation of any grievance filed by or against a volunteer must be retained in the volunteer's personnel file.

(2) Include a provision for the ongoing training and continuing education of CASA volunteers. Ongoing training opportunities must be provided at least monthly under section 103(a). CASA volunteers must participate in a minimum of 12 hours of continuing education in each year of service.

(Subd (i) amended effective January 1, 2007; adopted as subd (g); previously amended effective January 1, 1995; previously amended and relettered effective January 1, 2005.)

(j) Removal, resignation, and termination of a CASA volunteer

The CASA program must adopt a written plan for the removal, resignation, or involuntary termination of a CASA volunteer, including the following provisions:

(1) A volunteer may resign or be removed from an individual case at any time by the order of the juvenile court presiding judge or designee.

(2) A volunteer may be involuntarily terminated from the program by the program director.

(3) The volunteer has the right to appeal termination by the program director under the program's grievance procedure.

(Subd (j) amended effective January 1, 2007; adopted as subd (h); previously amended effective January 1, 1995; previously amended and relettered effective January 1, 2005.)

(k) CASA program administration and management

A CASA program must adopt and adhere to a written plan for program governance and evaluation that includes the following as applicable:

(1) Articles of incorporation, bylaws, and a board of directors. Any CASA program that functions under the auspices of a public agency or private entity must specify in its plan a clear administrative relationship with the parent organization and clearly delineated delegations of authority and accountability. No CASA program may function under the auspices of a probation department or department of social services. CASA programs may receive funds from probation departments, local child welfare agencies, and the California Department of Social Services if:

(A) The CASA program and the contributing agency develop a memorandum of understanding (MOU) or contract stating that the funds will be used only for general operating expenses as determined by the receiving CASA program, and the contributing agency will not oversee or monitor the funds;

(B) A procedure resolving any conflict between the CASA program and contributing agency is implemented so that conflict between the two agencies does not affect funding or the CASA program's ability to retain an independent evaluation separate from that of the contributing agency's; and

(C) Any MOU or contract between a CASA program and the contributing agency is submitted to and approved by Judicial Council staff.

(2) A clear statement of the purpose or mission of the CASA program and express goals and objectives to further that purpose. Where the CASA program is not an independent nonprofit organization, but instead functions under the auspices of a public agency or a private entity, an active advisory council must be established. The advisory council for CASA programs functioning under the auspices of a public agency or a private entity will not function as the governing body of the CASA program. The board of directors for the private entity or the public agency management will function as the governing body for the CASA program, with guidance from the advisory council.

(3) A procedure for the recruitment, selection, hiring, and evaluation of an executive director for the CASA program.

(4) An administrative manual containing personnel policies, record-keeping practices, and data collection practices.

(5) Local juvenile court rules developed in consultation with the presiding judge of the juvenile court or a designee, as specified in section 100. One local rule must specify when CASA reports are to be submitted to the court, who is entitled to receive a copy of the report, and who will copy and distribute the report. This rule must also specify that the CASA court report must be distributed to the persons entitled to receive it at least two court days before the hearing for which the report was prepared.

(Subd (k) amended effective January 1, 2016; adopted as subd (i); previously amended and relettered as subd (k) effective January 1, 2005; previously amended effective January 1, 1995, January 1, 2000, and January 1, 2007.)

(*l*) Finance, facility, and risk management

(1) A CASA program must adopt a written plan for fiscal control. The fiscal plan must include an annual audit, conducted by a qualified professional, that is consistent with generally accepted accounting principles and the audit protocols in the program's contract with the Judicial Council.

(2) The fiscal plan must include a written budget with projections that guide the management of financial resources and a strategy for obtaining necessary funding for program operations.

(3) When the program has accounting oversight, it must adhere to written operational procedures in regard to accounting control.

(4) The CASA program's board of directors must set policies for and exercise control over fundraising activities carried out by its employees and volunteers.

(5) The CASA program must have the following insurance coverage for its staff and volunteers:

(A) General liability insurance with limits of liability of not less than $1 million ($1,000,000) for each person per occurrence/aggregate for bodily injury and not less than $1 million ($1,000,000) per occurrence/aggregate for property damage;

(B) Nonowned automobile liability insurance and hired vehicle coverage with limits of liability of not less than $1 million ($1,000,000) combined single limit per occurrence and in the aggregate;

(C) Automobile liability insurance meeting the minimum state automobile liability insurance requirements, if the program owns a vehicle; and

(D) Workers' compensation insurance with a minimum limit of $500,000.

(6) The CASA program must require staff, volunteers, and members of the governing body, when applicable, to immediately notify the CASA program of any criminal charges against themselves.

(7) The nonprofit CASA program must plan for the disposition of property and confidential records in the event of its dissolution.

(Subd (l) amended effective January 1, 2016; adopted effective January 1, 2005.)

(m) Confidentiality

The presiding juvenile court judge and the CASA program director must adopt a written plan governing confidentiality of case information, case records, and personnel records. The written plan must include the following provisions:

(1) All information concerning children and families in the juvenile court process is confidential. Volunteers must not give case information to anyone other than the court, the parties and their attorneys, and CASA staff.

(2) CASA volunteers are required by law (Pen. Code, § 11166 et seq.) to report any reasonable suspicion that a child is a victim of child abuse or serious neglect as described by Penal Code section 273.

(3) The child's original case file must be maintained in the CASA office by a custodian of records and must remain there. Copies of documents needed by a volunteer must be restricted to those actually needed to conduct necessary business outside of the office. No one may have access to the child's original case file except on the approval of the CASA program director or presiding judge of the juvenile court. Controls must be in place to ensure that records can be located at any time. The office must establish a written procedure for the maintenance of case files.

(4) The volunteer's personnel file is confidential. No one may have access to the personnel file except the volunteer, the CASA program director or a designee, or the presiding judge of the juvenile court.

(Subd (m) amended effective January 1, 2007; adopted as subd (j); previously amended effective January 1, 1995; previously amended and relettered effective January 1, 2005.)

Rule 5.655 amended effective January 1, 2016; adopted as rule 1424 effective July 1, 1994; previously amended and renumbered as rule 5.655 effective January 1, 2007; previously amended effective January 1, 1995, January 1, 2000, January 1, 2001, January 1, 2005, and January 1, 2010.

Advisory Committee Comment

These 1995 guidelines implement the requirements of section 100, which establishes a grant program administered by the Judicial Council to establish or expand CASA programs to assist children involved in juvenile dependency proceedings, including guardianships, adoptions, and actions to terminate parental rights to custody and control.

CASA programs provide substantial benefits to children appearing in dependency proceedings and to the juvenile court having responsibility for these children. Child advocates improve the quality of judicial decision making by providing information to the court concerning the child. Advocates help identify needed services for the children they are assisting and provide a consistent friend and support person for children throughout the long and complex dependency process.

The CASA concept was first implemented in Seattle in 1977. As of 1994, there were more than 30,000 volunteers working in more than 525 CASA programs in nearly every state. The programs recruit, screen, select, train, and supervise lay volunteers to become effective advocates in the juvenile court.

Currently, numerous jurisdictions in California use some variation of the CASA concept. These programs have developed over the past several years under the supervision of local juvenile courts under sections 356.5 and 358. Each program is unique and was designed to respond to the specific needs of the local jurisdiction and community it serves.

These guidelines provide a framework for ensuring the excellence of California CASA programs and volunteers. They are intended to be consistent with the guidelines established by the National CASA Association and to conform with the requirements of California law and procedure. The California CASA Association has assisted in developing these guidelines, which are meant to give the local bench, bar, child welfare professionals, children's advocates, and other interested citizens full rein to adapt the CASA concept to the special needs and circumstances of local communities.

Central to the intent of these guidelines is the effort to provide a vehicle for the presiding judge of the local juvenile court to exercise fully informed and effective oversight of the local CASA program and CASA volunteers. These guidelines are also intended to help CASA programs and juvenile courts develop local court rules. Nothing in these guidelines should limit or restrict the local juvenile court from developing and supporting multiple branches of a CASA program

within the community to enable a county to offer comprehensive volunteer advocacy programs for children.

Rule 5.660. Attorneys for parties (§§ 317, 317.5, 317.6, 353, 366.26, 16010.6)

(a) Local rules

On or before January 1, 2002, the superior court of each county must amend its local rules regarding the representation of parties in dependency proceedings.

(1) The local rules must be amended after consultation by the court with representatives of the State Bar of California; local offices of the county counsel, district attorney, public defender, and other attorneys appointed to represent parties in these proceedings; county welfare departments; child advocates; current or recent foster youth; and others selected by the court in accordance with standard 5.40(c) of the Standards of Judicial Administration.

(2) The amended rules must address the following as needed:

(A) Representation of children in accordance with other sections of this rule;

(B) Timelines and procedures for settlements, mediation, discovery, protocols, and other issues related to contested matters;

(C) Procedures for the screening, training, and appointment of attorneys representing parties, with particular attention to the training requirements for attorneys representing children;

(D) Establishment of minimum standards of experience, training, and education of attorneys representing parties, including additional training and education in the areas of substance abuse and domestic violence as required;

(E) Establishment of procedures to determine appropriate caseloads for attorneys representing children;

(F) Procedures for reviewing and resolving complaints by parties regarding the performance of attorneys;

(G) Procedures for informing the court of interests of the dependent child requiring further investigation, intervention, or litigation; and

(H) Procedures for appointment of a Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem, who may be an attorney or a CASA volunteer, in cases in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the child.

(3) Appropriate local forms may be used.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2001, and January 1, 2003.)

(b) Attorneys for children

The court must appoint counsel for a child who is the subject of a petition under section 300 and is unrepresented by counsel, unless the court finds that the child would not benefit from the appointment of counsel.

(1) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:

(A) The child understands the nature of the proceedings;

(B) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and

(C) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.

(2) If the court finds that the child would not benefit from representation by counsel, the court must make a finding on the record as to each of the criteria in (1) and state the reasons for each finding.

(3) If the court finds that the child would not benefit from representation by counsel, the court must appoint a CASA volunteer for the child, to serve as the CAPTA guardian ad litem, as required in section 326.5.

(Subd (b) amended effective January 1, 2007; adopted effective July 1, 2001; previously amended effective January 1, 2003.)

(c) Conflict of interest guidelines for attorneys representing siblings

(1) *Appointment*

(A) The court may appoint a single attorney to represent a group of siblings involved in the same dependency proceeding.

(B) An attorney must decline to represent one or more siblings in a dependency proceeding, and the court must appoint a separate attorney to represent the sibling or siblings, if, at the outset of the proceedings:

(i) An actual conflict of interest exists among those siblings; or

(ii) Circumstances specific to the case present a reasonable likelihood that an actual conflict of interest will arise among those siblings.

(C) The following circumstances, standing alone, do not necessarily demonstrate an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise:

(i) The siblings are of different ages;

(ii) The siblings have different parents;

(iii) There is a purely theoretical or abstract conflict of interest among the siblings;

(iv) Some of the siblings appear more likely than others to be adoptable; or

(v) The siblings may have different permanent plans.

(2) *Withdrawal from appointment or continued representation*

(A) An attorney representing a group of siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is an actual conflict of interest.

(B) The following circumstances, standing alone, do not necessarily demonstrate an actual conflict of interest:

(i) The siblings are of different ages;

(ii) The siblings have different parents;

(iii) There is a purely theoretical or abstract conflict of interest among the siblings;

(iv) Some of the siblings are more likely to be adopted than others;

(v) The siblings have different permanent plans;

(vi) The siblings express conflicting desires or objectives, but the issues involved are not material to the case; or

(vii) The siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.

(C) It is not necessary for an attorney to withdraw from representing some or all of the siblings if there is merely a reasonable likelihood that an actual conflict of interest will develop.

(D) If an attorney believes that an actual conflict of interest existed at appointment or developed during representation, the attorney must take any action necessary to ensure that the siblings' interests are not prejudiced, including:

(i) Notifying the juvenile court of the existence of an actual conflict of interest among some or all of the siblings; and

(ii) Requesting to withdraw from representation of some or all of the siblings.

(E) If the court determines that an actual conflict of interest exists, the court must relieve an attorney from representation of some or all of the siblings.

(F) After an actual conflict of interest arises, the attorney may continue to represent one or more siblings whose interests do not conflict only if:

(i) The attorney has successfully withdrawn from the representation of all siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent;

(ii) The attorney has exchanged no confidential information with any sibling whose interest conflicts with those of the sibling or siblings the attorney continues to represent; and

(iii) Continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2006.)

(d) Competent counsel

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel.

(1) *Definition*

"Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.

(2) *Evidence of competency*

The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding.

(3) *Experience and education*

(A) Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Attorney training must include:

(i) An overview of dependency law and related statutes and cases;

(ii) Information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and

(iii) For any attorney appointed to represent a child, instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home placement.

(B) Within every three years, attorneys must complete at least eight hours of continuing education related to dependency proceedings.

(4) *Standards of representation*

Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.

(5) *Attorney contact information*

The attorney for a child for whom a dependency petition has been filed must provide his or her contact information to the child's caregiver no later than 10 days after receipt of the name, address, and telephone number of the child's caregiver. If the child is 10 years of age or older, the attorney must also provide his or her contact information to the child for whom a dependency petition has been filed no later than 10 days after receipt of the caregiver's contact information. The attorney may give contact information to a child for whom a dependency petition has been filed who is under 10 years of age. At least once a year, if the list of educational liaisons is available online from the California Department of Education, the child's attorney must provide, in any manner permitted by section 317(e)(4), his or her contact information to the educational liaison of each local educational agency serving the attorney's clients in foster care in the county of jurisdiction.

(6) *Caseloads for children's attorneys*

The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5).

(Subd (d) amended effective January 1, 2015; adopted as subd (b); amended and relettered as subd (c) effective July 1, 2001; previously relettered effective January 1, 2006; previously amended effective July 1, 1999, January 1, 2005, January 1, 2007, and January 1, 2014.)

(e) Client complaints

The court must establish a process for the review and resolution of complaints or questions by a party regarding the performance of an appointed attorney. Each party must be informed of the procedure for lodging the complaint. If it is determined that an appointed attorney has acted improperly or contrary to the rules or policies of the court, the court must take appropriate action.

(Subd (e) relettered effective January 1, 2006; adopted as subd (c); previously amended and relettered as subd (d) effective July 1, 2001.)

(f) CASA volunteer as CAPTA guardian ad litem (§ 326.5)

If the court makes the findings as outlined in (b) and does not appoint an attorney to represent the child, the court must appoint a CASA volunteer as the CAPTA guardian ad litem of the child.

(1) The required training of CASA volunteers is stated in rule 5.655.

(2) The caseload of a CASA volunteer acting as a CAPTA guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.

(3) CASA volunteers must not assume the responsibilities of attorneys for children.

(4) The appointment of an attorney to represent the child does not prevent the appointment of a CASA volunteer for that child, and courts are encouraged to appoint both an attorney and a CASA volunteer for the child in as many cases as possible.

(Subd (f) amended effective January 1, 2007; adopted as subd (e) effective July 1, 2001; previously amended effective January 1, 2003; previously relettered effective January 1, 2006.)

(g) Interests of the child

At any time following the filing of a petition under section 300 and until juvenile court jurisdiction is terminated, any interested person may advise the court of

information regarding an interest or right of the child to be protected or pursued in other judicial or administrative forums.

(1) *Juvenile Dependency Petition (Version One)* (form JV-100) and *Request to Change Court Order* (form JV-180) may be used.

(2) If the attorney for the child, or a CASA volunteer acting as a CAPTA guardian ad litem, learns of any such interest or right, the attorney or CASA volunteer must notify the court immediately and seek instructions from the court as to any appropriate procedures to follow.

(3) If the court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the court must appoint an attorney for the child, if the child is not already represented by counsel, and do one or all of the following:

(A) Refer the matter to the appropriate agency for further investigation and require a report to the court within a reasonable time;

(B) Authorize and direct the child's attorney to initiate and pursue appropriate action;

(C) Appoint a guardian ad litem for the child. The guardian may be the CASA volunteer already appointed as a CAPTA guardian ad litem or a person who will act only if required to initiate appropriate action; or

(D) Take any other action to protect or pursue the interests and rights of the child.

(Subd (g) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered as subd (f) effective July 1, 2001; amended effective January 1, 2003; previously relettered effective January 1, 2006.)

Rule 5.660 amended effective January 1, 2015; adopted as rule 1438 effective January 1, 1996; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1999, July 1, 2001, January 1, 2003, January 1, 2005, January 1, 2006, and January 1, 2014.

Advisory Committee Comment

The court should initially appoint a single attorney to represent all siblings in a dependency matter unless there is an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise. (*In re Celine R.* (2003) 31 Cal.4th 45, 58.) After the initial

appointment, the court should relieve an attorney from representation of multiple siblings only if an actual conflict of interest arises. (*Ibid*.) Attorneys have a duty to use their best judgment in analyzing whether, under the particular facts of the case, it is necessary to decline appointment or request withdrawal from appointment due to a purported conflict of interest.

Nothing in this rule is intended to extend the permissible scope of any judicial inquiry into an attorney's reasons for declining to represent one or more siblings or requesting to withdraw from representation of one or more siblings, due to an actual or reasonably likely conflict of interest. (See State Bar Rules Prof. Conduct, rule 3-310(C).) While the court has the duty and authority to inquire as to the general nature of an asserted conflict of interest, it cannot require an attorney to disclose any privileged communication, even if such information forms the basis of the alleged conflict. (*In re James S.* (1991) 227 Cal.App.3d 930, 934; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592–593.)

Rule 5.661. Representation of the child on appeal

(a) Definition

For purposes of this rule, "guardian ad litem" means a person designated as the child's Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem as defined in rule 5.662.

(b) Child as appellant

A notice of appeal on behalf of the child must be filed by the child's trial counsel, guardian ad litem, or the child if the child is seeking appellate relief from the trial court's judgment or order.

(c) Recommendation from child's trial counsel or guardian ad litem

(1) In any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal, the child's trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel.

(2) A child's trial counsel or guardian ad litem who recommends appointment of appellate counsel for a child who is not an appellant must follow the procedures outlined in (d)–(g).

(d) Time for trial counsel or guardian ad litem to file the recommendation with the Court of Appeal

A recommendation from the child's trial counsel or guardian ad litem may be filed at any time after a notice of appeal has been filed, but absent good cause, must be filed in the Court of Appeal no later than 20 calendar days after the filing of the last appellant's opening brief.

(e) Service of recommendation

The child's trial counsel or guardian ad litem must serve a copy of the recommendation filed in the Court of Appeal on the district appellate project and the trial court.

(Subd (e) amended effective January 1, 2015.)

(f) Factors to be considered

The following are factors to be considered by a child's trial counsel or guardian ad litem in making a recommendation to the Court of Appeal:

(1) An actual or potential conflict exists between the interests of the child and the interests of any respondent;

(2) The child did not have an attorney serving as his or her guardian ad litem in the trial court;

(3) The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings; and

(A) The child expresses a desire to participate in the appeal; or

(B) The child's wishes differ from his or her trial counsel's position;

(4) The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions;

(5) The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership;

(6) Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment;

(7) The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child; and

(8) The existence of any other factors relevant to the child's best interests.

(g) Form of recommendation

The child's trial counsel, the guardian ad litem, or the child may use *Recommendation for Appointment of Appellate Attorney for Child* (form JV-810). Any recommendation for an appellate attorney for the child must state a factual basis for the recommendation, include the information provided on form JV-810, and be signed under penalty of perjury.

Rule 5.661 amended effective January 1, 2015; adopted effective July 1, 2007.

Advisory Committee Comment

Generally, separate counsel for a nonappealing child will not be appointed for the purpose of introducing postjudgment evidence. See California Code Civ. Proc., § 909; *In re Zeth S.* (2003) 31 Cal.4th 396; *In re Josiah Z.* (2005) 36 Cal.4th 664. For further discussion, see *In re Mary C.* (1995) 41 Cal.App.4th 71.

Rule 5.662. Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for a child subject to a juvenile dependency petition

(a) Authority

This rule is adopted under section 326.5.

(Subd (a) amended effective January 1, 2007.)

(b) Applicability

The definition of the role and responsibilities of a CAPTA guardian ad litem in this rule applies exclusively to juvenile dependency proceedings and is distinct from the definitions of guardian ad litem in all other juvenile, civil, and criminal proceedings. No limitation period for bringing an action based on an injury to the

child commences running solely by reason of the appointment of a CAPTA guardian ad litem under section 326.5 and this rule.

(Subd (b) amended effective January 1, 2007.)

(c) Appointment

A CAPTA guardian ad litem must be appointed for every child who is the subject of a juvenile dependency petition under section 300. An attorney appointed under rule 5.660 will serve as the child's CAPTA guardian ad litem under section 326.5. If the court finds that the child would not benefit from the appointment of counsel, the court must appoint a CASA volunteer to serve as the child's CAPTA guardian ad litem. The court must identify on the record the person appointed as the child's CAPTA guardian ad litem.

(Subd (c) amended effective January 1, 2007.)

(d) General duties and responsibilities

The general duties and responsibilities of a CAPTA guardian ad litem are:

(1) To obtain firsthand a clear understanding of the situation and needs of the child; and

(2) To make recommendations to the court concerning the best interest of the child as appropriate under (e) and (f).

(e) Attorney as guardian ad litem

The specific duties and responsibilities of the child's court-appointed attorney who is appointed to serve as the child's CAPTA guardian ad litem are stated in section 317(e) and rule 5.660.

(Subd (e) amended effective January 1, 2007.)

(f) CASA volunteer as CAPTA guardian ad litem

The specific duties and responsibilities of the child's CASA volunteer who is appointed to serve as the child's CAPTA guardian ad litem are stated in section 102(c) and rule 5.655.

(Subd (f) amended effective January 1, 2007.)

Rule 5.662 amended and renumbered effective January 1, 2007; adopted as rule 1448 effective January 1, 2003.

Rule 5.663. Responsibilities of children's counsel in delinquency proceedings (§§ 202, 265, 633, 634, 634.6, 679, 700)

(a) Purpose

This rule is designed to ensure public safety and the protection of the child's best interest at every stage of the delinquency proceedings by clarifying the role of the child's counsel in delinquency proceedings. This rule is not intended to affect any substantive duty imposed on counsel by existing civil standards or professional discipline standards.

(b) Responsibilities of counsel

A child's counsel is charged in general with defending the child against the allegations in all petitions filed in delinquency proceedings and with advocating, within the framework of the delinquency proceedings, that the child receive care, treatment, and guidance consistent with his or her best interest.

(c) Right to representation

A child is entitled to have the child's interests represented by counsel at every stage of the proceedings, including postdispositional hearings. Counsel must continue to represent the child unless relieved by the court on the substitution of other counsel or for cause.

(Subd (c) amended effective January 1, 2007.)

(d) Limits to responsibilities

A child's counsel is not required:

(1) To assume the responsibilities of a probation officer, social worker, parent, or guardian;

(2) To provide nonlegal services to the child; or

(3) To represent the child in any proceedings outside of the delinquency proceedings.

(Subd (d) amended effective January 1, 2007.)

Rule 5.663 amended and renumbered effective January 1, 2007; adopted as rule 1479 effective July 1, 2004.

Rule 5.664. Training requirements for children's counsel in delinquency proceedings (§ 634.3)

(a) Definition

"Competent counsel" means an attorney who is a member, in good standing, of the State Bar of California, who provides representation in accordance with Welfare and Institutions Code section 634.3(a)(1)–(3), and who has participated in training in the law and practice of juvenile delinquency as defined in this rule.

(b) Education and training requirements

(1) Only those attorneys who, during each of the most recent three calendar years, have dedicated at least 50 percent of their practice to juvenile delinquency and demonstrated competence or who have completed a minimum of 12 hours of training or education during the most recent 12-month period in the area of juvenile delinquency, may be appointed to represent youth.

(2) Attorney training must include:

(A) An overview of delinquency law and related statutes and cases;

(B) Trial skills, including drafting and filing pretrial motions, introducing evidence at trial, preserving the record for appeal, filing writs, notices of appeal, and posttrial motions;

(C) Advocacy at the detention phase;

(D) Advocacy at the dispositional phase;

(E) Child and adolescent development, including training on interviewing and working with adolescent clients;

(F) Competence and mental health issues, including capacity to commit a crime and the effects of trauma, child abuse, and family violence, as well as crossover issues presented by youth involved in the dependency system;

(G) Police interrogation methods, suggestibility of juveniles, and false confessions;

(H) Counsel's ethical duties, including racial, ethnic, and cultural understanding and addressing bias;

(I) Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth;

(J) Understanding of the effects of and how to work with victims of human trafficking and commercial sexual exploitation of children and youth;

(K) Immigration consequences and the requirements of Special Immigrant Juvenile Status;

(L) General and special education, including information on school discipline;

(M) Extended foster care;

(N) Substance abuse;

(O) How to secure effective rehabilitative resources, including information on available community-based resources;

(P) Direct and collateral consequences of court involvement;

(Q) Fitness hearings and advocacy in adult court;

(R) Appellate advocacy; and

(S) Advocacy in the postdispositional phase.

(c) Continuing education requirements

(1) To remain eligible for appointment to represent delinquent youth, attorneys must engage in annual continuing education in the areas listed in (b)(2), as follows:

(A) Attorneys must complete at least 8 hours per calendar year of continuing education, for a total of 24 hours, during each MCLE compliance period.

(B) An attorney who is eligible to represent delinquent youth for only a portion of the corresponding MCLE compliance period must complete training hours in proportion to the amount of time the attorney was eligible. An attorney who is eligible to represent delinquent youth for only a portion of a calendar year must complete two hours of training for every three months of eligibility.

(C) The 12 hours of initial training may be applied toward the continuing training requirements for the first compliance period.

(2) Each individual attorney is responsible for complying with the training requirements in this rule; however, offices of the public defender and other agencies that work with delinquent youth are encouraged to provide MCLE training that meets the training requirements in (b)(2).

(3) Each individual attorney is encouraged to participate in policy meetings or workgroups convened by the juvenile court and to participate in local trainings designed to address county needs.

(d) Evidence of competency

The court may require evidence of the competency of any attorney appointed to represent a youth in a delinquency proceeding, including requesting documentation of trainings attended. The court may also require attorneys who represent youth in delinquency proceedings to complete Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court (JV-700).

Rule 5.664 adopted effective July 1, 2016.

Chapter 12. Cases Petitioned Under Section 300

Chapter 12 renumbered effective January 1, 2008; adopted as chapter 7 effective July 1989; previously renumbered as chapter 8 effective July 1, 1994, and as chapter 9 effective January 1, 2000; previously renumbered and amended as chapter 13 effective January 1, 2007.

Article 1. Initial Hearing

Rule 5.667. Service and notice
Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)
Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation (§§ 309, 311, 313, 315, 362.1)

Rule 5.672. Continuances
Rule 5.674. Conduct of hearing; admission, no contest, submission
Rule 5.676. Requirements for detention
Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives
Rule 5.680. Detention rehearings; prima facie hearings [Repealed]

Rule 5.667. Service and notice

(a) In court order of notice (§ 296)

The court may order the child, or any parent or guardian or Indian custodian of the child who is present in court, to appear again before the court, social worker, probation officer, or county financial officer at a specified time and place as stated in the order.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Language of notice

If it appears that the parent or guardian does not read English, the social worker must provide notice in the language believed to be spoken by the parent or guardian.

(Subd (b) amended effective January 1, 2006.)

Rule 5.667 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1440 effective January 1, 1998; previously amended effective January 1, 2006.

Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

(a) Commencement of hearing

At the beginning of the initial hearing on the petition, whether the child is detained or not detained, the court must give advisement as required by rule 5.534 and must inform each parent and guardian present, and the child, if present:

(1) Of the contents of the petition;

(2) Of the nature of, and possible consequences of, juvenile court proceedings;

(3) If the child has been taken into custody, of the reasons for the initial detention and the purpose and scope of the detention hearing; and

(4) If the petition is sustained and the child is declared a dependent of the court and removed from the custody of the parent or guardian, the court-ordered reunification services must be considered to have been offered or provided on the date the petition is sustained or 60 days after the child's initial removal, whichever is earlier. The time for services must not exceed 12 months for a child three years of age or older at the time of the initial removal and must not exceed 6 months for a child who was under three years of age or who is in a sibling group in which one sibling was under three years of age at the time of the initial removal if the parent or guardian fails to participate regularly and make substantive progress in any court-ordered treatment program.

(Subd (a) amended effective January 1, 2017; adopted effective January 1, 1999; previously amended effective January 1, 2001, and January 1, 2007.)

(b) Parentage inquiry

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 or alleged parents of the child as set forth in section 316.2.

(Subd (b) amended effective January 1, 2017; adopted effective January 1, 1999; previously amended effective January 1, 2007, and January 1, 2015.)

(c) Health and education information (§ 16010)

The court must order each parent and guardian present either to complete *Your Child's Health and Education* (form JV-225) or to provide the information necessary for the social worker or probation officer, court staff, or representative of the local child welfare agency to complete the form. The social worker or probation officer assigned to the dependency matter must provide the child's attorney with a copy of the completed form. Before each periodic status review hearing, the social worker or probation officer must obtain and include in the reports prepared for the hearing all information necessary to maintain the accuracy of form JV-225.

(Subd (c) amended effective January 1, 2008; adopted effective January 1, 2002; previously amended effective January 1, 2007.)

Rule 5.668 amended effective January 1, 2017; repealed and adopted as rule 1441 effective January 1, 1998; previously amended and renumbered effective January 1, 2007; previously

amended effective January 1, 1999, January 1, 2001, January 1, 2002, January 1, 2008, and January 1, 2015.

Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation (§§ 309, 311, 313, 315, 362.1)

(a) Child not detained; filing petition, setting hearing

If the social worker does not take the child into custody but determines that a petition concerning the child should be filed, the social worker must file a petition with the clerk of the juvenile court as soon as possible. The clerk must set an initial hearing on the petition within 15 court days.

(Subd (a) amended effective January 1, 2007.)

(b) Detention hearing—warrant cases, transfers in, changes in placement

Notwithstanding section 309(b), and unless the child has been released sooner, a detention hearing must be held as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a facility within the county if:

(1) The child was taken into custody in another county and transported in custody to the requesting county under a protective custody warrant issued by the juvenile court;

(2) The child was taken into custody in the county in which a protective custody warrant was issued by the juvenile court; or

(3) The matter was transferred from the juvenile court of another county under rule 5.610 and the child was ordered transported in custody.

At the hearing the court must determine whether the child is to continue to be detained in custody. If the hearing is not commenced within that time, the child must be immediately released from custody.

(Subd (b) amended and relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2007.)

(c) Visitation

(1) The court must consider the issue of visitation between the child and other persons, determine if contact pending the jurisdiction hearing would be beneficial or detrimental to the child, and make appropriate orders.

(2) The court must consider the issue of visitation between the child and any sibling who was not placed with the child, and who was taken into custody with the child or is otherwise under the court's jurisdiction, and enter an order for sibling visitation pending the jurisdiction hearing, unless the court finds by clear and convincing evidence that sibling interaction between the child and the sibling is contrary to the safety or well-being of either child.

(Subd (c) relettered effective January 1, 2017; adopted as subd (g); previously amended effective January 1, 2007, and July 1, 2011.)

Rule 5.670 amended effective January 1, 2017; repealed and adopted as rule 1442 effective January 1, 1998; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2011.

Rule 5.672. Continuances

(a) Detention hearing; right to one-day continuance; custody pending continued hearing (§§ 319, 322)

On motion of the child, parent, or guardian, the court must continue the detention hearing for one court day. Unless otherwise ordered by the court, the child must remain detained pending completion of the detention hearing or a rehearing. The court must either find that continuance in the home of the parent or guardian is contrary to the child's welfare or order the child released to the custody of the parent or guardian. The court may enter this finding on a temporary basis, without prejudice to any party, and reevaluate the finding at the time of the continued detention hearing.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Initial hearing; child not detained

If the child is not detained, motions for continuances of the initial hearing must be made and ruled on under rule 5.550.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2002.)

Rule 5.672 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1443 effective January 1, 1998; previously amended effective July 1, 2002.

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a) Admission, no contest, submission

(1) At the initial hearing, whether or not the child is detained, the parent or guardian may admit the allegations of the petition, plead no contest, or submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing.

(2) If the court accepts an admission, a plea of no contest, or a submission from each parent and guardian with standing to participate as a party, the court must then proceed according to rules 5.682 and 5.686.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

(A) Continuance in the home is contrary to the child's welfare;

(B) Temporary placement and care are vested with the social services agency;

(C) Reasonable efforts have been made to prevent removal; and

(D) The findings and orders required to be made on the record under section 319.

(Subd (b) amended effective January 1, 2016; adopted effective July 1, 2002; previously amended effective January 1, 2007.)

(c) Detention hearing; rights of child, parent, or guardian (§§ 311, 319)

At the detention hearing, the child, the parent, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

(1) The preparer of a police report, probation or social worker report, or other document submitted to the court; and

(2) Any person examined by the court under section 319. If the child, parent, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court may not consider any such report or document unless the preparer is made available for cross-examination.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (c); previously amended and relettered as subd (d) effective July 1, 2002; previously amended effective January 1, 2007.)

(d) No parent or guardian present and not noticed (§ 321)

If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court must proceed under rules 5.670–5.678.

(Subd (d) adopted effective January 1, 2017.)

(e) Hearing for further evidence; prima facie case (§ 321)

If the court orders the child detained, and the child, a parent, a guardian, or counsel requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within 3 court days to consider evidence of the prima facie case or set the matter for jurisdiction hearing within 10 court days. If at the hearing the petitioner fails to establish the prima facie case, the child must be released from custody.

(Subd (e) adopted effective January 1, 2017.)

Rule 5.674 amended effective January 1, 2017; repealed and adopted as rule 1444 effective January 1, 1998; previously amended and renumbered as rule 5.674 effective January 1, 2007; previously amended effective July 1, 2002, and January 1, 2016.

Rule 5.676. Requirements for detention

(a) Requirements for detention (§ 319)

No child may be ordered detained by the court unless the court finds that:

(1) A prima facie showing has been made that the child is described by section 300;

(2) Continuance in the home of the parent or guardian is contrary to the child's welfare; and

(3) One or more of the grounds for detention in rule 5.678 is found.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Evidence required at detention hearing

In making the findings required to support an order of detention, the court may rely solely on written police reports, probation or social worker reports, or other documents.

The reports relied on must include:

(1) A statement of the reasons the child was removed from the parent's custody;

(2) A description of the services that have been provided, including those under section 306, and of any available services or safety plans that would prevent or eliminate the need for the child to remain in custody;

(3) If a parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, information and a recommendation regarding whether the child can be returned to the custody of that parent;

(4) Identification of the need, if any, for the child to remain in custody; and

(5) If continued detention is recommended, information about any parent or guardian of the child with whom the child was not residing at the time the child was taken into custody and about any relative or nonrelative extended family member as defined under section 362.7 with whom the child may be detained.

(Subd (b) amended effective January 1, 2016; previously amended effective July 1, 2002, and January 1, 2007.)

Rule 5.676 amended effective January 1, 2016; repealed and adopted as rule 1445 effective January 1, 1998; previously amended effective July 1, 2002; previously amended and renumbered as rule 5.676 effective January 1, 2007.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives

(a) Findings in support of detention (§ 319; 42 U.S.C., § 600 et seq.)

The court must order the child released from custody unless the court finds that:

(1) A prima facie showing has been made that the child is described by section 300;

(2) Continuance in the home of the parent or guardian is contrary to the child's welfare; and

(3) Any of the following grounds exist:

(A) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means to protect the child's physical or emotional health without removing the child from the parent's or guardian's physical custody;

(B) The child is a dependent of the juvenile court who has left a placement;

(C) The parent, guardian, or responsible relative is likely to flee the jurisdiction of the court with the child; or

(D) The child is unwilling to return home and the petitioner alleges that a person residing in the home has physically or sexually abused the child.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Factors to consider

In determining whether to release or detain the child under (a), the court must consider the following:

(1) Whether the child can be returned home if the court orders services to be provided, including services under section 306; and

(2) Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

(Subd (b) amended effective January 1, 2016; previously amended effective July 1, 2002, and January 1, 2007.)

(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C., § 600 et seq.)

(1) Whether the child is released or detained at the hearing, the court must determine whether reasonable efforts have been made to prevent or eliminate the need for removal and must make one of the following findings:

(A) Reasonable efforts have been made; or

(B) Reasonable efforts have not been made.

(2) The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services that would prevent or eliminate the need to detain the child or that would permit the child to return home.

(3) If the court orders the child detained, the court must:

(A) Determine if there are services that would permit the child to return home pending the next hearing and state the factual bases for the decision to detain the child;

(B) Specify why the initial removal was necessary; and

(C) If appropriate, order services to be provided as soon as possible to reunify the child and the child's family.

(Subd (c) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered effective July 1, 2002.)

(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 custody of the child be vested with the county welfare department pending disposition or further order of the court.

(Subd (d) adopted effective July 1, 2002.)

(e) Detention alternatives (§ 319)

The court may order the child detained in the approved home of a relative, an emergency shelter, another suitable licensed home or facility, a place exempt from licensure if specifically designated by the court, or the approved home of a nonrelative extended family member as defined in section 362.7.

(1) In determining the suitability of detention with a relative or a nonrelative extended family member, the court must consider the recommendations of the social worker based on the approval of the home of the relative or nonrelative extended family member, including the results of checks of criminal records and any prior reports of alleged child abuse.

(2) The court must order any parent and guardian present to disclose the names, residences (if known), and any identifying information of any maternal or paternal relatives of the child.

(Subd (e) amended effective January 1, 2007; adopted effective January 1, 1999; previously amended effective July 1, 2002.)

Rule 5.678 amended effective January 1, 2016; repealed and adopted as rule 1446 effective January 1, 1998; previously amended effective January 1, 1999, and July 1, 2002; previously amended and renumbered as rule 5.678 effective January 1, 2007.

Rule 5.680. Detention rehearings; prima facie hearings [Repealed]

Rule 5.680 repealed effective January 1, 2017; repealed and adopted as rule 1447 effective January 1, 1998; previously amended and renumbered effective January 1, 2007.

Article 2. Jurisdiction

Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission
Rule 5.684. Contested hearing on petition
Rule 5.686. Continuance pending disposition hearing [Repealed]
Rule 5.688. Failure to cooperate with services (§ 360(b)) [Repealed]

Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission

(a) Rights explained (§§ 341, 353, 361.1)

After giving the advisement required by rule 5.534, the court must advise the parent or guardian of the following rights:

(1) The right to a hearing by the court on the issues raised by the petition; and

(2) The right, if the child has been removed, to have the child returned to the parent or guardian within two working days after a finding by the court that the child does not come within the jurisdiction of the juvenile court under section 300, unless the parent or guardian and the child welfare agency agree that the child will be released on a later date.

(Subd (a) amended and relettered effective January 1, 2017; adopted as subd (b); previously amended effective January 1, 2005, and January 1, 2007.)

(b) Admission of allegations; prerequisites to acceptance

The court must then inquire whether the parent or guardian intends to admit or deny the allegations of the petition. If the parent or guardian neither admits nor denies the allegations, the court must state on the record that the parent or guardian does not admit the allegations. If the parent or guardian wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the parent or guardian understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in (a) and (e)(3).

(Subd (b) amended and relettered effective January 1, 2017; adopted as subd (c); previously amended effective January 1, 2007.)

(c) Parent or guardian must admit

An admission by the parent or guardian must be made personally by the parent or guardian.

(Subd (c) relettered effective January 1, 2017; adopted as subd (d); previously amended effective January 1, 2007.)

(d) Admission, no contest, submission

The parent or guardian may elect to admit the allegations of the petition or plead no contest and waive further jurisdictional hearing. The parent or guardian may elect to submit the jurisdictional determination to the court based on the information provided to the court and choose whether to waive further jurisdictional hearing. If the parent or guardian submits to the jurisdictional determination in writing, *Waiver*

of Rights—Juvenile Dependency (form JV-190) must be completed by the parent or guardian and counsel and submitted to the court.

(Subd (d) amended and relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2007.)

(e) Findings of court (§ 356)

After admission, plea of no contest, or submission, the court must make the following findings noted in the order of the court:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The parent or guardian has knowingly and intelligently waived the right to a trial on the issues by the court, the right to assert the privilege against self-incrimination, and the right to confront and to cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the parent or guardian's behalf;

(4) The parent or guardian understands the nature of the conduct alleged in the petition and the possible consequences of an admission, plea of no contest, or submission;

(5) The admission, plea of no contest, or submission by the parent or guardian is freely and voluntarily made;

(6) There is a factual basis for the parent or guardian's admission;

(7) Those allegations of the petition as admitted are true as alleged; or

(8) Whether the allegations of the petition as submitted are true as alleged; and

(9) The child is described by one or more specific subdivisions of section 300.

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2007.)

(f) Disposition

After accepting an admission, plea of no contest, or submission, the court must proceed to a disposition hearing under rule 5.690.

(Subd (f) amended and relettered effective January 1, 2017; adopted as subd (g); previously amended effective January 1, 2007.)

Rule 5.682 amended effective January 1, 2017; adopted as rule 1449 effective January 1, 1991; previously amended effective January 1, 2005; amended and renumbered as rule 5.692 effective January 1, 2007.

Rule 5.684. Contested hearing on petition

(a) Contested jurisdiction hearing (§ 355)

If the parent or guardian denies the allegations of the petition, the court must hold a contested hearing and determine whether the allegations in the petition are true.

(Subd (a) amended effective January 1, 2007.)

(b) Admissibility of evidence—general (§§ 355, 355.1)

Except as provided in sections 355(c) and 355.1 and (c) and (d) of this rule, the admission and exclusion of evidence must be in accordance with the Evidence Code as it applies to civil cases.

(Subd (b) amended effective January 1, 2017; previously amended effective July 1, 1997, and January 1, 2007.)

(c) Reports

(1) A social study, with hearsay evidence contained in it, is admissible as provided in section 355.

(2) The social study must be provided to all parties and their counsel by the county welfare department within a reasonable time before the hearing.

(Subd (c) amended effective January 1, 2017; previously amended effective July 1, 1997, and January 1, 2007.)

(d) Inapplicable privileges (Evid. Code, §§ 972, 986)

The privilege not to testify or to be called as a witness against a spouse or domestic partner, and the confidential marital communication privilege, does not apply to dependency proceedings.

(Subd (d) relettered effective January 1, 2017; adopted as subd (e); previously amended effective July 1, 1997, and January 1, 2007.)

(e) Findings of court—allegations true (§ 356)

If the court determines by a preponderance of the evidence that the allegations of the petition are true, the court must make findings on each of the following, noted in the minutes:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The allegations of the petition are true; and

(4) The child is described by one or more subdivisions of section 300.

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2007.)

(f) Disposition and continuance pending disposition hearing (§§ 356, 358)

After making the findings in (e), the court must proceed to a disposition hearing under rule 5.690. The court may continue the disposition hearing as provided in section 358.

(Subd (f) amended and relettered effective January 1, 2017; adopted as subd (g); previously amended effective July 1, 1997, and January 1, 2007.)

(g) Findings of court—allegations not proved (§§ 356, 361.1)

If the court determines that the allegations of the petition have not been proved by a preponderance of the evidence, the court must dismiss the petition and terminate any detention orders relating to the petition. The court must order that the child be returned to the physical custody of the parent or guardian immediately but, in any event, not more than two working days following the date of that finding, unless the parent or guardian and the agency with custody of the child agree to a later date for the child's release. The court must make the following findings, noted in the order of the court:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child; and

(3) The allegations of the petition are not proved.

(Subd (g) relettered effective January 1, 2017; adopted as subd (h); previously amended effective July 1, 1997, January 1, 2005, and January 1, 2007.)

Rule 5.684 amended effective January 1, 2017; adopted as rule 1450 effective January 1, 1991; previously amended effective July 1, 1997, and January 1, 2005; previously amended and renumbered as rule 5.684 effective January 1, 2007.

Rule 5.686. Continuance pending disposition hearing [Repealed]

Rule 5.686 repealed effective January 1, 2017; adopted as rule 1451 effective January 1, 1990; previously amended and renumbered as rule 5.686 effective January 1, 2007.

Rule 5.688. Failure to cooperate with services (§ 360(b)) [Repealed]

Rule 5.688 repealed effective January 1, 2017; adopted as rule 1452 effective January 1, 1990; previously amended effective July 1, 2000; previously amended and renumbered as rule 5.688 effective January 1, 2007.

Article 3. Disposition

Rule 5.690. General conduct of disposition hearing
Rule 5.695. Findings and orders of the court—disposition
Rule 5.700. Termination of jurisdiction—custody and visitation orders (§§ 302, 304, 361.2, 362.4, 726.5)
Rule 5.705. Setting a hearing under section 366.26

Rule 5.690. General conduct of disposition hearing

(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))

The petitioner must prepare a social study of the child. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner must comply with the following when preparing the social study:

(A) If petitioner recommends that the court appoint a legal guardian, petitioner must prepare an assessment under section 360(a), to be

included in the social study report prepared for disposition or in a separate document.

(B) If petitioner recommends removal of the child from the home, the social study must include:

(i) A discussion of the reasonable efforts made to prevent or eliminate removal and a recommended plan for reuniting the child with the family, including a plan for visitation;

(ii) A plan for achieving legal permanence for the child if efforts to reunify fail; and

(iii) A statement that each parent has been advised of the option to participate in adoption planning and to voluntarily relinquish the child if an adoption agency is willing to accept the relinquishment, and the parent's response.

(C) The social study must include a discussion of the social worker's efforts to comply with rule 5.637, including but not limited to:

(i) The number of relatives identified and the relationship of each to the child;

(ii) The number and relationship of those relatives described by item (i) who were located and notified;

(iii) The number and relationship of those relatives described by item (ii) who are interested in ongoing contact with the child; and

(iv) The number and relationship of those relatives described by item (ii) who are interested in providing placement for the child.

(D) If siblings are not placed together, the social study must include an explanation of why they have not been placed together in the same home, what efforts are being made to place the siblings together, or why making those efforts would be contrary to the safety and well-being of any of the siblings.

(E) If petitioner alleges that section 361.5(b) applies, the social study must state why reunification services should not be provided.

(F) All other relevant requirements of sections 358 and 358.1.

(2) The petitioner must submit the social study and copies of it to the clerk at least 48 hours before the disposition hearing is set to begin, and the clerk must make the copies available to the parties and attorneys. A continuance within statutory time limits must be granted on the request of a party who has not been furnished a copy of the social study in accordance with this rule.

(Subd (a) amended effective January 1, 2017; previously amended effective July 1, 1995, January 1, 2000, January 1, 2007, and January 1, 2011.)

(b) Evidence considered (§§ 358, 360)

The court must receive in evidence and consider the social study, a guardianship assessment, the report of any CASA volunteer, the case plan, and any relevant evidence offered by petitioner, the child, or the parent or guardian. The court may require production of other relevant evidence on its own motion. In the order of disposition, the court must state that the social study and the study or evaluation by the CASA volunteer, if any, have been read and considered by the court.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1995.)

(c) Case plan (§ 16501.1)

Whenever child welfare services are provided, the social worker must prepare a case plan.

(1) A written case plan must be completed and filed with the court by the date of disposition or within 60 calendar days of initial removal or of the in-person response required under section 16501(f) if the child has not been removed from his or her home, whichever occurs first.

(2) The court must consider the case plan and must find as follows:

(A) The social worker solicited and integrated into the case plan the input of the child, the child's family, the child's identified Indian tribe, including consultation with the child's tribe on whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful; and other interested parties, or

(B) The social worker did not solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties. If the court finds that the social worker did

not solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties, the court must order that the social worker solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties, unless the court finds that each of these participants was unable, unavailable, or unwilling to participate.

(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:

(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or

(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.

(C) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g) the court must order the agency to comply with the requirements of section 16501.1(g).

(Subd (c) amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2009, and July 1, 2010.)

Rule 5.690 amended effective January 1, 2017; adopted as rule 1455 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1995, January 1, 2000, January 1, 2009, July 1, 2010, and January 1, 2011.

Rule 5.695. Findings and orders of the court—disposition

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

At the disposition hearing, the court may:

(1) Dismiss the petition with specific reasons stated in the minutes;

(2) Place the child under a program of supervision for a time period consistent with section 301 and order that services be provided;

(3) Appoint a legal guardian for the child without declaring dependency and order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827;

(4) Declare dependency and appoint a legal guardian for the child if the requirements of section 360 are met and order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827;

(5) Declare dependency, permit the child to remain at home, and order that services be provided;

(6) Declare dependency, permit the child to remain at home, limit the control to be exercised by the parent or guardian, and order that services be provided; or

(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 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 a noncustodial parent with services to one or both parents; or

(C) Make a placement order and consider granting specific visitation rights to the child's grandparents.

(Subd (a) amended effective January 1, 2017; previously amended effective July 1, 1995, January 1, 2007, and January 1, 2015.)

(b) Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)

(1) If a child is declared a dependent, the court may clearly and specifically limit the control over the child by a parent or guardian.

(2) If the court orders that a parent or guardian retain physical custody of the child subject to court-ordered supervision, the parent or guardian must be ordered to participate in child welfare services or services provided by an appropriate agency designated by the court.

(3) The court must consider whether it is necessary to limit the rights of the parent or guardian to make educational or developmental-services decisions for the child or youth. If the court limits those rights, it must follow the procedures in rules 5.649–5.651.

(Subd (b) relettered effective January 1, 2017; adopted as subd (b); previously relettered as subd (c) effective July 1, 1995; previously amended effective July 1, 2002, January 1, 2004, January 1, 2007, January 1, 2008, and January 1, 2014.)

(c) Removal of custody—required findings (§ 361)

The court may not order a dependent removed from the physical custody of a parent or guardian with whom the child resided at the time the petition was filed, unless the court makes one or more of the findings in subdivision (c) of section 361 by clear and convincing evidence.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (c); previously relettered as subd (d) effective July 1, 1995; previously amended effective July 1, 1997, July 1, 1999, July 1, 2002, and January 1, 2007.)

(d) Reasonable efforts finding

The court must consider whether reasonable efforts to prevent or eliminate the need for removal have been made and make one of the following findings:

(1) Reasonable efforts have been made to prevent removal; or

(2) Reasonable efforts have not been made to prevent removal.

(Subd (d) amended and relettered effective January 1, 2017; adopted as subd (d); previously relettered as subd (e) effective July 1, 1995; amended effective July 1, 2002, and January 1, 2006.)

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

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (f) effective January 1, 2011; previously amended effective January 1, 2014, and January 1, 2015.)

(f) Due diligence (§ 309)

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

(1) Asked the child, in an age-appropriate manner and consistent with the child's best interest, about his or her relatives;

(2) Obtained information regarding the location of the child's relatives;

(3) Reviewed the child's case file for any information regarding relatives;

(4) Telephoned, e-mailed, or visited all identified relatives;

(5) Asked located relatives for the names and locations of other relatives;

(6) Used Internet search tools to locate relatives identified as supports; or

(7) Developed tools, including a genogram, family tree, family map, or other diagram of family relationships, to help the child or parents to identify relatives.

(Subd (f) amended and relettered effective January 1, 2017; adopted as subd (g) effective January 1, 2011; previously amended effective January 1, 2014, and January 1, 2015.)

(g) Provision of reunification services (§ 361.5)

(1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5 if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child's mother and statutorily presumed parent, or the child's legal guardian, to facilitate reunification of the family as required in section 361.5.

(2) On a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity 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.

(3) If a child is removed from the custody of a parent or guardian, and reunification services are ordered, the court must order visitation between the child and the parent or guardian for whom services are ordered. Visits are to be as frequent as possible, consistent with the well-being of the child.

(4) Reunification services must not be provided when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or if the court has appointed a guardian under section 360.

(5) Except when the order is made under paragraph (1) of subdivision (b) of section 361.5, if the court orders no reunification services for every parent otherwise eligible for such services, the court must conduct a hearing under section 366.26 within 120 days and:

(A) Order that the social worker provide a copy of the child's birth certificate to the caregiver consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and

(B) Order that the social worker provide a child or youth 16 years of age or older with a certified copy of his or her birth certificate unless the court finds that provision of the birth certificate would be inappropriate.

(6) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review may be sought only by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record, and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. If a 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.

(7) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(A) An extraordinary writ was sought by the timely filing of a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record, and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ; and

(B) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

(8) Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(9) Failure to file a notice of intent to file a writ petition and request for record and a petition for extraordinary writ review within the period specified by rules 8.450 and 8.452 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.

(10) When the court orders a hearing under section 366.26, the court must advise orally all parties present, and by first-class mail for parties not present, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party must seek an extraordinary writ by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ.

(A) Within 24 hours of the hearing, notice by first-class mail must be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26.

(B) Copies of *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) must be available in the courtroom and must accompany all mailed notices informing the parties of their rights.

(Subd (g) amended and relettered effective January 1, 2017; adopted as subd (e); previously relettered as subd (f) effective July 1, 1995, and as subd (h) January 1, 2011; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, January 1, 1996, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2001, July 1, 2002, January 1, 2007, January 1, 2010, January 1, 2014, and January 1, 2015.)

(h) 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) 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 of the dispositional hearing or within 12 months of the date the child entered foster care, whichever time limit is applicable.

(Subd (h) relettered effective January 1, 2017; adopted as subd (f); previously relettered as subd (g) effective July 1, 1995, and as subd (i) effective January 1, 2011; previously amended effective January 1, 2001, July 1, 2002, January 1, 2015.)

(i) 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 welfare department.

(Subd (i) relettered effective January 1, 2017; adopted as subd (j) effective July 1, 1997; previously amended effective July 1, 2002; previously relettered as subd (l) effective January 1, 2011.)

Rule 5.695 amended effective January 1, 2017; adopted as rule 1456 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, January 1, 1996, January 1, 1997, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2001, July 1, 2002, January 1, 2004, January 1, 2006, January 1, 2008, January 1, 2010, January 1, 2011, January 1, 2014, and January 1, 2015.

Rule 5.700. Termination of jurisdiction—custody and visitation orders (§§ 302, 304, 361.2, 362.4, 726.5)

When the juvenile court terminates its jurisdiction over a dependent or ward of the court and places the child in the home of a parent, it may issue an order determining the rights to custody of and visitation with the child. The court may also issue protective orders as provided in section 213.5 or as described in Family Code section 6218.

(a) Effect of order

Any order issued under this rule continues in effect until modified or terminated by a later order of a superior court with jurisdiction to make determinations about the custody of the child. The order may be modified or terminated only if the superior court finds both that:

(1) There has been a significant change of circumstances since the juvenile court issued the order; and

(2) Modification or termination of the order is in the best interest of the child.

(Subd (a) adopted effective January 1, 2016.)

(b) Preparation and transmission of order

The order must be prepared on *Custody Order—Juvenile—Final Judgment* (form JV-200). The court must direct either the parent, parent's attorney, county counsel, or clerk to:

(1) Prepare the order for the court's signature; and

(2) Transmit the order within 10 calendar days after the order is signed to any superior court where a proceeding described in (c)(1) is pending or, if no such proceeding exists, to the superior court of, in order of preference:

(A) The county in which the parent who has been given sole physical custody resides;

(B) The county in which the children's primary residence is located if no parent has been given sole physical custody; or

(C) A county or other location where any parent resides.

(Subd (b) amended and relettered effective January 1, 2016; adopted as part of subd (a).)

(c) Procedures for filing order—receiving court

On receiving a juvenile court custody order transmitted under (b)(2), the clerk of the receiving court must immediately file the juvenile court order as follows.

(1) Except as provided in paragraph (2), the juvenile court order must be filed in any pending nullity, dissolution, legal separation, guardianship, Uniform Parentage Act, Domestic Violence Prevention Act, or other family law custody proceeding and, when filed, becomes a part of that proceeding.

(2) If the only pending proceeding related to the child in the receiving court is filed under Family Code section 17400 et seq., the clerk must proceed as follows.

(A) If the receiving court has issued a custody or visitation order in the pending proceeding, the clerk must file the received order in that proceeding.

(B) If the receiving court has not issued a custody or visitation order in the pending proceeding, the clerk must not file the received order in that proceeding, but must instead proceed under paragraph (3).

(3) If no dependency, family law, or guardianship proceeding affecting custody or visitation of the child is pending, the order must be used to open a new custody proceeding in the receiving court. The clerk must immediately open a family law file without charging a filing fee, assign a case number, and file the order in the new case file.

(Subd (c) amended and relettered effective January 1, 2016; adopted as part of subd (a).)

(d) Endorsed filed copy—clerk's certificate of mailing

Within 15 court days of receiving the order, the clerk of the receiving court must send an endorsed filed copy of the order showing the case number assigned by the receiving court by first-class mail to the child's parents and the originating juvenile court, with a completed clerk's certificate of mailing, for inclusion in the child's file.

(Subd (d) amended and relettered effective January 1, 2016; adopted as part of subd (a).)

Rule 5.700 amended effective January 1, 2016; adopted as rule 1457 effective January 1, 1990; previously amended effective January 1, 1994, and January 1, 2001; previously amended and renumbered as rule 5.700 effective January 1, 2007.

Article 4. Reviews, Permanent Planning

Rule 5.706. Family maintenance review hearings (§ 364)
Rule 5.707. Review or dispositional hearing requirements for child approaching majority (§§ 224.1, 366(a)(1)(F), 366.3, 366.31, 16501.1(f)(16))
Rule 5.708. General review hearing requirements
Rule 5.710. Six-month review hearing
Rule 5.715. Twelve-month permanency hearing
Rule 5.720. Eighteen-month permanency review hearing
Rule 5.722. Twenty-four-month subsequent permanency review hearing
Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)
Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)
Rule 5.727. Proposed removal (§ 366.26(n))
Rule 5.728. Emergency removal (§ 366.26(n))
Rule 5.730. Adoption
Rule 5.735. Legal guardianship
Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 16501.1)

Rule 5.706. Family maintenance review hearings (§ 364)

(a) Notice (§ 292)

The petitioner or the court clerk must give notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in section 292, to all persons required to receive notice under section 292 and to any CASA volunteer that has been appointed on the case.

(Subd (a) relettered effective January 1, 2017; adopted as subd (b).)

(b) Court considerations and findings

(1) The court must consider the report prepared by the petitioner, the report of any CASA volunteer, and the case plan submitted for this hearing.

(2) In considering the case plan submitted for the hearing, the court must find as follows:

(A) The child was actively involved in the development of his or her own case plan as age and developmentally appropriate; or

(B) The child was not actively involved in the development of his or her own case plan. If the court makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan, unless the court finds that the child is unable, unavailable, or unwilling to participate; and

(C) Each parent was actively involved in the development of the case plan; or

(D) Each parent was not actively involved in the development of the case plan. If the court makes such a finding, the court must order the agency to actively involve each parent in the development of the case plan, unless the court finds that each parent is unable, unavailable, or unwilling to participate.

(Subd (b) relettered effective January 1, 2017; adopted as subd (d).)

(c) Conduct of hearing (§ 364)

If the court retains jurisdiction, the court must order continued services and set a review hearing within six months. The court must determine whether continued supervision is necessary under section 364(c).

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (e).)

(d) Reasonable cause (§ 364)

In any case in which the court has ordered that a parent or legal guardian retain physical custody of a child subject to supervision by a social worker, and the social worker subsequently receives a report of acts or circumstances that indicate there is reasonable cause to believe that the child is a person described under section 300(a), (d), or (e), the social worker must file a subsequent petition under section

342 or a supplemental petition under section 387. If, as a result of the proceedings under the section 342 or 387 petition, the court finds that the child is a person described in section 300(a), (d), or (e), the court must remove the child from the care, custody, and control of the child's parent or legal guardian and must commit the child to the care, custody, and control of the social worker under section 361.

(Subd (d) relettered effective January 1, 2017; adopted as subd (f).)

(e) Child's education (§§ 361, 366, 366.1)

The court must consider the child's education, including whether it is necessary to limit the right of the parent or legal guardian to make educational or developmental-services decisions for the child, following the requirements and procedures in rules 5.649, 5.650, and 5.651 and in section 361(a).

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (g).)

Rule 5.706 amended effective January 1, 2017; adopted effective January 1, 2010.

Rule 5.707. Review or dispositional hearing requirements for child approaching majority (§§ 224.1, 366(a)(1)(F), 366.3, 366.31, 16501.1(f)(16))

(a) Reports

At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the report prepared by the social worker for the hearing, the report must include a description of:

(1) The child's plans to remain under juvenile court jurisdiction as a nonminor dependent including the criteria in section 11403(b) that he or she plans to meet;

(2) The efforts made by the social worker to help the child meet one or more of the criteria in section 11403(b);

(3) For an Indian child to whom the Indian Child Welfare Act applies, his or her plans to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent;

(4) Whether the child has applied for and, if so, the status of any in-progress application pending for title XVI Supplemental Security Income benefits and, if such an application is pending, whether it will be in the child's best interest to continue juvenile court jurisdiction until a final decision is issued to ensure that the child receives continued assistance with the application process;

(5) Whether the child has an in-progress application pending for Special Immigrant Juvenile Status or other applicable application for legal residency and whether an active dependency case is required for that application;

(6) The efforts made by the social worker toward providing the child with the written information, documents, and services described in section 391, and to the extent that the child has not yet been provided with them, the barriers to providing the information, documents, or services and the steps that will be taken to overcome those barriers by the date the child attains 18 years of age;

(7) When and how the child was informed of his or her right to have juvenile court jurisdiction terminated when he or she attains 18 years of age;

(8) When and how the child was provided with information about the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent and the social worker's assessment of the child's understanding of those benefits; and

(9) When and how the child was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over him or her as a nonminor dependent.

(Subd (a) amended effective January 1, 2016; previously amended effective July 1, 2012.)

(b) Transitional Independent Living Case Plan

At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, the child's Transitional Independent Living Case Plan:

(1) Must be submitted with the social worker's report prepared for the hearing at least 10 calendar days before the hearing; and

(2) Must include:

(A) The individualized plan for the child to satisfy one or more of the criteria in section 11403(b) and the child's anticipated placement as specified in section 11402; and

(B) The child's alternate plan for his or her transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.

(Subd (b) amended effective January 1, 2016.)

(c) Findings

(1) At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must make the following findings in the written court documentation of the hearing:

(A) Whether the child's Transitional Independent Living Case Plan includes a plan for the child to satisfy one or more of the criteria in section 11403(b) and the specific criteria it is anticipated the child will satisfy;

(B) Whether there is included in the child's Transitional Independent Living Case Plan an alternative plan for the child's transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age;

(C) For an Indian child to whom the Indian Child Welfare Act applies, whether he or she intends to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent;

(D) Whether the child has an in-progress application pending for title XVI Supplemental Security Income benefits and, if such an application is pending, whether it is in the child's best interest to continue juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with the application process;

(E) Whether the child has an in-progress application pending for Special Immigrant Juvenile Status or other applicable application for legal residency and whether an active dependency case is required for that application;

(F) Whether all the information, documents, and services in sections 391(e) were provided to the child, and whether the barriers to providing any missing information, documents, or services can be overcome by the date the child attains 18 years of age;

(G) Whether the child has been informed of his or her right to have juvenile court jurisdiction terminated when he or she attains 18 years of age;

(H) Whether the child understands the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent; and

(I) Whether the child has been informed that if juvenile court jurisdiction is terminated after he or she attains 18 years of age, he or she has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over him or her as a nonminor dependent.

(2) The hearing must be continued for no more than five court days for the submission of additional information as ordered by the court if the court finds that the report and Transitional Independent Living Case Plan submitted by the social worker do not provide the information required by (a) and (b) and the court is unable to make all the findings required by (c)(1).

(Subd (c) amended effective January 1, 2016; previously amended effective July 1, 2012, and January 1, 2014.)

(d) Orders

(1) For a child who intends to remain under juvenile court jurisdiction as a nonminor dependent, as defined in section 11400(v), after attaining 18 years of age, the court must set a nonminor dependent status review hearing under rule 5.903 within six months from the date of the current hearing.

(2) For a child who does not intend to remain under juvenile court as a nonminor dependent, as defined in section 11400(v), after attaining 18 years of age, the court must:

(A) Set a hearing under rule 5.555 for a date within one month after the child's 18th birthday, for the child who requests that the juvenile court terminate its jurisdiction after he or she attains 18 years of age; or

(B) Set a hearing under section 366.21, 366.22, 366.25, or 366.3 no more than six months from the date of the current hearing, for a child who will remain under juvenile court jurisdiction in a foster care placement.

(Subd (d) amended effective July 1, 2012.)

Rule 5.707 amended effective January 1, 2016; adopted effective January 1, 2012; previously amended effective July 1, 2012, and January 1, 2014.

Rule 5.708. General review hearing requirements

(a) Notice of hearing (§ 293)

The petitioner or the clerk must serve written notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in sections 224.2 or 293 as appropriate, to all persons or entities entitled to notice under sections 224.2 and 293 and to any CASA volunteer, educational rights holder, or surrogate parent appointed to the case.

(Subd (a) amended and relettered effective January 1, 2017; adopted as subd (b); previously amended effective January 1, 2014.)

(b) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)

Before the hearing, the social worker must investigate and file a report describing the services offered to the family, progress made, and, if relevant, the prognosis for return of the child to the parent or legal guardian.

(1) The report must include:

(A) Recommendations for court orders and the reasons for those recommendations;

(B) A description of the efforts made to achieve legal permanence for the child if reunification efforts fail;

(C) A factual discussion of each item listed in sections 366.1 and 366.21(c); and

(D) A factual discussion of the information required by section 16002(b).

(2) At least 10 calendar days before the hearing, the social worker must file the report and provide copies to the parent or legal guardian and his or her counsel, to counsel for the child, to any CASA volunteer, and, in the case of an Indian child, to the child's identified Indian tribe. The social worker must provide a summary of the recommendations to any foster parents, relative caregivers, or certified foster parents who have been approved for adoption.

(3) The court must read and consider, and state on the record that it has read and considered, the report of the social worker, the report of any CASA volunteer, the case plan submitted for the hearing, any report submitted by the child's caregiver under section 366.21(d), and any other evidence.

(Subd (b) relettered effective January 1, 2017; adopted as subd (c); previously amended effective July 1, 2010, and January 1, 2016.)

(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25, 366.3)

(1) If the child is not returned to the custody of the parent or legal guardian, the court must consider whether reasonable services have been offered or provided. The court must find that reasonable services have been offered or provided or have not been offered or provided.

(2) If the child is not returned to the custody of the parent or legal guardian, the court must consider the safety of the child and make the findings listed in sections 366(a) and 16002.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (e).)

(d) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)

The court must consider the educational and developmental-services needs of each child and nonminor or nonminor dependent, including whether it is necessary to limit the rights of the parent or legal guardian to make educational or developmental-services decisions for the child. If the court limits those rights or, in the case of a nonminor or nonminor dependent who has chosen not to make educational or developmental-services decisions for him- or herself or has been deemed incompetent, finds that appointment would be in the best interests of the nonminor or nonminor dependent, the court must appoint a responsible adult as the educational rights holder as defined in rule 5.502. Any limitation on the rights of a parent or guardian to make educational or developmental-services decisions for the

child must be specified in the court order. The court must follow the procedures in rules 5.649–5.651.

(Subd (d) relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2014, and January 1, 2016.)

(e) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must determine:

The court must consider the case plan submitted for the hearing and must determine:

(1) Whether the child was actively involved, as age- and developmentally appropriate, in the development of the case plan and plan for permanent placement. If the court finds the child was not appropriately involved, the court must order the agency to actively involve the child in the development of the case plan and plan for permanent placement, unless the court finds the child is unable, unavailable, or unwilling to participate.

(2) Whether each parent or legal guardian was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent or legal guardian was not actively involved, the court must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate.

(3) In the case of an Indian child, whether the agency consulted with the Indian child's tribe, as defined in rule 5.502, and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful. If the court finds that the agency did not consult the Indian child's tribe, the court must order the agency to do so, unless the court finds that the tribe is unable, unavailable, or unwilling to participate.

(4) For a child 12 years of age or older in a permanent placement, whether the child was given the opportunity to review the case plan, sign it, and receive a copy. If the court finds that the child was not given this opportunity, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.

(5) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g), the court must order the agency to comply with the requirements of section 16501.1(g).

(Subd (e) amended and relettered effective January 1, 2016; adopted as subd (g); previously amended effective July 1, 2010, January 1, 2014, and January 1, 2016.)

(f) Sibling findings; additional findings (§§ 366, 16002)

(1) The court must determine whether the child has other siblings under the court's jurisdiction. If so, the court must make the additional determinations required by section 366(a)(1)(D); and

(2) The court must enter any additional findings as required by section 366 and section 16002.

(Subd (f) relettered effective January 1, 2017; adopted as subd (j); previously amended effective January 1, 2016.)

(g) Placement with noncustodial parent (§ 361.2)

If at any review hearing the court places the child with a noncustodial parent, or if the court has previously made such a placement, the court may, after stating on the record or in writing the factual basis for the order:

(1) Continue supervision and reunification services;

(2) Order custody to the noncustodial parent, continue supervision, and order family maintenance services; or

(3) Order custody to the noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700.

(Subd (g) relettered effective January 1, 2017; adopted as subd (k).)

(h) Setting a hearing under section 366.26 for one parent

The court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:

(1) That parent is the only surviving parent;

(2) 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

(3) The other parent has relinquished custody of the child to the county welfare department.

(Subd (h) relettered effective January 1, 2017; adopted as subd (l).)

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

The court must make the following orders and determinations when setting a hearing under section 366.26:

(1) The court must ensure that notice is provided as required by section 294.

(2) The court must follow all procedures in rule 5.590 regarding writ petition rights, advisements, and forms.

(Subd (i) amended and relettered effective January 1, 2017; adopted as subd (n); previously amended effective July 1, 2010, January 1, 2014, January 1, 2015, January 1, 2016, and July 1, 2016.)

(j) Appeal of order setting section 366.26 hearing

An appeal of any order setting a hearing under section 366.26 must follow the procedures in rules 8.400–8.416.

(Subd (j) relettered effective January 1, 2017; adopted as subd (o).)

Rule 5.708 amended effective January 1, 2017; adopted effective January 1, 2010; previously amended effective July 1, 2010, January 1, 2014, January 1, 2015, January 1, 2016, and July 1, 2016.

Rule 5.710. Six-month review hearing

(a) Determinations and conduct of hearing (§§ 364, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(e) and as follows:

(1) *Order return of the child or find that return would be detrimental*

If the child is returned, the court may order the termination of dependency jurisdiction or order continued dependency services and set a review hearing within 6 months.

(2) *Place with noncustodial parent*

If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708 (g) and section 361.2.

(3) *Set a section 366.26 hearing*

If the court does not return custody of the child to the parent or legal guardian, the court may set a hearing under section 366.26 within 120 days, as provided in (b).

(4) *Continue the case for a 12-month permanency hearing*

If the child is not returned and the court does not set a section 366.26 hearing, the court must order that any reunification services previously ordered will continue to be offered to the parent or legal guardian, if appropriate. The court may modify those services as appropriate or order additional services reasonably believed to facilitate the return of the child to the parent or legal guardian. The court must set a date for the next hearing no later than 12 months from the date the child entered foster care as defined in section 361.49.

(Subd (a) amended and relettered effective January 1, 2017; repealed and adopted as subd (d); relettered as subd (e) effective January 1, 1992; previously amended effective January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2002, January 1, 2004, January 1, 2005, and January 1, 2007; previously amended and relettered as subd (b) effective January 1, 2010.)

(b) Setting a section 366.26 hearing (§§ 366.21, 366.215)

(1) The court may set a hearing under section 366.26 within 120 days if any of the conditions in section 366.21(e) are met; or the parent is deceased.

(2) At the hearing, the court and all parties must comply with all relevant requirements and procedures related to section 366.26 hearings in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708.

(Subd (b) amended and relettered effective January 1, 2017; repealed and adopted as subd (e); previously amended and relettered as subd (f) effective January 1, 1992; previously amended effective January 1, 1993, January 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, July 1, 2002, January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2007, January 1, 2010, January 1, 2011, and January 1, 2014; previously amended and relettered subd (c) effective January 1, 2015.)

Rule 5.710 amended effective January 1, 2017; adopted as rule 1460 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, July 1, 2002, January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2010, January 1, 2011, January 1, 2014, and January 1, 2015.

Rule 5.715. Twelve-month permanency hearing

(a) Requirement for 12-month review; setting of hearing (§§ 293, 366.21)

The case of any dependent child whom the court has removed from the custody of the parent or legal guardian must be set for a permanency hearing within 12 months of the date the child entered foster care, as defined in section 361.49, and no later than 18 months from the date of the initial removal.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2001, January 1, 2004, January 1, 2006, January 1, 2007, and January 1, 2010.)

(b) Determinations and conduct of hearing (§§ 309(e), 361.5, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(f) and as follows:

(1) The requirements in rule 5.708 (c) must be followed in entering a reasonable services finding.

(2) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708 (g) and section 361.2.

(3) The court may order that the name and address of the foster home remain confidential.

(4) In the case of an Indian child, if the child is not returned to his or her parent or legal guardian, the court must determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court or administrative review panel must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver.

(Subd (b) amended effective January 1, 2017; repealed and adopted as subd (c)(2); previously amended and relettered as subd (c) effective July 1, 1999, as subd (d) effective January 1, 2002, as subd (c) effective January 1, 2001, and as subd (b) effective January 1, 2010; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, January 1, 2004, January 1, 2005, January 1, 2007, July 1, 2010, and January 1, 2014.)

Rule 5.715 amended effective January 1, 2017; adopted as rule 1461 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2010, July 1, 2010, and January 1, 2014.

Rule 5.720. Eighteen-month permanency review hearing

(a) Determinations and conduct of hearing (§§ 309(e), 361.5, 366.22)

At the hearing the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.22 and as follows:

(1) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708 (g) and section 361.2.

(2) The court may order that the name and address of the foster home remain confidential.

(3) In the case of an Indian child, if the child is not returned to his or her parent or legal guardian, the court must determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(4) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver.

(Subd (a) amended and relettered effective January 1, 2017; repealed and adopted as subd (b); previously amended and relettered as subd (c) effective January 1, 2005, and as subd (b) effective January 1, 2010; previously amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, January 1, 1999, July 1, 1999, January 1, 2006, July 1, 2006, January 1, 2007, July 1, 2007, July 1, 2010, January 1, 2014, and January 1, 2015.)

Rule 5.720 amended effective January 1, 2017; repealed and adopted as rule 1462 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, January 1, 2005, January 1, 2006, July 1, 2006, July 1, 2007, January 1, 2010, July 1, 2010, January 1, 2014, and January 1, 2015.

Rule 5.722. Twenty-four-month subsequent permanency review hearing

(a) Determinations and conduct of hearing (§§ 309(e), 366, 366.1, 366.25)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.25 and as follows:

(1) The requirements in rule 5.708(c) must be followed in entering a reasonable services finding.

(2) If the court does not order the return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment.

(3) The court may order that the name and address of the foster home remain confidential. The court and all parties must comply with all relevant

requirements, procedures, findings, and orders related to section 366.26 hearings in rule 5.708(h)–(j).

(4) In the case of an Indian child, if the child is not returned to his or her parent or legal guardian, the court must determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver.

(Subd (a) relettered and amended effective January 1, 2017; adopted as subd (b); previously amended effective July 1, 2010.)

Rule 5.722 amended effective January 1, 2017; adopted effective January 1, 2010; previously amended effective July 1, 2010.

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)

(a) Application of rule

This rule applies to children who have been declared dependents or wards of the juvenile court.

(1) 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 by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or unless the other parent has relinquished custody of the child to the welfare department.

(2) Only sections 366.26 and 727.31 apply for establishing legal guardianship.

(3) For termination of the parental rights of an Indian child, the procedures in this rule and in rule 5.485 must be followed.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 1994, July 1, 2002, January 1, 2007, and January 1, 2009.)

(b) Notice of hearing (§ 294)

In addition to the requirements stated in section 294, notice must be given to any CASA volunteer, Indian custodian, and de facto parent on *Notice of Hearing on Selection of a Permanent Plan* (form JV-300).

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1992, July 1, 1992, July 1, 1995, July 1, 2002, January 1, 2005, January 1, 2006, and January 1, 2007.)

(c) Report

Before the hearing, petitioner must prepare an assessment under section 366.21(i). At least 10 calendar days before the hearing, the petitioner must file the assessment, provide copies to each parent or guardian and all counsel of record, and provide a summary of the recommendations to the present custodians of the child, to any CASA volunteer, and to the tribe of an Indian child.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1992; previously amended effective July 1, 1995, and July 1, 2002.)

(d) Conduct of hearing

At the hearing, the court must state on the record that the court has read and considered the report of petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, any report submitted by the child's caregiver under section 366.21(d), and any other evidence, and must proceed under section 366.26 and as follows:

(1) In the case of an Indian child, after the agency has consulted with the tribe, when the court has determined with the concurrence of the tribe that tribal customary adoption is the appropriate permanent plan for the child, order a tribal customary adoption in accordance with section 366.24.

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

(3) If the court finds that section 366.26(c)(1)(A) or section 366.26(c)(2)(A) applies, the court must appoint the present custodian or other appropriate person to become the child's legal guardian or must order the child to remain in foster care.

(A) If the court orders that the child remain in foster care, it may order that the name and address of the foster home remain confidential.

(B) If the court finds that removal of the child from the home of a foster parent or relative who is not willing to become a legal guardian for the child would be seriously detrimental to the emotional well-being of the child, then the child must not be removed. The foster parent or relative must be willing to provide, and capable of providing, a stable and permanent home for the child and must have substantial psychological ties with the child.

(4) The court must consider the case plan submitted for this hearing and must make the required findings and determinations in rule 5.708(e).

(Subd (d) amended effective January 1, 2017; repealed and adopted as subd (c); previously amended and relettered as subd (d) effective January 1, 1992, and as subd (e) effective January 1, 2005; previously relettered as subd (d) effective January 1, 2010; previously amended effective July 1, 1994, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2006, January 1, 2007, January 1, 2009, July 1, 2010, and January 1, 2015.)

(e) Procedures—adoption

(1) The court must follow the procedures in section 366.24 or 366.26, as appropriate.

(2) An order of the court terminating parental rights, ordering adoption under section 366.26 or, in the case of an Indian child, ordering tribal customary adoption under section 366.24, is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. The order may not be set aside or modified by the court, except as provided in section 366.26(i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

(Subd (e) amended effective January 1, 2017; adopted as subd (d); previously relettered as subd (e) effective January 1, 1992, as subd (f) effective January 1, 2005, and as subd (e) effective January 1, 2010; previously amended effective July 1, 1992, January 1, 1995, July 1, 2002, January 1, 2006, January 1, 2007, July 1, 2010, and January 1, 2015.)

(f) Procedures—legal guardianship

The proceedings for appointment of a legal guardian for a dependent child of the juvenile court must be in the juvenile court as provided in rule 5.735.

(Subd (f) relettered effective January 1, 2010; repealed and adopted as subd (e); relettered as subd (f) effective January 1, 1992 and as subd (g) effective January 1, 2005; previously amended effective July 1, 1997, July 1, 2002, and January 1, 2007.)

(g) Purpose of termination of parental rights

The purpose of termination of parental rights is to free the 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 relinquished custody of the child to the county welfare department. The rights of all parents—whether natural, presumed, biological, alleged, or unknown—must be terminated in order to free the child for adoption.

(Subd (g) amended effective January 1, 2015; adopted as subd (g) effective July 1, 1997; previously amended and relettered as subd (h) effective January 1, 2005; previously amended effective July 1, 2002; previously relettered as subd (g) effective January 1, 2010.)

(h) Advisement of appeal rights

The court must advise all parties of their appeal rights as provided in rule 5.585 and section 366.26(*1*).

(Subd (h) relettered effective January 1, 2010; repealed and adopted as subd (f); previously relettered as subd (g) effective January 1, 1992; amended and relettered as subd (h) effective July 1, 1997; relettered as subd (i) effective January 1, 2005; previously amended effective July 1, 2002, January 1, 2006, and January 1, 2007.)

Rule 5.725 amended effective January 1, 2017; repealed and adopted as rule 1463 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1992, January 1, 1994, July 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2005, January 1, 2006, January 1, 2009, January 1, 2010, July 1, 2010, and January 1, 2015.

Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)

(a) Request procedure

A dependent child's caregiver may be designated as a prospective adoptive parent. The court may make the designation on its own motion or on a request by a caregiver, the child, a social worker, the child's identified Indian tribe, or the attorney for any of these parties.

(1) A request for designation as a prospective adoptive parent may be made at a hearing where parental rights are terminated or a plan of tribal customary adoption is ordered or thereafter, whether or not the child's removal from the home of the prospective adoptive parent is at issue.

(2) A request may be made orally.

(3) If a request for prospective adoptive parent designation is made in writing, it must be made on *Request for Prospective Adoptive Parent Designation* (form JV-321).

(4) The address and telephone number of the caregiver and the child may be kept confidential by filing *Confidential Information—Prospective Adoptive Parent* (form JV-322), with form JV-321. Form JV-322 must be kept in the court file under seal, and only the court, the child's attorney, the agency, and the child's CASA volunteer may have access to this information.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007, and January 1, 2008.)

(b) Facilitation steps

Steps to facilitate the adoption process include those listed in section 366.26(n)(2) and, in the case of an Indian child when tribal customary adoption has been identified as the child's permanent plan, the child's identified Indian tribe has designated the caregiver as the prospective adoptive parent.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(c) Hearing on request for prospective adoptive parent designation

(1) The court must determine whether the caregiver meets the criteria in section 366.26(n)(1).

(2) If the court finds that the caregiver does not meet the criteria in section 366.26(n)(1), the court may deny the request without a hearing.

(3) If the court finds that the caregiver meets the criteria in section 366.26(n)(1), the court must set a hearing as set forth in (4) below.

(4) If it appears to the court that the request for designation as a prospective adoptive parent will be contested, or if the court wants to receive further evidence on the request, the court must set a hearing.

(A) If the request for designation is made at the same time a petition is filed to object to removal of the child from the caregiver's home, the court must set a hearing as follows:

(i) The hearing must be set as soon as possible and not later than five court days after the petition objecting to removal is filed with the court.

(ii) If the court for good cause cannot set the matter for hearing five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible.

(iii) The matter may be set for hearing more than five court days after the petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(B) If the request for designation is made before the agency serves notice of a proposed removal or before an emergency removal has occurred, the

court must set a hearing within 30 calendar days after the request for designation is made.

(5) If all parties stipulate to the designation of the caregiver as a prospective adoptive parent, the court may order the designation without a hearing.

(Subd (c) amended effective January 1, 2017.)

(d) Notice of designation hearing

After the court has ordered a hearing on a request for prospective-adoptive-parent designation, notice of the hearing must be as described below.

(1) The following participants must be noticed:

(A) The adoption agency;

(B) The current caregiver,

(C) The child's attorney;

(D) The child, if the child is 10 years of age or older;

(E) The child's identified Indian tribe if any;

(F) The child's Indian custodian if any; and

(G) The child's CASA program if any.

((2) If the request for designation is made at the same time as a request for hearing on a proposed or emergency removal, notice of the designation hearing must be provided with notice of the hearing on proposed removal, as stated in rule 5.727(f).

(3) If the request for designation is made before the agency serves notice of a proposed removal or before an emergency removal occurred, notice must be as follows:

(A) Service of the notice must be either by first-class mail sent at least 15 calendar days before the hearing date to the last known address of the person to be noticed, or by personal service on the person at least 10 calendar days before the hearing.

(B) *Prospective Adoptive Parent Designation Order* (form JV-327) must be used to provide notice of a hearing on the request for prospective adoptive parent designation.

(C) The clerk must provide notice of the hearing to the participants listed in (1) above, if the court, caregiver, or child requested the hearing.

(D) The child's attorney must provide notice of the hearing to the participants listed in (1) above, if the child's attorney requested the hearing.

(E) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the request for prospective adoptive parent designation.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(e) Termination of designation

If the prospective adoptive parent no longer meets the criteria in section 366.26(n)(1), a request to vacate the order designating the caregiver as a prospective adoptive parent may be filed under section 388 and rule 5.570.

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(f) Confidentiality

If the telephone or address of the caregiver or the child is confidential, all forms must be kept in the court file under seal. Only the court, the child's attorney, the agency, and the child's CASA volunteer may have access to this information.

Rule 5.726 amended effective January 1, 2017; adopted as rule 1463.1 effective July 1, 2006; previously amended and renumbered as rule 5.726 effective January 1, 2007; previously amended effective January 1, 2008, and July 1, 2010.

Rule 5.727. Proposed removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent

child from a prospective adoptive parent or from a caregiver who may meet the criteria for designation as a prospective adoptive parent in section 366.26(n)(1). This rule does not apply if the caregiver requests the child's removal.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(b) Participants to be served with notice

Before removing a child from the home of a prospective adoptive parent as defined in section 366.26(n)(1) or from the home of a caregiver who may meet the criteria of a prospective adoptive parent in section 366.26(n)(1), and as soon as possible after a decision is made to remove the child, the agency must notify the following participants of the proposed removal:

(1) The court;

(2) The current caregiver, if that caregiver either is a designated prospective adoptive parent or, on the date of service of the notice, meets the criteria in section 366.26(n)(1);

(3) The child's attorney;

(4) The child, if the child is 10 years of age or older;

(5) The child's identified Indian tribe if any;

(6) The child's Indian custodian if any; and

(7) The child's CASA program if any.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(c) Form of notice

DSS or the agency must provide notice on *Notice of Intent to Remove Child* (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and *Request for Prospective Adoptive Parent Designation* (form JV-321) must also be provided to all participants listed in (b) except the court.

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Service of notice

DSS or the agency must serve notice of its intent to remove a child as follows:

(1) DSS or the agency must serve notice either by first-class mail, sent to the last known address of the person to be noticed, or by personal service.

(2) If service is by first-class mail, service is completed and time to respond is extended by five calendar days.

(3) Notice to the child's identified Indian tribe and Indian custodian must comply with the requirements of section 224.2.

(4) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, January 1, 2008, and January 1, 2011.)

(e) Objection to proposed removal

Each participant who receives notice under (b) may object to the proposed removal of the child and may request a hearing.

(1) A request for hearing on the proposed removal must be made on *Objection to Removal* (form JV-325).

(2) A request for hearing on the proposed removal must be made within five court or seven calendar days from the date of notification, whichever is longer. If service of the notification is by mail, time to request a hearing is extended by five calendar days.

(3) The court must set a hearing as follows:

(A) The hearing must be set as soon as possible and not later than five court days after the objection is filed with the court.

(B) If the court for good cause is unable to set the matter for hearing five court days after the petition is filed, the court must set the matter for hearing as soon as possible.

(C) The matter may be set for hearing more than five court days after the objection is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(f) Notice of hearing on proposed removal

After the court has ordered a hearing on a proposed removal, notice of the hearing must be as follows:

(1) The clerk must provide notice of the hearing to the agency and the participants listed in (b) above, if the court, caregiver, or child requested the hearing.

(2) The child's attorney must provide notice of the hearing to the agency and the participants listed in (b) above, if the child's attorney requested the hearing.

(3) Notice must be by personal service or by telephone. Notice by personal service must include a copy of the completed forms *Notice of Intent to Remove Child* (form JV-323) and *Objection to Removal* (form JV-325). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-323 and JV-325.

(4) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(g) Burden of proof

At a hearing on an intent to remove the child, the agency intending to remove the child must prove by a preponderance of the evidence that the proposed removal is in the best interest of the child.

(h) Confidentiality

If the telephone or address of the caregiver or the child is confidential, all forms must be kept in the court file under seal. Only the court, the child's attorney, the agency, and the child's CASA volunteer may have access to this information.

(i) Appeal

If the court order made after a hearing on an intent to remove a child is appealed, the appeal must be brought as a petition for writ review under rules 8.454 and 8.456.

(Subd (i) amended effective January 1, 2017; previously amended effective January 1, 2007.)

Rule 5.727 amended effective January 1, 2017; adopted as rule 1463.3 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, July 1, 2010, and January 1, 2011.

Rule 5.728. Emergency removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from the home of a prospective adoptive parent or a caregiver who may meet the criteria for designation as a prospective adoptive parent in section 366.26(n)(1) when the DSS or the licensed adoption agency has determined a removal must occur immediately due to a risk of physical or emotional harm. This rule does not apply if the child is removed at the request of the caregiver.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(b) Participants to be noticed

After removing a child from the home of a prospective adoptive parent, or from the home of a caregiver who may meet the criteria of a prospective adoptive parent in section 366.26(n)(1), because of risk of physical or emotional harm, the agency must notify the following participants of the emergency removal:

(1) The court;

(2) The caregiver, who is a prospective adoptive parent or who, on the date of service of the notice, may meet the criteria in section 366.26(n)(1);

(3) The child's attorney;

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

(5) The child's identified Indian tribe if any;

(6) The child's Indian custodian if any; and

(7) The child's CASA program if any.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(c) Form and service of notice

Notice of Emergency Removal (form JV-324) must be used to provide notice of an emergency removal, as described below.

(1) The agency must provide notice of the emergency removal as soon as possible but no later than two court days after the removal.

(2) Notice must be either by telephone or by personal service of the form.

(3) Telephone notice must include the reasons for removal as indicated on the form, and notice of the right to object to the removal.

(4) Whenever possible, the agency, at the time of the removal, must give a blank copy of *Request for Prospective Adoptive Parent Designation* (form JV-321) and a blank copy of *Objection to Removal* (form JV-325) to the caregiver and, if the child is 10 years of age or older, to the child.

(5) Notice to the court must be served by filing *Notice of Emergency Removal* (form JV-324) and *Proof of Notice* (form JV-326) with the court.

(6) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Objection to emergency removal

Each participant who receives notice under (b) may object to the removal of the child and may request a hearing.

(1) A request for hearing on the emergency removal must be made on *Objection to Removal* (form JV-325).

(2) The court must set a hearing as follows:

(A) The hearing must be set as soon as possible and not later than five court days after the petition objecting to removal is filed with the court.

(B) If the court for good cause cannot set the matter for hearing within five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible.

(C) The matter may be set for hearing more than five court days after the petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(e) Notice of hearing on emergency removal

After the court has ordered a hearing on an emergency removal, notice of the hearing must be as follows:

(1) The clerk must provide notice of the hearing to the agency and the participants listed in (b) above, if the court, caregiver, or child requested the hearing.

(2) The child's attorney must provide notice of the hearing to the agency and the participants listed in (b) above, if the child's attorney requested the hearing.

(3) Notice must be by personal service or by telephone. Notice by personal service must include a copy of the completed *Notice of Emergency Removal* (form JV-324). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324 and JV-325.

(4) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the emergency removal.

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(f) Burden of proof

At a hearing on an emergency removal, the agency that removed the child must prove by a preponderance of the evidence that the removal is in the best interest of the child.

(g) Confidentiality

If the telephone or address of the caregiver or the child is confidential, all forms must be kept in the court file under seal. Only the court, the child's attorney, the agency, and the child's CASA volunteer and program may have access to this information.

Rule 5.728 amended effective January 1, 2017; adopted as rule 1463.5 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, and July 1, 2010.

Rule 5.730. Adoption

(a) Procedures—adoption

(1) The petition for the adoption of a dependent child who has been freed for adoption may be filed in the juvenile court with jurisdiction over the dependency.

(2) All adoption petitions must be completed on *Adoption Request* (form ADOPT-200) and must be verified. In addition, the petitioner must complete *Adoption Agreement* (form ADOPT-210) and *Adoption Order* (form ADOPT-215).

(3) A petitioner seeking to adopt an Indian child must also complete *Adoption of Indian Child* (form ADOPT-220). If applicable, *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) may be filed.

(4) The clerk must open a confidential adoption file for each child and this file must be separate and apart from the dependency file, with an adoption case number different from the dependency case number.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1996, January 1, 1999, and January 1, 2004.)

(b) Notice

The clerk of the court must give notice of the adoption hearing to:

(1) Any attorney of record for the child;

(2) Any CASA volunteer;

(3) The child welfare agency;

(4) The tribe of an Indian child; and

(5) The California Department of Social Services. The notice to the California Department of Social Services must include a copy of the completed *Adoption Request* (form ADOPT-200) and a copy of any adoptive placement agreement or agency joinder filed in the case.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(c) Hearing

If the petition for adoption is filed in the juvenile court, the proceeding for adoption must be heard in juvenile court once appellate rights have been exhausted. Each petitioner and the child must be present at the hearing. The hearing may be heard by a referee if the referee is acting as a temporary judge.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1999, and January 1, 2004.)

(d) Record

The record must reflect that the court has read and considered the assessment prepared for the hearing held under section 366.26 and as required by section 366.22(b), the report of any CASA volunteer, and any other reports or documents admitted into evidence.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(e) Assessment

The preparer of the assessment may be called and examined by any party to the adoption proceeding.

(f) Consent

(1) At the hearing, each adoptive parent must execute *Adoption Agreement* (form ADOPT-210) in the presence of and with the acknowledgment of the court.

(2) If the child to be adopted is 12 years of age or older, he or she must also execute *Adoption Agreement* (form ADOPT-210), except in the case of a tribal customary adoption.

(Subd (f) amended effective July 1, 2010; previously amended effective January 1, 1999, January 1, 2004, and January 1, 2007.)

(g) Dismissal of jurisdiction

If the petition for adoption is granted, the juvenile court must dismiss the dependency, terminate jurisdiction over the child, and vacate any previously set review hearing dates. A completed *Termination of Dependency (Juvenile)* (form JV-364) must be filed in the child's juvenile dependency file.

(Subd (g) amended January 1, 2007; previously amended effective January 1, 1999, and January 1, 2004.)

Rule 5.730 amended effective July 1, 2010; adopted as rule 1464 effective July 1, 1995; previously amended effective January 1, 1996, January 1, 1999, and January 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Family Code section 8600.5 exempts tribal customary adoption from various provisions of the Family Code applicable to adoptions generally, including section 8602, which requires the consent of a child over the age of 12 to an adoption. However, under Welfare and Institutions Code section 366.24(c)(7), "[t]he child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption and the child's best interest." Under Welfare and Institutions Code section 317(e), for all children over 4 years of age, the attorney for the child must determine the child's wishes and advise the court of the child's wishes. Welfare and Institutions Code section 361.31(e) provides that "[w]here appropriate, the placement preference of the Indian child, when of sufficient age, . . . shall be considered." This is consistent with Guideline F-3 of the *Guidelines for State Courts; Indian Child Custody Proceedings* issued by the Bureau of Indian Affairs on November 26, 1979, which recognizes that the request and wishes of a child of sufficient age are important in making an effective placement. The committee concludes, therefore, that while the consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of a child are still an important and appropriate factor for the court to consider and for children's

counsel to ascertain and present to the court when determining whether tribal customary adoption is the appropriate permanent plan for an Indian child.

Rule 5.735. Legal guardianship

(a) Proceedings in juvenile court (§ 366.26(d))

The proceedings for the appointment of a legal guardian for a dependent child must be in the juvenile court. The request for appointment of a guardian must be included in the social study report prepared by the county welfare department or in the assessment prepared for the hearing under section 366.26. Neither a separate petition nor a separate hearing is required.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1997, July 1, 1999, and January 1, 2006.)

(b) Notice; hearing

Notice for the guardianship hearing must be given under section 294, and the hearing must proceed under section 366.26.

(Subd (b) amended effective January 1, 2006; previously amended effective July 1, 1999.)

(c) Findings and orders

(1) If the court finds that legal guardianship is the appropriate permanent plan, the court must appoint the guardian and order the clerk to issue letters of guardianship, which will not be subject to the confidentiality protections described in section 827.

(2) The court must issue orders regarding visitation of the child by a parent or former guardian, unless the court finds that visitation would be detrimental to the physical or emotional well-being of the child.

(3) The court may issue orders regarding visitation of the child by a relative.

(4) On appointment of a guardian under section 366.26, the court may terminate dependency.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (d); previously amended effective July 1, 1999, and January 1, 2006.)

(d) Notification of appeal rights

The court must advise all parties of their appeal rights as provided in rule 5.590.

(Subd (d) amended and relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2006, and January 1, 2007.)

Rule 5.735 amended effective January 1, 2017; adopted as rule 1464 effective January 1, 1991; renumbered as rule 1465 effective July 1, 1995; previously amended effective July 1, 1999, and January 1, 2006; previously amended and renumbered as rule 5.735 effective January 1, 2007.

Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 16501.1)

(a) Review hearings—adoption and guardianship

Following an order for termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, or a plan for the establishment of a guardianship under section 366.26, the court must retain jurisdiction and conduct review hearings at least every 6 months to ensure the expeditious completion of the adoption or guardianship.

(1) At the review hearing, the court must consider the report of the petitioner required by section 366.3(g), the report of any CASA volunteer, the case plan submitted for this hearing, and any report submitted by the child's caregiver under section 366.21(d); inquire about the progress being made to provide a permanent home for the child; consider the safety of the child; and enter findings as required by section 366.3(e).

(2) The court or administrative review panel must consider the case plan and make the findings and determinations concerning the child in rule 5.708(e).

(3) When adoption is granted, the court must terminate its jurisdiction.

(4) When legal guardianship is granted, the court may continue dependency jurisdiction if it is in the best interest of the child, or the court may terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship.

(5) Notice of the hearing must be given as provided in section 295.

(6) If the child is not placed for adoption, the court or administrative review panel must find as follows:

(A) Whether the agency has made diligent efforts to locate an appropriate relative. If the court or administrative review panel finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to do so.

(B) Whether each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource. If the court or administrative review panel finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to do so.

(Subd (a) amended effective January 1, 2017; repealed and adopted effective January 1, 1991; previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, January 1, 2005, January 1, 2006, January 1, 2007, July 1, 2010, and January 1, 2015.)

(b) Review hearings—relative care or foster care

Following the establishment of a plan other than those provided for in (a), review hearings must be conducted at least every 6 months by the court or by a local administrative review panel.

(1) At the review hearing, the court or administrative review panel must consider the report of the petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, and any report submitted by the child's caregiver under section 366.21(d); inquire about the progress being made to provide a permanent home for the child; consider the safety of the child; and enter findings as required by section 366.3(e).

(2) The court or administrative review panel must consider the case plan submitted for this hearing and make the findings and determinations concerning the child in rule 5.708(e).

(3) If the child is not placed for adoption, the court or administrative review panel must find as follows:

(A) Whether the agency has made diligent efforts to locate an appropriate relative. If the court or administrative review panel finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to do so.

(B) Whether each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement

resource. If the court or administrative review panel finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to do so.

(4) No less frequently than once every 12 months, the court must conduct a review of the previously ordered permanent plan to consider whether the plan continues to be appropriate for the child. The review of the permanent plan may be combined with the 6-month review.

(5) If circumstances have changed since the permanent plan was ordered, the court may order a new permanent plan under section 366.26 at any subsequent hearing, or any party may seek a new permanent plan by a motion filed under section 388 and rule 5.570.

(6) Notice of the hearing must be given as provided in section 295.

(7) The court must continue the child in foster care unless the parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order reunification services for a period not to exceed 6 months.

(Subd (b) amended effective January 1, 2017; repealed and adopted effective January 1, 1991; previously amended effective January 1, 1992, January 1, 1994, January 1, 1998, January 1, 1999, July 1, 1999, January 1, 2005, January 1, 2006, and January 1, 2007.)

(c) Hearing on petition to terminate guardianship or modify guardianship orders

A petition to terminate a guardianship established by the juvenile court, to appoint a successor guardian, or to modify or supplement orders concerning a guardianship must be filed in the juvenile court. The procedures described in rule 5.570 must be followed, and *Request to Change Court Order* (form JV-180) must be used.

(1) Proceedings on a petition to terminate a guardianship established under section 366.26 must be heard in the juvenile court. If dependency was terminated at the time of or subsequent to the appointment of the guardian, and dependency is later declared in another county, proceedings to terminate the guardianship may be held in the juvenile court with current dependency jurisdiction.

(2) Not less than 15 court days before the hearing date, the clerk must cause notice of the hearing to be given to the department of social services; the guardian; the child, if 10 years or older; parents whose parental rights have

not been terminated; the court that established the guardianship, if in another county; and counsel of record for those entitled to notice.

(3) At the hearing on the petition to terminate the guardianship, the court may do one of the following:

(A) Deny the petition to terminate guardianship;

(B) Deny the petition and request the county welfare department to provide services to the guardian and the ward for the purpose of maintaining the guardianship, consistent with section 301; or

(C) Grant the petition to terminate the guardianship.

(4) If the petition is granted and the court continues or resumes dependency, the court must order that a new plan be developed to provide stability and permanency to the child. Unless the court has already scheduled a hearing to review the child's status, the court must conduct a hearing within 60 days. Parents whose parental rights have not been terminated must be notified of the hearing on the new plan. The court may consider further efforts at reunification only if the parent proves, by a preponderance of the evidence, that the efforts would be the best alternative for the child.

(5) If the court terminates a guardianship established in another county, the clerk of the county of current dependency jurisdiction must transmit a certified copy of the order terminating guardianship within 15 days to the court that established the original guardianship.

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 1993, July 1, 1994, July 1, 1999, and January 1, 2007.)

Rule 5.740 amended effective January 1, 2017; adopted as rule 1465 effective January 1, 1991; previously renumbered as rule 1466 effective July 1, 1995; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, July 1, 1994, January 1, 1998, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2005, January 1, 2006, July 1, 2010, January 1, 2012, and January 1, 2015.

Chapter 13. Cases Petitioned Under Sections 601 and 602

Chapter 13 renumbered effective January 1, 2008; adopted as chapter 11 effective July 1, 2002; previously amended and renumbered as chapter 14 effective January 1, 2007.

Article 1. Initial Appearance

Rule 5.752. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing
Rule 5.754. Commencement of initial hearing—explanation, advisement, admission
Rule 5.756. Conduct of detention hearing
Rule 5.758. Requirements for detention; prima facie case
Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders
Rule 5.762. Detention rehearings
Rule 5.764. Prima facie hearings

Rule 5.752. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing

(a) Child not detained; filing petition, setting hearing

If the child is not taken into custody and the authorized petitioner (district attorney or probation officer) determines that a petition or notice of probation violation concerning the child should be filed, the petition or notice must be filed with the clerk of the juvenile court as soon as possible. The clerk must set an initial hearing on the petition within 15 court days.

(Subd (a) amended effective January 1, 2007.)

(b) Time limit on custody; filing petition (§§ 604, 631, 631.1)

A child must be released from custody within 48 hours, excluding noncourt days, after first being taken into custody unless a petition or notice of probation violation has been filed either within that time or before the time the child was first taken into custody.

(Subd (b) amended effective January 1, 2007.)

(c) Time limit on custody—willful misrepresentation of age (§ 631.1)

If the child willfully misrepresents the child's age to be 18 years or older, and this misrepresentation causes an unavoidable delay in investigation that prevents the filing of a petition or of a criminal complaint within 48 hours, excluding noncourt days, after the child has been taken into custody, the child must be released unless a petition or complaint has been filed within 48 hours, excluding noncourt days, from the time the true age is determined.

(Subd (c) amended effective January 1, 2007.)

(d) Time limit on custody—certification of child detained in custody (§ 604)

A child must be released from custody within 48 hours, excluding noncourt days, after certification to juvenile court under rules 4.116 and 5.516(d) unless a petition has been filed.

(Subd (d) amended effective January 1, 2007.)

(e) Time limit for detention hearing—warrant or nonward charged with nonviolent misdemeanor (§ 632)

A detention hearing must be set and commenced as soon as possible, but no later than 48 hours, excluding noncourt days, after the child has been taken into custody, if:

(1) The child has been taken into custody on a warrant or by the authority of the probation officer; or

(2) The child is not on probation or parole and is alleged to have committed a misdemeanor not involving violence, the threat of violence, or the possession or use of a weapon.

(Subd (e) amended effective January 1, 2007.)

(f) Time limit for detention hearing—felony, violent misdemeanor, or ward (§ 632)

A detention hearing must be set and commenced as soon as possible, but no later than the expiration of the next court day after the petition or notice of probation violation has been filed, if:

(1) The child is alleged to have committed a felony;

(2) The child is alleged to have committed a misdemeanor involving violence, the threat of violence, or the possession or use of a weapon; or

(3) The child is a ward currently on probation or parole.

(Subd (f) amended effective January 1, 2007.)

(g) Time limit for hearing—arrival at detention facility (§ 632)

A detention hearing must be set and commenced as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a detention facility within the county if:

(1) The child was taken into custody in another county and transported in custody to the requesting county;

(2) The child was ordered transported in custody when transferred by the juvenile court of another county under rule 5.610; or

(3) The child is a ward temporarily placed in a secure facility pending a change of placement.

(Subd (g) amended effective January 1, 2007.)

(h) Time limit for hearing—violation of home supervision (§§ 628.1, 636)

A child taken into custody for a violation of a written condition of home supervision, which the child has promised in writing to obey under section 628.1 or 636, must be brought before the court for a detention hearing as soon as possible, but no later than 48 hours, excluding noncourt days, after the child was taken into custody.

(Subd (h) amended effective January 1, 2007.)

(i) Time limits—remedy for not observing (§§ 632, 641)

If the detention hearing is not commenced within the time limits, the child must be released immediately, or, if the child is a ward under section 602 awaiting a change of placement, the child must be placed in a suitable, nonsecure facility.

(Subd (i) amended effective January 1, 2007.)

Rule 5.752 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1471 effective January 1, 1998.

Rule 5.754. Commencement of initial hearing—explanation, advisement, admission

(a) Explanation of proceedings (§ 633)

At the beginning of the initial hearing, whether the child is detained or not detained, the court must give the advisement required by rule 5.534 and must inform the child and each parent and each guardian present of the following:

(1) The contents of the petition;

(2) The nature and possible consequences of juvenile court proceedings; and

(3) If the child has been taken into custody, the reasons for the initial detention and the purpose and scope of the initial hearing.

(Subd (a) amended effective January 1, 2007.)

(b) Admission of allegations; no contest plea

If the child wishes to admit the allegations of the petition or enter a no contest plea at the initial hearing, the court may accept the admission or plea of no contest and must proceed according to rule 5.778.

(Subd (b) amended effective January 1, 2007.)

Rule 5.754 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1472 effective January 1, 1998.

Rule 5.756. Conduct of detention hearing

(a) Right to inspect (§ 827)

The child, the parent, the guardian, and counsel are permitted to inspect and receive copies of police reports, probation reports, and any other documents filed with the court or made available to the probation officer in preparing the probation recommendations.

(Subd (a) amended effective January 1, 2007.)

(b) Examination by court (§ 635)

Subject to the child's privilege against self-incrimination, the court may examine the child, the parent, the guardian, and any other person present who has knowledge or information relevant to the issue of detention and must consider any relevant evidence that the child, the parent, the guardian, or counsel presents.

(Subd (b) amended effective January 1, 2007.)

(c) Evidence required

The court may base its findings and orders solely on written police reports, probation reports, or other documents.

Rule 5.756 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1473 effective January 1, 1998.

Rule 5.758. Requirements for detention; prima facie case

(a) Requirements for detention (§§ 635, 636)

The court must release the child unless the court finds that:

(1) A prima facie showing has been made that the child is described by section 601 or 602;

(2) Continuance in the home is contrary to the child's welfare; and

(3) One or more of the grounds for detention stated in rule 5.760 exist. However, except as provided in sections 636.2 and 207, no child taken into custody solely on the basis of being a person described in section 601 may be detained in juvenile hall or any other secure facility.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Detention in adult facility

A child must not be detained in a jail or lockup used for the confinement of adults, except as provided in section 207.1.

(Subd (b) amended effective July 1, 2002.)

Rule 5.758 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1474 effective January 1, 1998; previously amended effective July 1, 2002.

Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders

(a) Conduct of detention hearing (§§ 635, 636)

The court must consider the written report of the probation officer and any other evidence and may examine the child, any parent or guardian, or any other person with relevant knowledge of the child.

(Subd (a) adopted effective January 1, 2007.)

(b) Written detention report (§§ 635, 636)

If the probation officer has reason to believe that the child is at risk of entering foster care placement, the probation officer must submit a written report to the court that includes the following:

(1) The reasons the child has been removed;

(2) Any prior referral for abuse or neglect of the child and any prior filing of a petition regarding the child under section 300;

(3) The need, if any, for continued detention;

(4) Available services to facilitate the return of the child;

(5) Whether there are any relatives able and willing to provide effective care and control over the child;

(6) Documentation that continuance in the home is contrary to the child's welfare; and

(7) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from the home and documentation of the nature and results of the services provided.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective January 1, 2001; previously amended effective July 1, 2002.)

(c) Grounds for detention (§§ 625.3, 635, 636)

(1) The child must be released unless the court finds that continuance in the home of the parent or legal guardian is contrary to the child's welfare, and one or more of the following grounds for detention exist:

(A) The child has violated an order of the court;

(B) The child has escaped from a commitment of the court;

(C) The child is likely to flee the jurisdiction of the court;

(D) It is a matter of immediate and urgent necessity for the protection of the child; or

(E) It is reasonably necessary for the protection of the person or property of another.

(2) If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child.

(3) The court may order the child placed on home supervision under the conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a suitable place designated by the court.

(4) If the court orders the release of a child who is a dependent of the court under section 300, the court must order the child welfare services department either to ensure that the child's current caregiver takes physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement.

(Subd (c) amended effective January 1, 2016; adopted as subd (a); previously amended effective July 1, 2002;previously amended and relettered as subd (b) effective January 1, 2001, and as subd (c) effective January 1, 2007.)

(d) Required determinations before detention

Before detaining the child, the court must determine whether continuance in the home of the parent or legal guardian is contrary to the child's welfare and whether there are available services that would prevent the need for further detention. The court must make these determinations on a case-by-case basis and must state the evidence relied on in reaching its decision.

(1) If the court determines that the child can be returned to the home of the parent or legal guardian through the provision of services, the court must release the child to the parent or guardian and order that the probation department provide the required services.

(2) If the child cannot be returned to the home of the parent or legal guardian, the court must state the facts on which the detention is based.

(Subd (d) amended effective January 1, 2016; adopted as subd (c) effective July 1, 2002; previously amended and relettered as subd (d) effective January 1, 2007.)

(e) Required findings to support detention (§ 636)

If the court orders the child detained, the court must make the following findings on the record and in the written order. The court must reference the probation officer's report or other evidence relied on to make its determinations:

(1) Continuance in the home of the parent or guardian is contrary to the child's welfare;

(2) Temporary placement and care is the responsibility of the probation officer pending disposition or further order of the court; and

(3) Reasonable efforts have been made to prevent or eliminate the need for removal of the child, or reasonable efforts were not made.

(Subd (e) amended effective January 1, 2016; adopted as subd (b); previously relettered as subd (c) effective January 1, 2001; previously amended and relettered as subd (d) effective July 1, 2002, and as subd (e) effective January 1, 2007.)

(f) Required orders to support detention (§ 636)

If the court orders the child detained, the court must make the following additional orders:

(1) As soon as possible, the probation officer must provide services that will enable the child's parent or legal guardian to obtain such assistance as may be needed to effectively provide the care and control necessary for the child to return home; and

(2) The child's placement and care must be the responsibility of the probation department pending disposition or further order of the court.

(Subd (f) relettered effective January 1, 2007; adopted as subd (e) effective July 1, 2002.)

(g) Factors—violation of court order

Regarding ground for detention (c)(1), the court must consider:

(1) The specificity of the court order alleged to have been violated;

(2) The nature and circumstances of the alleged violation;

(3) The severity and gravity of the alleged violation;

(4) Whether the alleged violation endangered the child or others;

(5) The prior history of the child as it relates to any failure to obey orders or directives of the court or probation officer;

(6) Whether there are means to ensure the child's presence at any scheduled court hearing without detaining the child;

(7) The underlying conduct or offense that brought the child before the juvenile court; and

(8) The likelihood that if the petition is sustained, the child will be ordered removed from the custody of the parent or guardian at disposition.

(Subd (g) amended and relettered effective January 1, 2007; adopted as subd (c); previously relettered as subd (d) effective January 1, 2001; previously amended and relettered as subd (f) effective July 1, 2002.)

(h) Factors—escape from commitment

Regarding ground for detention (c)(2), the court must consider whether or not the child:

(1) Was committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice; or a county juvenile home, ranch, camp, forestry camp, or juvenile hall; and

(2) Escaped from the facility or the lawful custody of any officer or person in which the child was placed during commitment.

(Subd (h) amended and relettered effective January 1, 2007; adopted as subd (d); previously relettered as subd (e) effective January 1, 2001; amended and relettered as subd (g) effective July 1, 2002; previously amended effective January 1, 2006.)

(i) Factors—likely to flee

Regarding ground for detention (c)(3), the court must consider whether or not:

(1) The child has previously fled the jurisdiction of the court or failed to appear in court as ordered;

(2) There are means to ensure the child's presence at any scheduled court hearing without detaining the child;

(3) The child promises to appear at any scheduled court hearing;

(4) The child has a prior history of failure to obey orders or directions of the court or the probation officer;

(5) The child is a resident of the county;

(6) The nature and circumstances of the alleged conduct or offense make it appear likely that the child would flee to avoid the jurisdiction of the court;

(7) The child's home situation is so unstable as to make it appear likely that the child would flee to avoid the jurisdiction of the court; and

(8) Absent a danger to the child, the child would be released on modest bail or own recognizance were the child appearing as an adult in adult court.

(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (e); previously relettered as subd (f) effective January 1, 2001; previously amended and relettered as subd (h) effective July 1, 2002.)

(j) Factors—protection of child

Regarding ground for detention (c)(4), the court must consider whether or not:

(1) There are means to ensure the care and protection of the child until the next scheduled court appearance;

(2) The child is addicted to or is in imminent danger from the use of a controlled substance or alcohol; and

(3) There exist other compelling circumstances that make detention reasonably necessary.

(Subd (j) amended and relettered effective January 1, 2007; adopted as subd (f); previously relettered as subd (g) effective January 1, 2001; previously amended and relettered as subd (i) effective July 1, 2002.)

(k) Factors—protection of person or property of another

Regarding ground for detention (c)(5), the court must consider whether or not:

(1) The alleged offense involved physical harm to the person or property of another;

(2) The prior history of the child reveals that the child has caused physical harm to the person or property of another or has posed a substantial threat to the person or property of another; and

(3) There exist other compelling circumstances that make detention reasonably necessary.

(Subd (k) amended and relettered effective January 1, 2007; adopted as subd (g); previously relettered as subd (h) effective January 1, 2001; previously amended and relettered as subd (j) effective July 1, 2002.)

(*l*) Restraining orders

As a condition of release or home supervision, the court may issue restraining orders as stated in rule 5.630 or orders restraining the child from any or all of the following:

(1) Molesting, attacking, striking, sexually assaulting, or battering, or from any contact whatsoever with an alleged victim or victim's family;

(2) Presence near or in a particular area or building; or

(3) Associating with or contacting in writing, by phone, or in person any adult or child alleged to have been a companion in the alleged offense.

(Subd (l) amended effective January 1, 2016; adopted as subd (i); previously relettered as subd (j) effective January 1, 2001; previously amended and relettered as subd (k) effective July 1, 2002, and as subd (l) effective January 1, 2007.)

Rule 5.760 amended effective January 1, 2016; repealed and adopted as rule 1475 effective January 1, 1998; previously amended effective January 1, 2001, July 1, 2002, and January 1, 2006; previously amended and renumbered as rule 5.760 effective January 1, 2007.

Rule 5.762. Detention rehearings

(a) No parent or guardian present and not noticed

If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing, the court must proceed under rules 5.752 5.760.

(Subd (a) amended effective January 1, 2007.)

(b) Parent or guardian noticed; parent or guardian not present (§ 637)

If the court determines that the parent or guardian has received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, a request from the parent or guardian for a detention rehearing must be denied, absent a finding that the failure was due to good cause.

(Subd (b) amended effective January 1, 2007.)

(c) Parent or guardian noticed; preparers available (§ 637)

If a parent or guardian received notice of the detention hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present at court or otherwise available for cross-examination, there is no right to a detention rehearing.

(Subd (c) amended effective January 1, 2007.)

Rule 5.762 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1476 effective January 1, 1998.

Rule 5.764. Prima facie hearings

(a) Hearing for further evidence; prima facie case (§ 637)

If the court orders the child detained, and the child or the child's attorney requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within three court days to consider evidence of the prima facie case.

(b) Continuance (§ 637)

If the court determines that a prima facie hearing cannot be held within three court days because of the unavailability of a witness, a reasonable continuance not to exceed five court days may be granted. If at the hearing petitioner fails to establish the prima facie case, the child must be released from custody.

Rule 5.764 adopted effective January 1, 2007.

Article 2. Fitness Hearings

Rule 5.766. General provisions
Rule 5.768. Report of probation officer
Rule 5.770. Conduct of fitness hearing under section 707(a)(1)
Rule 5.772. Conduct of fitness hearings under sections 707(a)(2) and 707(c)

Rule 5.766. General provisions

(a) Fitness hearing (§ 707)

A child who is the subject of a petition under section 602(a) and who was 14 years or older at the time of the alleged offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The prosecuting attorney may request a hearing to determine whether the child is a fit and proper subject to be dealt with under the juvenile court law, in one of the following circumstances:

(1) Under section 707(a)(1), the child was 16 years or older at the time of the alleged offense if the offense is not listed in section 707(b).

(2) Under section 707(a)(2), the child was 16 years or older at the time of the alleged felony offense not listed in section 707(b) and has been declared a ward of the court under section 602 on at least one prior occasion and:

(A) The child has previously been found to have committed two or more felony offenses; and

(B) The felony offenses in the previously sustained petitions were committed when the child was 14 years or older.

(3) Under section 707(c), the child was 14 years or older at the time of the alleged offense listed in section 707(b).

(Subd (a) amended effective January 1, 2001; previously amended January 1, 1996.)

(b) Notice (§ 707)

Notice of the fitness hearing must be given at least five judicial days before the fitness hearing.

(Subd (b) amended effective January 1, 2007.)

(c) Time of fitness hearing—rules 5.774, 5.776

The fitness hearing must be held and the court must rule on the issue of fitness before the jurisdiction hearing begins. Absent a continuance, the jurisdiction hearing must begin within the time limits under rule 5.774.

(Subd (c) amended effective January 1, 2007.)

Rule 5.766 amended and renumbered effective January 1, 2007; adopted as rule 1480 effective January 1, 1991; previously amended January 1, 1996, and January 1, 2001.

Rule 5.768. Report of probation officer

(a) Contents of report (§ 707)

The probation officer must investigate the issue of fitness and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether or not the child would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, including information regarding all of the criteria listed in rules 5.770 and 5.772. The report may also include information concerning:

(1) The social, family, and legal history of the child;

(2) Any statement the child chooses to make regarding the alleged offense;

(3) Any statement by a parent or guardian;

(4) If the child is or has been under the jurisdiction of the court, a statement by the social worker, probation officer, or Youth Authority parole agent who has supervised the child regarding the relative success or failure of any program of rehabilitation; and

(5) Any other information relevant to the determination of fitness.

(Subd (a) amended effective January 1, 2007.)

(b) Recommendation of probation officer (§§ 281, 707)

The probation officer must make a recommendation to the court as to whether the child is a fit and proper subject to be dealt with under the juvenile court law.

(Subd (b) amended effective January 1, 2007.)

(c) Copies furnished

The probation officer's report on the behavioral patterns and social history of the child must be furnished to the child, the parent or guardian, and all counsel at least 24 hours before commencement of the fitness hearing. A continuance of 24 hours must be granted on the request of any party who has not been furnished the probation officer's report in accordance with this rule.

(Subd (c) amended effective January 1, 2007.)

Rule 5.768 amended and renumbered effective January 1, 2007; adopted as rule 1481 effective January 1, 1991.

Rule 5.770. Conduct of fitness hearing under section 707(a)(1)

(a) Burden of proof (§ 707(a)(1))

In a fitness hearing under section 707(a)(1), the burden of proving that the child is unfit is on the petitioner, by a preponderance of the evidence.

(Subd (a) amended effective July 1, 2002; previously amended effective January 1, 1996, and January 1, 2001.)

(b) Criteria to consider (§ 707(a)(1))

Following receipt of the probation officer's report and any other relevant evidence, the court may find that the child is not a fit and proper subject to be dealt with under juvenile court law if the court finds:

(1) The child was 16 years or older at the time of the alleged offense; and

(2) The child would not be amenable to the care, treatment, and training program available through facilities of the juvenile court, based on an evaluation of all of the following criteria:

(A) The degree of criminal sophistication exhibited by the child;

(B) Whether the child can be rehabilitated before the expiration of jurisdiction;

(C) The child's previous delinquent history;

(D) The results of previous attempts by the court to rehabilitate the child; and

(E) The circumstances and gravity of the alleged offense.

(Subd (b) amended effective January 1, 2007; adopted as subd (b); previously amended and relettered as subd (c) effective January 1, 1996; previously amended and relettered effective January 1, 2001.)

(c) Findings under section 707(a)(1)

The findings must be stated in the order.

(1) *Finding of fitness*

The court may find the child to be fit and state that finding.

(2) *Finding of unfitness*

If the court determines the child is unfit, the court must find that:

(A) The child was 16 years or older at the time of the alleged offense; and

(B) The child would not be amenable to the care, treatment, and training program available through the juvenile court because of one or a combination of more than one of the criteria listed in (b)(2).

(Subd (c) amended effective January 1, 2007; adopted as subd (c); previously amended and relettered as subd (d) effective January 1, 1996; amended and relettered effective January 1, 2001; previously amended effective July 1, 2002.)

(d) Maintenance of juvenile court jurisdiction

If the court determines that one or more of the criteria listed in (b)(2) apply to the child, the court may nevertheless find that the child is amenable to the care, treatment, and training program available through the juvenile court and may find the child to be a fit and proper subject to be dealt with under juvenile court law.

(Subd (d) amended effective January 1, 2007; adopted as subd (e) effective January 1, 1996; previously amended and relettered effective January 1, 2001.)

(e) Extenuating circumstances

The court may consider extenuating or mitigating circumstances in the evaluation of each relevant criterion.

(Subd (e) relettered effective January 1, 2001; adopted as subd (f) effective January 1, 1996.)

(f) Procedure following findings

(1) If the court finds the child to be fit, the court must proceed to jurisdiction hearing under rule 5.774.

(2) If the court finds the child to be unfit, the court must make orders under section 707.1 relating to bail and to the appropriate facility for the custody of the child, or release on own recognizance pending prosecution. The court must dismiss the petition without prejudice.

(Subd (f) amended effective January 1, 2007; adopted as subd (d); previously relettered as subd (g) effective January 1, 1996, and as subd (f) effective January 1, 2001; previously amended effective July 1, 2002.)

(g) Continuance to seek review

If the prosecuting attorney informs the court orally or in writing that a review of a finding of fitness will be sought and requests a continuance of the jurisdiction hearing, the court must grant a continuance for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

(Subd (g) amended effective January 1, 2007; adopted as subd (e); previously relettered as subd (h) effective January 1, 1996, and as subd (g) effective January 1, 2001; previously amended effective July 1, 2002.)

(h) Subsequent role of judicial officer

Unless the child objects, the judicial officer who has conducted a fitness hearing may participate in any subsequent contested jurisdiction hearing relating to the same offense.

(Subd (h) amended and relettered effective January 1, 2001; adopted as subd (f); relettered as subd (i) effective January 1, 1996.)

(i) Review of fitness determination

An order that a child is or is not a fit and proper subject to be dealt with under the juvenile court law is not an appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge's order determining the child unfit, or denying an application for rehearing of the referee's determination of unfitness, must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the unfitness determination.

(Subd (i) amended effective July 1, 2002; adopted as subd (g); previously relettered as subd (j) effective January 1, 1996; amended and relettered effective 1, 2001.)

Rule 5.770 amended and renumbered effective January 1, 2007; adopted as rule 1482 effective; previously amended effective January 1, 1996, January 1, 2001, and July 1, 2002.

Rule 5.772. Conduct of fitness hearings under sections 707(a)(2) and 707(c)

(a) Presumption (§§ 707(a)(2), 707(c))

In a fitness hearing under section 707(a)(2) or 707(c), the child is presumed to be unfit, and the burden of rebutting the presumption is on the child, by a preponderance of the evidence.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1996, and January 1, 2001.)

(b) Prima facie showing

On the child's motion, the court must determine whether a prima facie showing has been made that the offense alleged is a felony or is specified in section 707(b).

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1996, and January 1, 2001.)

(c) Criteria to consider (§ 707(a)(2))

Following receipt of the probation officer's report and any other relevant evidence, the court must find that the child is not a fit and proper subject to be dealt with under the juvenile court law, unless the court finds:

(1) The child was under 16 years of age at the time of the alleged felony offense;

(2) The child had not been declared a ward at the time of the alleged offense or any time previously;

(3) The child has not previously been found to have committed two or more felony offenses;

(4) The prior felony offenses were committed before the child had reached the age of 14 years; or

(5) The child would be amenable to the care, treatment, and training program available through the juvenile court, based on evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the child;

(B) Whether the child can be rehabilitated before the expiration of jurisdiction;

(C) The child's previous delinquent history;

(D) The results of previous attempts by the court to rehabilitate the child; and

(E) The circumstances and gravity of the alleged offense.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1996, and January 1, 2001.)

(d) Findings under section 707(c)

Following receipt of the probation officer's report and any other relevant evidence, the court must find that the child is not a fit and proper subject to be dealt with under the juvenile court law, unless the court finds:

(1) The child was under 14 years of age at the time of the offense specified in section 707(b);

(2) The offense alleged is not listed in section 707(b); or

(3) The child would be amenable to the care, treatment, and training program available through the juvenile court, based on evaluation of each of the criteria described in (c)(5).

(Subd (d) amended effective January 1, 2007.)

(e) Extenuating circumstances

The court may consider extenuating or mitigating circumstances in the evaluation of each relevant criterion.

(Subd (e) amended and relettered effective January 1, 2001; adopted as subd (d) effective January 1, 1996.)

(f) Findings (§§ 707(a)(2), 707(c))

The findings must be stated in the order.

(1) *Finding of unfitness (§ 707 (a)(2))*

If the child has failed to rebut the presumption of unfitness, the court must find that:

(A) The child has previously been found to have committed two or more offenses listed in section 707(b) and was 14 years of age or older at the time of the felony offenses; and

(B) The child would not be amenable to the care, treatment, and training program available through the juvenile court because of one or a combination of more than one of the criteria in (c)(5).

(2) *Finding of unfitness (§ 707(c))*

If the child has failed to rebut the presumption of unfitness, the court must find that:

(A) The child was 14 years or older at the time of the alleged offense and the offense is listed in section 707(b); and

(B) The child would not be amenable to the care, treatment, and training program available through the juvenile court because of one or a combination of more than one of the criteria in (c)(5).

(3) *Finding of fitness (§§ 707(a)(2), 707(c))*

In order to find the child fit, the court must find that the child would be amenable to the care, treatment, and training program through the juvenile court on each and every criterion in (c)(5), and the court must state that finding of amenability under each and every criterion.

(Subd (f) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered as subd (e) effective January 1, 1996; previously relettered effective January 1, 2001.)

(g) Procedure following findings

(1) If the court finds the child to be unfit, the court must make orders under section 707.1 relating to bail, and to the appropriate facility for the custody of the child, or release on own recognizance pending prosecution. The court must dismiss the petition without prejudice.

(2) If the court finds the child to be fit, the court must proceed to jurisdiction hearing under rule 5.774.

(Subd (g) amended effective January 1, 2007; adopted as subd (e); previously relettered as subd (f) effective January 1, 1996, and as subd (g) effective January 1, 2001.)

(h) Continuance to seek review

If the prosecuting attorney informs the court orally or in writing that a review of a finding of fitness will be sought and requests a continuance of the jurisdiction hearing, the court must grant a continuance for not less than 2 judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

(Subd (h) amended effective January 1, 2009; adopted as subd (f); previously relettered as subd (g) effective January 1, 1996; previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2007.)

(i) Subsequent role of judicial officer

Unless the child objects, the judicial officer who has conducted a fitness hearing may participate in any subsequent contested jurisdiction hearing relating to the same offense.

(Subd (i) amended and relettered effective January 1, 2001; adopted as subd (g); relettered as subd (h) effective January 1, 1996.)

(j) Review of fitness determination

An order that a child is or is not a fit and proper subject to be dealt with under the juvenile court law is not an appealable order. Appellate review of the order is by extraordinary writ. Any petition for review of a judge's order determining the child to be unfit or denying an application for rehearing of the referee's determination of unfitness must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the unfitness determination.

(Subd (j) amended effective January 1, 2007; adopted as subd (h); previously relettered as subd (i) effective January 1, 1996, and as subd (j) effective January 1, 2001.)

Rule 5.772 amended effective January 1, 2009; adopted as rule 1483 effective January 1, 1991; previously amended effective January 1, 1996, and January 1, 2001; previously amended and renumbered effective January 1, 2007.

Article 3. Jurisdiction

Rule 5.774. Setting petition for hearing—detained and nondetained cases; waiver of hearing
Rule 5.776. Grounds for continuance of jurisdiction hearing
Rule 5.778. Commencement of hearing on section 601 or section 602 petition; right to counsel; advisement of trial rights; admission, no contest 291
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Rule 5.782. Continuance pending disposition hearing

Rule 5.774. Setting petition for hearing—detained and nondetained cases; waiver of hearing

(a) Nondetention cases (§ 657)

If the child is not detained, the jurisdiction hearing on the petition must begin within 30 calendar days from the date the petition is filed.

(Subd (a) amended effective January 1, 2007.)

(b) Detention cases (§ 657)

If the child is detained, the jurisdiction hearing on the petition must begin within 15 judicial days from the date of the order of the court directing detention. If the child is released from detention before the jurisdiction hearing, the court may reset the jurisdiction hearing within the time limit in (a).

(Subd (b) amended effective January 1, 2007.)

(c) Tolling of time period

Any period of delay caused by the child's unavailability or failure to appear must not be included in computing the time limits of (a) and (b).

(Subd (c) amended effective January 1, 2007.)

(d) Dismissal

Absent a continuance under rule 5.776, when a jurisdiction hearing is not begun within the time limits of (a) and (b), the court must order the petition dismissed. This does not bar the filing of another petition based on the same allegations as in the original petition, but the child must not be detained.

(Subd (d) amended effective January 1, 2007.)

(e) Waiver of hearing (§ 657)

At the detention hearing, or at any time thereafter, a child may admit the allegations of the petition or plead no contest and waive further jurisdiction hearing. The court may accept the admission or no contest plea and proceed according to rules 5.778 and 5.782.

(Subd (e) amended effective January 1, 2007.)

Rule 5.774 amended and renumbered effective January 1, 2007; adopted as rule 1485 effective January 1, 1991.

Rule 5.776. Grounds for continuance of jurisdiction hearing

(a) Request for continuance; consent (§ 682)

A continuance may be granted only on a showing of good cause and only for the time shown to be necessary. Stipulation between counsel or parties and convenience of parties are not in and of themselves good cause.

(1) In order to obtain a continuance, written notice with supporting documents must be filed and served on all parties at least two court days before the date set for the hearing, unless the court finds good cause for failure to comply with these requirements. Absent a waiver of time, a child may not be detained beyond the statutory time limits.

(2) The court must state in its order the facts requiring any continuance that is granted.

(3) If the child is represented by counsel and no objection is made to an order setting or continuing the jurisdiction hearing beyond the time limits of rule 5.774, consent must be implied.

(Subd (a) amended effective January 1, 2007.)

(b) Grounds for continuance—mandatory (§ 700)

The court must continue the jurisdiction hearing for:

(1) A reasonable period to permit the child and the parent, guardian, or adult relative to prepare for the hearing; and

(2) No more than seven calendar days:

(A) For appointment of counsel;

(B) To enable counsel to become acquainted with the case; or

(C) To determine whether the parent, guardian, or adult relative can afford counsel.

(Subd (b) amended effective January 1, 2007.)

(c) Grounds for continuance—discretionary (§§ 700.5, 701)

The court may continue the jurisdiction hearing for no more than seven calendar days to enable the petitioner to subpoena witnesses if the child has made an extrajudicial admission and denies it, or has previously indicated to the court or petitioner an intention to admit the allegations of the petition, and at the time set for jurisdiction hearing denies the allegations.

(d) Grounds for continuance—section 654.2 (§§ 654.2, 654.3, 654.4)

In a case petitioned under section 602, the court may, with the consent of the child and the parent or guardian, continue the jurisdiction hearing for six months. If the court grants the continuance, the court must order the child and the parent or guardian to participate in a program of supervision under section 654, and must order the parent or guardian to participate with the child in a program of counseling or education under section 654.

(Subd (d) amended effective January 1, 2007.)

Rule 5.776 amended and renumbered effective January 1, 2007; adopted as rule 1486 effective January 1, 1991.

Rule 5.778. Commencement of hearing on section 601 or section 602 petition; right to counsel; advisement of trial rights; admission, no contest

(a) Petition read and explained (§ 700)

At the beginning of the jurisdiction hearing, the petition must be read to those present. On request of the child, or the parent, guardian, or adult relative, the court must explain the meaning and contents of the petition, the nature of the hearing, the procedures of the hearing, and possible consequences.

(Subd (a) amended effective January 1, 2007.)

(b) Rights explained (§ 702.5)

After giving the advisement required by rule 5.534, the court must advise those present of each of the following rights of the child:

(1) The right to a hearing by the court on the issues raised by the petition;

(2) The right to assert the privilege against self-incrimination;

(3) The right to confront and to cross-examine any witness called to testify against the child; and

(4) The right to use the process of the court to compel the attendance of witnesses on the child's behalf.

(Subd (b) amended effective January 1, 2007.)

(c) Admission of allegations; prerequisites to acceptance

The court must then inquire whether the child intends to admit or deny the allegations of the petition. If the child neither admits nor denies the allegations, the court must state on the record that the child does not admit the allegations. If the child wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in (b).

(Subd (c) amended effective January 1, 2007.)

(d) Consent of counsel—child must admit

Counsel for the child must consent to the admission, which must be made by the child personally.

(Subd (d) amended effective January 1, 2007.)

(e) No contest

The child may enter a plea of no contest to the allegations, subject to the approval of the court.

(f) Findings of the court (§ 702)

On an admission or plea of no contest, the court must make the following findings noted in the minutes of the court:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The child has knowingly and intelligently waived the right to a hearing on the issues by the court, the right to confront and cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the child's behalf, and the right to assert the privilege against self-incrimination;

(4) The child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest;

(5) The admission or plea of no contest is freely and voluntarily made;

(6) There is a factual basis for the admission or plea of no contest;

(7) Those allegations of the petition as admitted are true as alleged;

(8) The child is described by section 601 or 602; and

(9) In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 1998.)

(g) Disposition

After accepting an admission or plea of no contest, the court must proceed to disposition hearing under rules 5.782 and 5.785.

(Subd (g) amended effective January 1, 2007.)

Rule 5.778 amended and renumbered effective January 1, 2007; adopted as rule 1487 effective January 1, 199; previously amended effective January 1, 1998.

Rule 5.780. Contested hearing on section 601 or section 602 petition

(a) Contested jurisdiction hearing (§ 701)

If the child denies the allegations of the petition, the court must hold a contested hearing to determine whether the allegations in the petition are true.

(Subd (a) amended effective January 1, 2007.)

(b) Admissibility of evidence—general (§ 701)

In a section 601 matter, the admission and exclusion of evidence must be in accordance with the Evidence Code as it applies in civil cases. In a section 602 matter, the admission and exclusion of evidence must be in accordance with the Evidence Code as it applies in criminal cases.

(Subd (b) amended effective January 1, 2007.)

(c) Probation reports

Except as otherwise provided by law, the court must not read or consider any portion of a probation report relating to the contested petition before or during a contested jurisdiction hearing.

(Subd (c) amended effective January 1, 2007.)

(d) Unrepresented children (§ 701)

If the child is not represented by counsel, objections that could have been made to the evidence must be deemed made.

(Subd (d) amended effective January 1, 2007.)

(e) Findings of court—allegations true (§ 702)

If the court determines by a preponderance of the evidence in a section 601 matter, or by proof beyond a reasonable doubt in a section 602 matter, that the allegations of the petition are true, the court must make findings on each of the following, noted in the order:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The allegations of the petition are true;

(4) The child is described by section 601 or 602; and

(5) In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or a felony had the offense been committed by an adult. If any offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration, and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 1998.)

(f) Disposition

After making the findings in (e), the court must then proceed to disposition hearing under rules 5.782 and 5.785.

(Subd (f) amended effective January 1, 2007.)

(g) Findings of court—allegations not proved (§ 702)

If the court determines that the allegations of the petition have not been proved by a preponderance of the evidence in a 601 matter, or beyond a reasonable doubt in a 602 matter, the court must make findings on each of the following, noted in the order:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child; and

(3) The allegations of the petition have not been proved.

The court must dismiss the petition and terminate detention orders related to this petition.

(Subd (g) amended effective January 1, 2007.)

Rule 5.780 amended and renumbered effective January 1, 2007; adopted as rule 1488 effective January 1, 1991; previously amended effective January 1, 1998.

Rule 5.782. Continuance pending disposition hearing

(a) Continuance pending disposition hearing (§ 702)

If the court finds that the child is described by section 601 or 602, it must proceed to a disposition hearing. The court may continue the disposition hearing up to 10 judicial days if the child is detained. If the child is not detained, the court may continue the disposition hearing up to 30 calendar days from the date of the filing of the petition and up to an additional 15 calendar days for good cause shown.

(Subd (a) amended effective January 1, 2007.)

(b) Detention pending hearing (§ 702)

The court may release or detain the child during the period of the continuance.

(c) Observation and diagnosis (§ 704)

If the child is eligible for commitment to the Youth Authority, the court may continue the disposition hearing up to 90 calendar days and order the child to be placed temporarily at a Youth Authority diagnostic and treatment center for observation and diagnosis. The court must order the Youth Authority to submit a diagnosis and recommendation within 90 days, and the probation officer or any other peace officer designated by the court must place the child in the diagnostic and treatment center and return the child to the court. After return from the diagnostic and treatment center, the child must be brought to court within 2 judicial days. A disposition hearing must be held within 10 judicial days thereafter.

(Subd (c) amended effective January 1, 2007.)

Rule 5.782 amended and renumbered effective January 1, 2007; adopted as rule 1489 effective January 1, 1991.

Article 4. Disposition

Rule 5.785. General conduct of hearing
Rule 5.790. Orders of the court
Rule 5.795. Required determinations
Rule 5.800. Deferred entry of judgment
Rule 5.805. California Department of Corrections and Rehabilitation, Division of Juvenile Justice, commitments

Rule 5.785. General conduct of hearing

(a) Social study (§§ 280, 702, 706.5)

The probation officer must prepare a social study of the child, which must contain all matters relevant to disposition, including any parole status information, and a recommendation for disposition.

(1) In any case in which the probation officer is recommending placement in foster care or in which the child is already in foster care placement or pending placement under an earlier order, the social study must include a case plan as described in (c).

(2) The probation officer must submit the social study and copies of it to the clerk at least 48 hours before the disposition hearing is set to begin, and the clerk must make the copies available to the parties and attorneys. A continuance of up to 48 hours must be granted on the request of a party who has not been furnished a copy of the social study in accordance with this rule.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Evidence considered (§ 706)

The court must receive in evidence and consider the social study and any relevant evidence offered by the petitioner, the child, or the parent or guardian. The court may require production of other relevant evidence on its own motion. In the order of disposition the court must state that the social study has been read and considered by the court.

(Subd (b) amended effective July 1, 2002.)

(c) Case plan

When a child is detained and is at risk of entering foster care placement, the probation officer must prepare a case plan.

(1) The plan must be completed and filed with the court by the date of disposition or within 60 calendar days of initial removal, whichever occurs first.

(2) The court must consider the case plan and must find as follows:

(A) The probation officer solicited and integrated into the case plan the input of the child, the child's family, in a case described by rule 5.480(2)(A)–(C) the child's identified Indian tribe, and other interested parties; or

(B) The probation officer did not solicit and integrate into the case plan the input of the child, the child's family, in a case described by rule 5.480(2)(A)–(C) the child's identified Indian tribe, and other interested parties. If the court finds that the probation officer did not solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties, the court must order that the probation officer solicit and integrate into the case plan the input of the child, the child's family, in a case described by rule 5.480(2)(A)–(C) the child's identified Indian tribe, and other interested parties, unless the court finds that each of these participants was unable, unavailable, or unwilling to participate.

(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:

(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or

(B) The child was not give the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the probation officer to give the child the opportunity to review the case plan, sign it, and receive a copy, unless the court finds that the child was unable, unavailable, or unwilling to participate.

(4) If the probation officer believes that the child will be able to return home through reasonable efforts by the child, the parents or guardian, and the probation officer, the case plan must include the elements described in section 636.1(b).

(5) If the probation officer believes that foster care placement is the most appropriate disposition for the child, the case plan must include all of the information required by section 706.6.

(Subd (c) amended effective July 1, 2013; adopted effective July 1, 2002; previously amended effective January 1, 2007.)

Rule 5.785 amended effective July 1, 2013; adopted as rule 1492 effective January 1, 1991; previously amended effective July 1, 2002; previously amended and renumbered effective January 1, 2007.

Rule 5.790. Orders of the court

(a) Findings and orders of the court (§§ 654, 654.1, 654.2, 654.3, 654.4, 725, 725.5, 782)

At the disposition hearing:

(1) If the court has not previously considered whether any offense is a misdemeanor or felony, the court must do so at this time and state its finding on the record. If the offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and must expressly declare on the record that it has made such consideration and must state its finding as to whether the offense is a misdemeanor or a felony.

(2) The court may then:

(A) Dismiss the petition in the interests of justice and the welfare of the child or, if the child does not need treatment or rehabilitation, with the specific reasons stated in the minutes;

(B) Place the child on probation for no more than six months, without declaring the child a ward; or

(C) Declare the child a ward of the court.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1998, and July 1, 2002.)

(b) Conditions of probation (§§ 725, 726, 727, 729.2, 729.9, 729.10)

If the child is placed on probation, with or without wardship, the court must set reasonable terms and conditions of probation. Unless the court finds and states its reasons on the record that any of the following conditions is inappropriate, the court must:

(1) Require the child to attend school;

(2) Require the parent to participate with the child in a counseling or education program; and

(3) Require the child to be at the child's residence between 10:00 p.m. and 6:00 a.m. unless accompanied by a parent or a guardian or an adult custodian.

(Subd (b) amended effective January 1, 2014; previously amended effective July 1, 2002, and January 1, 2007.)

(c) Custody and visitation (§ 726.5)

(1) At any time when a child is a ward of the juvenile court, the court may issue an order determining the custody of or visitation with the child. An order issued under this subdivision continues in effect until modified or terminated by a later order of the juvenile court.

(2) At the time wardship is terminated, the court may issue an order determining custody of or visitation with the child, as described in rule 5.700.

(Subd (c) amended effective January 1, 2016; adopted effective January 1, 2007.)

(d) Removal of custody—required findings (§ 726)

The court must not order a ward removed from the physical custody of a parent or guardian unless the court finds:

(1) The parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child;

(2) The child has been on probation in the custody of the parent or guardian and during that time has failed to reform; or

(3) The welfare of the child requires that physical custody be removed from the parent or guardian.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c); previously amended effective July 1, 2002.)

(e) Removal of custody—orders regarding reunification services (§ 727.2)

(1) Whenever the court orders the care, custody, and control of the child to be under the supervision of the probation officer for placement, the court must order the probation department to ensure the provision of reunification services to facilitate the safe return of the child to his or her home or the

permanent placement of the child and to address the needs of the child while in foster care.

(2) Reunification services need not be provided to the parent or guardian if the court finds, by clear and convincing evidence, that one or more of the exceptions listed in section 727.2(b) is true.

(Subd (e) amended and relettered effective January 1, 2007; adopted as subd (d) effective July 1, 2002; previously amended effective January 1, 2004.)

(f) Family-finding determination (§ 628(d))

(1) If the child is detained or at risk of entering foster care, the court must consider and determine whether the 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 detention or as soon as possible thereafter to consider and determine whether the probation officer has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives.

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

(Subd (f) amended effective January 1, 2015; adopted effective January 1, 2014.)

(g) Due diligence

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

(1) Asked the child, in an age-appropriate manner and consistent with the child's best interest, about his or her relatives;

(2) Obtained information regarding the location of the child's relatives;

(3) Reviewed the child's case file for any information regarding relatives;

(4) Telephoned, e-mailed, or visited all identified relatives;

(5) Asked located relatives for the names and locations of other relatives;

(6) Used Internet search tools to locate relatives identified as supports; or

(7) Developed tools, including a genogram, family tree, family map, or other diagram of family relationships, to help the child or parents to identify relatives.

(Subd (g) amended effective January 1, 2015; adopted effective January 1, 2014.)

(h) Wardship orders (§§ 726, 727, 727.1, 730, 731)

The court may make any reasonable order for the care, supervision, custody, conduct, maintenance, support, and medical treatment of a child adjudged a ward of the court.

(1) Subject to the provisions of section 727, the court may order the ward to be on probation without the supervision of the probation officer and may impose on the ward reasonable conditions of behavior.

(2) The court may order the care, custody, control, and conduct of the ward to be under the supervision of the probation officer in the home of a parent or guardian.

(3) If the court orders removal of custody under (d), it must authorize the probation officer to place the ward with a person or organization described in section 727. The decision regarding choice of placement must take into account the following factors:

(A) That the setting is safe;

(B) That the setting is the least restrictive or most family-like environment that is appropriate for the child and available;

(C) That the setting is in close proximity to the parent's home; and

(D) That the setting is the environment best suited to meet the child's special needs and best interest.

The selection must consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment under Family Code section 7950.

(4) If the child was declared a ward under section 602, the court may order treatment or commitment of the child under section 730 or 731.

(5) The court may limit the control exercised over the ward by a parent or guardian. Orders must clearly specify all limitations. In particular, the court must consider whether it is necessary to limit the rights of the parent or guardian to make educational or developmental-services decisions for the child. If the court limits those rights, it must follow the procedures in rules 5.649–5.651.

(Subd (h) amended and relettered effective January 1, 2014; adopted as subd (d); previously amended and relettered as subd (e) effective July 1, 2002, and as subd (f) effective January 1, 2007; previously amended effective January 1, 2004, and January 1, 2008.)

(i) California Department of Corrections and Rehabilitation, Division of Juvenile Justice

If, at the time of the disposition hearing, the child is a ward of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) under a prior commitment, the court may either recommit or return the child to the DJJ. If the child is returned to the DJJ, the court may:

(1) Recommend that the ward's parole status be revoked;

(2) Recommend that the ward's parole status not be revoked; or

(3) Make no recommendation regarding revocation of parole.

(Subd (i) relettered effective January 1, 2014; adopted as subd (e); previously amended effective January 1, 2006; previously amended and relettered as subd (f) effective July 1, 2002, and as subd (g) effective January 1, 2007.)

(j) Fifteen-day reviews (§ 737)

If the child or nonminor is detained pending the implementation of a dispositional order, the court must review the case at least every 15 days as long as the child is detained. The review must meet all the requirements in section 737.

(Subd (j) amended effective January 1, 2016; adopted as subd (f); previously amended and relettered as subd (g) effective July 1, 2002, and as subd (h) effective January 1, 2007; previously relettered as subd (j) effective January 1, 2014.)

Rule 5.790 amended effective January 1, 2016; adopted as rule 1493 effective January 1, 1991; previously amended and renumbered as rule 5.790 effective January 1, 2007; previously amended effective January 1, 1998, July 1, 2002, January 1, 2004, January 1, 2006, January 1, 2008, January 1, 2014, and January 1, 2015.

Rule 5.795. Required determinations

(a) Felony or misdemeanor (§ 702)

Unless determined previously, the court must find and note in the minutes the degree of the offense committed by the youth, and whether it would be a felony or a misdemeanor had it been committed by an adult. If any offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration and must state its determination as to whether the offense is a misdemeanor or a felony.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Physical confinement (§ 726)

If the youth is declared a ward under section 602 and ordered removed from the physical custody of a parent or guardian, the court must specify and note in the minutes the maximum period of confinement under section 726.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 5.795 amended and renumbered effective January 1, 2007; adopted as rule 1494 effective January 1, 1991; previously amended effective January 1, 2001, and January 1, 2003.

Rule 5.800. Deferred entry of judgment

(a) Eligibility (§ 790)

A child who is the subject of a petition under section 602 alleging violation of at least one felony offense may be considered for a deferred entry of judgment if all of the following apply:

(1) The child is 14 years or older at the time of the hearing on the application for deferred entry of judgment;

(2) The offense alleged is not listed in section 707(b);

(3) The child has not been previously declared a ward of the court based on the commission of a felony offense;

(4) The child has not been previously committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice;

(5) If the child is presently or was previously a ward of the court, probation has not been revoked before completion; and

(6) The child meets the eligibility standards stated in Penal Code section 1203.06.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2006.)

(b) Procedures for consideration (§ 790)

(1) Before filing a petition alleging a felony offense, or as soon as possible after filing, the prosecuting attorney must review the child's file to determine if the requirements of (a) are met. If the prosecuting attorney's review reveals that the requirements of (a) have been met, the prosecuting attorney must file *Determination of Eligibility—Deferred Entry of Judgment—Juvenile* (form JV-750) with the petition.

(2) If the court determines that the child is eligible and suitable for a deferred entry of judgment, and would derive benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment.

(Subd (b) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(c) Citation (§ 792)

The court must issue *Citation and Written Notification for Deferred Entry of Judgment—Juvenile* (form JV-751) to the child's custodial parent, guardian, or

foster parent. The form must be personally served on the custodial adult at least 24 hours before the time set for the appearance hearing.

(Subd (c) amended effective January 1, 2007.)

(d) Determination without a hearing; supplemental information (§ 791)

(1) The court may grant a deferred entry of judgment as stated in (2) or (3).

(2) If the child admits each allegation contained in the petition as charged and waives the right to a speedy disposition hearing, the court may summarily grant the deferred entry of judgment.

(3) When appropriate, the court may order the probation department to prepare a report with recommendations on the suitability of the child for deferred entry of judgment or set a hearing on the matter, with or without the order to the probation department for a report.

(A) The probation report must address the following:

(i) The child's age, maturity, educational background, family relationships, motivation, any treatment history, and any other relevant factors regarding the benefit the child would derive from education, treatment, and rehabilitation efforts; and

(ii) The programs best suited to assist the child and the child's family.

(B) The probation report must be submitted to the court, the child, the prosecuting attorney, and the child's attorney at least 48 hours, excluding noncourt days, before the hearing.

(Subd (d) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(e) Written notification of ineligibility (§ 790)

If it is determined that the child is ineligible for deferred entry of judgment, the prosecuting attorney must complete and provide to the court, the child, and the child's attorney *Determination of Eligibility—Deferred Entry of Judgment—Juvenile* (form JV-750).

(Subd (e) amended effective January 1, 2007.)

(f) Conduct of hearing (§§ 791, 794)

At the hearing, the court must consider the declaration of the prosecuting attorney, any report and recommendations from the probation department, and any other relevant material provided by the child or other interested parties.

(1) If the child consents to the deferred entry of judgment, the child must enter an admission as stated in rule 5.778(c) and (d). A no-contest plea must not be accepted.

(2) The child must waive the right to a speedy disposition hearing.

(3) After acceptance of the child's admission, the court must set a date for review of the child's progress and a date by which the probation department must submit to the court, the child, the child's parent or guardian, the child's attorney, and the prosecuting attorney a report on the child's adherence to the conditions set by the court. Although the date set may be any time within the following 36 months, consideration of dismissal of the petition may not occur until at least 12 months have passed since the court granted the deferred entry of judgment.

(4) If the court grants the deferred entry of judgment, the court must order search-and-seizure probation conditions and may order probation conditions regarding the following:

(A) Education;

(B) Treatment;

(C) Testing for alcohol and other drugs, if appropriate;

(D) Curfew and school attendance requirements;

(E) Restitution; and

(F) Any other conditions consistent with the identified needs of the child and the factors that led to the conduct of the child.

(Subd (f) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(g) Compliance with conditions; progress review

Twelve months after the court granted the deferred entry of judgment and on receipt of the progress report ordered at the hearing on the deferred entry of judgment, the court may:

(1) Find that the child has complied satisfactorily with the conditions imposed, dismiss the petition, seal the court records in compliance with section 793(c), and vacate the date set for review hearing; or

(2) Confirm the review hearing. At the hearing the court must:

(A) Find that the child has complied satisfactorily with the conditions imposed, dismiss the petition, and seal the court records in compliance with section 793(c); or

(B) Find that the child has not complied satisfactorily with the conditions imposed, lift the deferred entry of judgment, and set a disposition hearing.

(Subd (g) amended effective January 1, 2007.)

(h) Failure to comply with conditions (§ 793)

(1) Before the date of the progress hearing, if the child is found to have committed a misdemeanor offense or more than one misdemeanor offense on a single occasion, the court may schedule a hearing within 15 court days.

(A) At the hearing, the court must follow the procedure stated in rule 5.580(d) and (e) to determine if the deferred entry of judgment should be lifted, with a disposition hearing to be conducted thereafter.

(B) The disposition hearing must be conducted as stated in rules 5.785 through 5.795.

(C) The child's admission of the charges under a deferred entry of judgment must not constitute a finding that a petition has been sustained unless a judgment is entered under section 793(b).

(2) Before the date of the progress hearing, on the court's own motion, or if the court receives a declaration from the probation department or the prosecuting attorney alleging that the child has not complied with the conditions imposed or that the conditions are not benefiting the child, or if the child is found to have committed a felony offense or two or more misdemeanor offenses on separate occasions, the court must schedule a hearing within 10 court days.

(A) At the hearing, the court must follow the procedure stated in rule 5.580(d) and (e) to determine if the deferred entry of judgment should be lifted, with a disposition hearing to be conducted thereafter.

(B) The disposition hearing must be conducted as stated in rules 5.785 through 5.795.

(C) The child's admission of the charges under a deferred entry of judgment must not constitute a finding that a petition has been sustained unless a judgment is entered under section 793(b).

(3) If the child is found to have committed a felony offense or two or more misdemeanor offenses on separate occasions, the court must schedule a disposition hearing within 10 court days. The disposition hearing must be conducted as stated in rules 5.785 through 5.795.

(4) If the judgment previously deferred is imposed and a disposition hearing is scheduled under section 793(a), the juvenile court must report the complete criminal history of the child to the Department of Justice under section 602.5.

(Subd (h) amended effective January 1, 2007.)

Rule 5.800 amended effective July 1, 2010; adopted as rule 1495 effective January 1, 2001; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Rule 5.805. California Department of Corrections and Rehabilitation, Division of Juvenile Justice, commitments

If the court orders the youth committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ):

(1) The court must complete Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (form JV-732).

(2) The court must specify whether the offense is one listed in section 707(b) or subdivision (c) of Penal Code section 290.008.

(3) The court must order the probation department to forward to the DJJ all required medical information, including previously executed medical releases.

(4) If the youth is taking a prescribed psychotropic medication, the DJJ may continue to administer the medication for up to 60 days, provided that a physician examines the youth on arrival at the facility, and the physician recommends that the medication continue.

(5) The court must provide to the DJJ information regarding the youth's educational needs, including the youth's current individualized education program if one exists. To facilitate this process, the court must ensure that the probation officer communicates with appropriate educational staff.

Rule 5.805 amended effective January 1, 2014; adopted as rule 1494.5 effective January 1, 2003; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Article 5. Reviews and Sealing

Rule 5.810. Reviews, hearings, and permanency planning
Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review or dispositional hearing for child approaching majority (§§ 450, 451, 727.2(i)–(j), 778)
Rule 5.813. Modification to transition jurisdiction for a ward older than 18 years and younger than 21 years of age (§§ 450, 451)
Rule 5.814. Modification to transition jurisdiction for a ward older than 17 years, 5 months of age and younger than 18 years of age (§§ 450, 451)
Rule 5.815. Appointment of legal guardians for wards of the juvenile court; modification or termination of guardianship
Rule 5.820. Termination of parental rights for child in foster care for 15 of the last 22 months
Rule 5.825. Freeing wards for adoption
Rule 5.830. Sealing records (§ 781)
Rule 5.840. Dismissal of petition and sealing of records (§ 786)

Rule 5.810. Reviews, hearings, and permanency planning

(a) Six-month status review hearings (§§ 727.2, 11404.1)

For any ward removed from the custody of his or her parent or guardian under section 726 and placed in a home under section 727, the court must conduct a status review hearing no less frequently than once every six months from the date the ward entered foster care. The court may consider the hearing at which the initial order for placement is made as the first status review hearing.

(1) *Consideration of reports (§ 727.2(d))*

The court must review and consider the social study report and updated case plan submitted by the probation officer and the report submitted by any CASA volunteer, and any other reports filed with the court under section 727.2(d).

(2) *Return of child if not detrimental (§ 727.2(f))*

At any status review hearing before the first permanency hearing, the court must order the return of the ward to the parent or guardian unless it finds the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the ward. The probation department has the burden of establishing that detriment. In making its determination, the court must review and consider all reports submitted to the court and must consider the efforts and progress demonstrated by the child and the family and the extent to which the child availed himself or herself of the services provided.

(3) *Findings and orders (§ 727.2(e))*

The court must consider the safety of the ward and make findings and orders that determine the following:

(A) The continuing necessity for and appropriateness of the placement;

(B) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child;

(C) Whether it is necessary to limit the rights of the parent or guardian to make educational or developmental-services decisions for the child. If the court limits those rights or, if the ward is 18 years of age or older and has chosen not to make educational or developmental-services decisions for him- or herself or has been deemed incompetent, finds that it is in the best interests of the ward, the court must appoint a responsible adult as the educational rights holder as defined in rule 5.502. Any limitation on the rights of a parent or guardian to make educational or developmental-services decisions for a ward must be

specified in the court order. The court must follow the procedures in rules 5.649–5.651;

(D) The extent of progress that has been made by the child and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care;

(E) The likely date by which the child may return to and be safely maintained in the home or placed for adoption, legal guardianship, or another permanent plan;

(F) In the case of a child who is 16 years of age or older, the services needed to assist the child in making the transition from foster care to independent living;

(G) Whether the child was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not appropriately involved, the court must order the probation department to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate;

(H) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate; and

(I) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child.

(4) *Basis for Findings and Orders (§ 727.2(e))*

The determinations required by (a)(3) must be made on a case-by-case basis, and the court must reference, in its written findings, the probation officer's report and any other evidence relied on in reaching its decision.

(Subd (a) amended effective January 1, 2016; previously amended effective January 1, 1998, January 1, 2001, January 1, 2003, January 1, 2004, January 1, 2007, and January 1, 2014.)

(b) Permanency planning hearings (§§ 727.2, 727.3, 11404.1)

A permanency planning hearing for any ward who has been removed from the custody of a parent or guardian and not returned at a previous review hearing must be held within 12 months of the date the ward entered foster care as defined in section 727.4(d)(4). However, when no reunification services are offered to the parents or guardians under section 727.2(b), the first permanency planning hearing must occur within 30 days of disposition.

(1) *Consideration of reports (§ 727.3)*

The court must review and consider the social study report and updated case plan submitted by the probation officer and the report submitted by any CASA volunteer, and any other reports filed with the court under section 727.3(a)(2).

(2) *Findings and orders (§§ 727.2(e), 727.3(a))*

At each permanency planning hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) The continuing necessity for and appropriateness of the placement;

(B) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child;

(C) The extent of progress that has been made by the child and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care;

(D) The permanent plan for the child, as described in (3);

(E) Whether the child was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not appropriately involved, the court must order the probation officer to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate; and

(F) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate; and

(G) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child.

(3) *Selection of a permanent plan (§ 727.3(b))*

At the first permanency planning hearing, the court must select a permanent plan. At subsequent permanency planning hearings that must be held under section 727.2(g) and rule 5.810(c), the court must either make a finding that the current permanent plan is appropriate or select a different permanent plan, including returning the child home, if appropriate. The court must choose from one of the following permanent plans, which are, in order of priority:

(A) A permanent plan that immediately returns the child to the physical custody of the parent or guardian. This plan must be the permanent plan unless no reunification services were offered under section 727.2(b), or unless the court finds that the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well being of the ward. The probation department has the burden of establishing that detriment. In making its determination, the court must review and consider all reports submitted to the court and must consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the child availed himself or herself of the services provided.

(B) A permanent plan of return of the child to the physical custody of the parent or guardian, after 6 additional months of reunification services. The court may not order this plan unless the court finds that there is a substantial probability that the child will be able to return home within 18 months of the date of initial removal or that reasonable services have not been provided to the parent or guardian.

(C) A permanent plan of adoption. When this plan is identified, the court must order that a hearing under section 727.31 be held within 120 days.

(D) A permanent plan of legal guardianship. When this plan is ordered, the court must set a hearing under the procedures described in section 728 and rule 5.815.

(E) A permanent plan of placement with a fit and willing relative. When this plan is ordered, the court must specify that the child will be placed with the appropriate relative on a permanent basis.

(F) A permanent plan of placement in a planned permanent living arrangement. The court may order this permanent plan only after considering, and ruling out, each of the other permanent plan options listed above. If, after doing so, the court concludes that a planned permanent living arrangement is the most appropriate permanent plan for the child, it must also enter a finding, by clear and convincing evidence, that there is a compelling reason, as defined in section 727.3(c), for determining that a plan of termination of parental rights and adoption is not in the best interest of the child. When a planned permanent living arrangement is ordered, the court must specify the type of placement. The court must also specify the goal of the placement, which may include, but is not limited to, a goal of the child returning home, emancipation, guardianship, or permanent placement with a relative.

(4) *Involvement of parents or guardians*

If the child has a continuing involvement with his or her parents or legal guardians, they must be involved in the planning for permanent placement. The permanent plan order must include an order regarding the nature and frequency of visitation with the parents or guardians.

(Subd (b) amended effective January 1, 2016; adopted effective January 1, 2001; previously amended effective January 1, 2003, January 1, 2007, and January 1, 2014.)

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement no less frequently than once every six months.

(1) *Consideration of reports (§ 727.2(d))*

The court must review and consider the social study report and updated case plan submitted for this hearing by the probation officer and the report

submitted by any CASA volunteer, and any other reports filed with the court under section 727.2(d).

(2) *Findings and orders (§ 727.2(g))*

At each postpermanency status review hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) Whether the current permanent plan continues to be appropriate. If not, the court must select a different permanent plan, including returning the child home, if appropriate;

(B) The continuing necessity for and appropriateness of the placement;

(C) The extent of the probation department's compliance with the case plan in making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan for the child;

(D) Whether the child was actively involved, as age and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not appropriately involved, the court must order the probation department to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate; and

(E) If sibling interaction has been suspended and will continue to be suspended, sibling interaction is contrary to the safety or well-being of either child.

(Subd (c) amended effective January 1, 2016; adopted effective January 1, 2001; previously amended effective January 1, 2003, January 1, 2007, and January 1, 2014.)

(d) Notice of hearings; service; contents (§ 727.4)

No earlier than 30 nor later than 15 calendar days before each hearing date, the probation officer must serve written notice on all persons entitled to notice under section 727.4, as well as the current caregiver, any CASA volunteer or educational rights holder, and all counsel of record. A *Notice of Hearing—Juvenile Delinquency Proceeding* (form JV-625) must be used.

(Subd (d) amended effective January 1, 2014; adopted effective January 1, 2001; previously amended effective January 1, 2003, January 1, 2006, and January 1, 2007.)

(e) Report (§§ 706.5, 706.6, 727.2(c), 727.3(a)(1), 727.4(b), 16002)

Before each hearing described above, the probation officer must investigate and prepare a social study report that must include an updated case plan and all of the information required in sections 706.5, 706.6, 727.2, 727.3, and 16002.

(1) The report must contain recommendations for court findings and orders and must document the evidentiary basis for those recommendations.

(2) At least 10 calendar days before each hearing, the probation officer must file the report and provide copies of the report to the ward, the parent or guardian, all attorneys of record, and any CASA volunteer.

(Subd (e) amended effective January 1, 2016; adopted as subd (b); previously amended and relettered as subd (e) effective January 1, 2001; previously amended effective January 1, 1998, January 1, 2003, January 1, 2007, and January 1, 2014.)

Rule 5.810 amended effective January 1, 2016; adopted as rule 1496 effective January 1, 1991; previously amended and renumbered as rule 5.810 effective January 1, 2007; previously amended effective January 1, 1998, January 1, 2001, January 1, 2003, January 1, 2004, January 1, 2006, and January 1, 2014.

Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review or dispositional hearing for child approaching majority (§§ 450, 451, 727.2(i)–(j), 778)

(a) Hearings subject to this rule

The following hearings are subject to this rule:

(1) The last review hearing under section 727.2 or 727.3 before the child turns 18 years of age and a dispositional hearing under section 702 for a child under an order of foster care placement who will attain 18 years of age before a subsequent review hearing will be held. If the hearing is the last review hearing under section 727.2 or 727.3, the hearing must be set at least 90 days before the child attains his or her 18th birthday and within six months of the previous hearing held under section 727.2 or 727.3.

(2) Any review hearing held under section 727.2 or 727.3 for a child less than 18 years of age during which a recommendation to terminate juvenile court jurisdiction will be considered;

(3) Any hearing to terminate juvenile court jurisdiction over a child less than 18 years of age who is subject to an order for foster care placement; and

(4) Any hearing to terminate juvenile court jurisdiction over a child less than 18 years of age who is not currently subject to an order for foster care placement but was previously removed from the custody of his or her parents or legal guardian as a dependent of the juvenile court and an order for a foster care placement as a dependent of the juvenile court was in effect at the time the juvenile court adjudged the child to be a ward of the juvenile court under section 725.

(Subd (a) amended effective January 1, 2016; previously amended effective July 1, 2012.)

(b) Conduct of the hearing

(1) The hearing must be held before a judicial officer and recorded by a court reporter.

(2) The hearing must be continued for no more than five court days for the submission of additional information as ordered by the court if the court finds that the report and, if required, the Transitional Independent Living Case Plan and Transitional Independent Living Plan submitted by the probation officer do not provide the information required by (c) and the court is unable to make all the findings required by (d).

(Subd (b) amended effective July 1, 2012.)

(c) Reports

(1) In addition to complying with all other statutory and rule requirements applicable to the report prepared by the probation officer for a hearing described in (a)(1)–(4), the report must state whether the child was provided with the notices and information required under section 607.5 and include a description of:

(A) The child's progress toward meeting the case plan goals that will enable him or her to be a law-abiding and productive member of his or her family and the community.

(B) If reunification services have not been previously terminated, the progress of each parent or legal guardian toward participating in case plan service activities and meeting the case plan goals developed to

resolve his or her issues that were identified and contributed to the child's removal from his or her custody.

(C) The current ability of each parent or legal guardian to provide the care, custody, supervision, and support the child requires in a safe and healthy environment.

(D) For a child previously determined to be a dual status child for whom juvenile court jurisdiction as a dependent was suspended under section 241.1(e)(5)(A), a joint assessment by the probation department and the child welfare services agency under section 366.5 regarding the detriment, if any, to the child of a return to the home of his or her parents or legal guardian and a recommendation on the resumption of dependency jurisdiction. The facts in support of the opinions expressed and the recommendations made must be included in the joint assessment section of the report. If the probation department and the child welfare services agency do not agree, the child welfare services agency must file a separate report with facts in support of its opinions and recommendations.

(E) For a child previously determined to be a dual status child for whom the probation department was designated the lead agency under section 241.1(e)(5)(B), the detriment, if any, to the child of a return to the home of his or her parents or legal guardian and the probation officer's recommendation regarding the modification of the court's jurisdiction over the child from that of a dual status child to that of a dependent under section 300 and the facts in support of the opinion expressed and the recommendation made.

(F) For a child other than a dual status child, the probation officer's recommendation regarding the modification of the juvenile court's jurisdiction over the child from that of a ward under section 601 or 602 to that of a dependent under section 300 or to that of a transition dependent under section 450 and the facts in support of his or her recommendation.

(2) For the review hearing held on behalf of a child approaching majority described in (a)(1) and any hearing described in (a)(2) or (a)(3) held on behalf of a child more than 17 years, 5 months old and less than 18 years of age, in addition to complying with all other report requirements set forth in (c)(1), the report prepared by the probation officer must include:

(A) The child's plans to remain under juvenile court jurisdiction as a nonminor dependent including the criteria in section 11403(b) that he or she plans to meet;

(B) The efforts made by the probation officer to help the child meet one or more of the criteria in section 11403(b);

(C) For an Indian child, his or her plans to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent;

(D) Whether the child has applied for and, if so, the status of any in-progress application pending for title XVI Supplemental Security Income benefits and, if such an application is pending, whether it is in the child's best interest to continue juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with the application process;

(E) Whether the child has an in-progress application pending for Special Immigrant Juvenile Status or other applicable application for legal residency and whether an active juvenile court case is required for that application;

(F) The efforts made by the probation officer toward providing the child with the written information, documents, and services described in section 391 and, to the extent that the child has not yet been provided with them, the barriers to providing the information, documents or services and the steps that will be taken to overcome those barriers by the date the child attains 18 years of age;

(G) When and how the child was informed that upon reaching 18 years of age he or she may request the dismissal of juvenile court jurisdiction over him or her under section 778;

(H) When and how the child was provided with information regarding the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent and the probation officer's assessment of the child's understanding of those benefits;

(I) When and how the child was informed that if juvenile court jurisdiction is terminated after he or she attains 18 years of age, he or she has the right to file a request to return to foster care and have the juvenile court

assume or resume transition jurisdiction over him or her as a nonminor dependent; and

(J) The child's Transitional Independent Living Case Plan and Transitional Independent Living Plan, which must include:

(i) The individualized plan for the child to satisfy one or more of the criteria in section 11403(b) and the child's anticipated placement as specified in section 11402; and

(ii) The child's alternate plan for his or her transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.

(Subd (c) amended effective July 1, 2012.)

(d) Findings

(1) At the hearing described in (a)(1)–(4), in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must make the following findings in the written documentation of the hearing:

(A) Whether the rehabilitative goals for this child have been met and juvenile court jurisdiction over the child as a ward is no longer required. The facts supporting the finding must be stated on the record.

(B) For a dual status child for whom dependency jurisdiction was suspended under section 241.1(e)(5)(A), whether the return to the home of the parents or legal guardian would be detrimental to the minor. The facts supporting the finding must be stated on the record.

(C) For a child previously determined to be a dual status child for whom the probation department was designated the lead agency under section 241.1(e)(5)(B), whether the return to the home of the parents or legal guardian would be detrimental to the minor. The facts supporting the finding must be stated on the record.

(D) For a child other than a dual status child:

(i) Who was not subject to the court's dependency jurisdiction at the time he or she was adjudged a ward and is currently subject to an order for a foster care placement, whether the child appears to

come within the description of section 300 and cannot be returned home safely. The facts supporting the finding must be stated on the record;

(ii) Who was subject to an order for a foster care placement as a dependent of the court at the time he or she was adjudged a ward, whether the child remains within the description of a dependent child under section 300 and whether the return to the home of the parents or legal guardian would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The facts supporting the findings must be stated on the record;

(iii) Whether reunification services have been terminated;

(iv) Whether the matter has been set for a hearing to terminate parental rights or establish a guardianship; and

(v) Whether the minor intends to sign a mutual agreement for a placement in a supervised setting as a nonminor dependent.

(2) At the review hearing held on behalf of a child approaching majority described in (a)(1) and any hearing under (a)(2) or (a)(3) held on behalf of a child more than 17 years, 5 months old and less than 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must make the following findings in the written documentation of the hearing:

(A) Whether the child's Transitional Independent Living Case Plan, if required, or Transitional Independent Living Plan includes:

(i) A plan specific to the child for him or her to satisfy one or more of the criteria in section 11403(b) and the specific criteria in section 11403(b) it is anticipated the child will satisfy; and

(ii) The child's alternate plan for his or her transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.

(B) For an Indian child to whom the Indian Child Welfare Act applies, whether he or she intends to continue to be considered an Indian child

for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent;

(C) Whether the child has an in-progress application pending for title XVI Supplemental Security Income benefits and, if such an application is pending, whether it is in the child's best interest to continue juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with the application process;

(D) Whether the child has an in-progress application pending for Special Immigrant Juvenile Status or other applicable application for legal residency and whether an active juvenile court case is required for that application;

(E) Whether the child has been informed that he or she may decline to become a nonminor dependent;

(F) Whether the child has been informed that upon reaching 18 years of age he or she may request the dismissal of juvenile court jurisdiction over him or her under section 778;

(G) Whether the child understands the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent;

(H) Whether the child has been informed that if after reaching 18 years of age juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the juvenile court assume or resume transition jurisdiction over him or her as a nonminor dependent;

(I) Whether all the information, documents, and services in sections 391(e) were provided to the child, and whether the barriers to providing any missing information, documents, or services can be overcome by the date the child attains 18 years of age; and

(J) Whether the notices and information required under section 607.5 were provided to a child who is or was subject to an order for foster care placement.

(Subd (d) amended effective January 1, 2014; previously amended effective July 1, 2012.)

(e) Orders

(1) For a child previously determined to be a dual status child for whom dependency jurisdiction was suspended under section 241.1(e)(5)(A), dependency jurisdiction must be resumed if the court finds that the child's rehabilitative goals have been achieved and a return to the home of the parents or legal guardian would be detrimental to the child.

(2) For a child previously determined to be a dual status child for whom the probation department was designated the lead agency under section 241.1(e)(5)(B), the court must terminate dual status, dismiss delinquency jurisdiction, and continue dependency jurisdiction with the child welfare services department responsible for the child's placement if the court finds that the child's rehabilitative goals have been achieved and a return to the home of the parents or legal guardian would be detrimental to the child.

(3) For a child who comes within the description of section 450(a), other than a child described in (e)(1) or (e)(2), the court must enter an order modifying its jurisdiction over him or her from delinquency jurisdiction to transition jurisdiction and set a nonminor dependent status review hearing under rule 5.903 within six months of the last hearing held under section 727.2.

(4) For a child who was not subject to the court's dependency jurisdiction at the time he or she was adjudged a ward and is currently subject to an order for a foster care placement, the court must:

(A) Order the probation department or the child's attorney to submit an application under section 329 to the county child welfare services department to commence a proceeding to declare the child a dependent of the court by filing a petition under section 300 if the court finds:

(i) The child does not come within the description of section 450(a);

(ii) The rehabilitative goals for the child included in his or her case plan have been met and delinquency jurisdiction is no longer required; and

(iii) The child appears to come within the description of section 300 and a return to the home of the parents or legal guardian may be detrimental to his or her safety, protection, or physical or emotional well-being.

(B) Set a hearing to review the county child welfare services department's decision within 20 court days of the date the order to file an application under section 329 was entered and at that hearing:

(i) Affirm the county child welfare services department's decision not to file a petition under section 300; or

(ii) Order the county child welfare services department to file a petition under section 300.

(C) If the court affirms the decision not to file a petition under section 300 or a petition filed under section 300 is not sustained, the court may:

(i) Return the child to the home of the parents or legal guardian and set a progress report hearing within the next six months;

(ii) Return the child to the home of the parents or legal guardian and terminate juvenile court jurisdiction over the child; or

(iii) Continue the child's foster care placement and set a hearing under section 727.2 no more than six months from the date of the most recent hearing held under 727.2.

(5) For a child who was subject to an order for foster care placement as a dependent of the court at the time he or she was adjudged a ward, the court must modify its delinquency jurisdiction over the child by vacating the order terminating jurisdiction over the child as a dependent of the court and resuming dependency jurisdiction over him or her if the court finds that:

(A) The child does not come within the description of section 450(a);

(B) The rehabilitative goals for the child included in his or her case plan have been met and delinquency jurisdiction may not be required; and

(C) The child remains within the description of a dependent child under section 300 and a return to the home of a parents or legal guardian would create a substantial risk of detriment to his or her safety, protection, or physical or emotional well-being.

(6) At a hearing described in (a)(1) for a child approaching majority or at any hearing described in (a)(2) or (a)(3) held on behalf of a child more than 17 years, 5 months old and less than 18 years old that did not result in modification of jurisdiction over the child from delinquency jurisdiction to dependency jurisdiction or transition jurisdiction, the court must:

(A) Return the child to the home of the parents or legal guardian and set a progress report hearing within the next six months; or

(B) Return the child to the home of the parents or legal guardian and terminate juvenile court jurisdiction over the child; or

(C) Continue the child's foster care placement and:

(i) For the child who intends to meet the eligibility requirements for status as a nonminor dependent after attaining 18 years of age, set a nonminor dependent status review hearing under rule 5.903 no more than six months from the most recent hearing held under section 727.2; or

(ii) For the child who does not intend to meet the eligibility requirements for nonminor dependent status after attaining 18 years of age:

a. Set a hearing to terminate delinquency jurisdiction under section 607.2(b)(4) and section 607.3 for a date within one month after the child's 18th birthday; or

b. Set a hearing under section 727.2 no more than six months from the date of the most recent hearing held under section 727.2 for the child who will remain under delinquency jurisdiction in a foster care placement.

(7) At any hearing under (a)(2) or (a)(3) held on behalf of a child 17 years, 5 months old or younger that did not result in modification of jurisdiction over the child from delinquency jurisdiction to dependency jurisdiction, the court must:

(A) Return the child to the home of the parents or legal guardian and set a progress report hearing within the next six months;

(B) Return the child to the home of the parents or legal guardian and terminate juvenile court jurisdiction over the child; or

(C) Continue the child's out-of-home placement and set a hearing under section 727.2 to occur within six months of the most recent hearing under section 727.2.

(8) At any hearing under (a)(4) on behalf of a child less than 18 years of age that did not result in modification of jurisdiction over the child from delinquency jurisdiction to dependency jurisdiction, the court must:

(A) Return the child to the home of the parents or legal guardian and set a progress report hearing within the next six months;

(B) Return the child to the home of the parents or legal guardian and terminate juvenile court jurisdiction over the child; or

(C) Continue the child's out-of-home placement and set a progress report hearing within the next six months.

(Subd (e) amended effective July 1, 2012.)

(f) Modification of jurisdiction—conditions

Whenever the court modifies its jurisdiction over a dependent or ward under section 241.1, 607.2, or 727.2, the court must ensure that all of the following conditions are met:

(1) The petition under which jurisdiction was taken at the time the dependent or ward was originally removed from his or her parents or legal guardian and placed in foster care is not dismissed until after the new petition is sustained; and

(2) The order modifying the court's jurisdiction contains all of the following provisions:

(A) A reference to the original removal findings, the date those findings were made, and a statement that the finding "continuation in the home is contrary to the child's welfare" and the finding "reasonable efforts were made to prevent removal" made at that hearing remain in effect;

(B) A statement that the child continues to be removed from the parents or legal guardian from whom the child was removed under the original petition; and

(C) Identification of the agency that is responsible for placement and care of the child based upon the modification of jurisdiction.

(Subd (f) amended effective July 1, 2012.)

Rule 5.812 amended effective January 1, 2016; adopted effective January 1, 2012; previously amended effective July 1, 2012 and January 1, 2014.

Rule 5.813. Modification to transition jurisdiction for a ward older than 18 years and younger than 21 years of age (§§ 450, 451)

(a) Purpose

This rule provides the procedures that must be followed when it appears to a probation officer that a ward who is at least 18 years of age and younger than 21 years of age has met his or her rehabilitative goals and wants to remain in extended foster care under the jurisdiction of the court.

(b) Setting and conduct of hearing

(1) The probation officer must request a hearing for the court to consider modifying delinquency jurisdiction to transition jurisdiction.

(2) The hearing must be held before a judicial officer and recorded by a court reporter.

(3) The hearing must be continued for no more than five court days for the submission of additional evidence as ordered by the court if the court finds that the report and, if required, the Transitional Independent Living Case Plan submitted by the probation officer do not provide the information required by (d) and the court is unable to make all the findings required by (e).

(c) Notice of hearing

(1) The probation officer must serve written notice of the hearing in the manner provided in section 295.

(2) Proof of service of notice must be filed by the probation officer at least five court days before the hearing.

(d) Reports

At least 10 calendar days before the hearing, the probation officer must submit a report to the court that includes information regarding:

(1) Whether the ward is a nonminor who was subject to an order for foster care placement on the day of the ward's 18th birthday and is within the age eligibility requirements for extended foster care;

(2) Whether the ward was removed from the physical custody of his or her parents, adjudged to be a ward of the juvenile court under section 725, and ordered into foster care placement as a ward; or whether the ward was removed from the custody of his or her parents as a dependent of the court with an order for foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under section 725 and was ordered into a foster care placement as a ward, including the date of the initial removal findings—"continuance in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—as well as whether the ward continues to be removed from the parents or legal guardian from whom the child was removed under the original petition;

(3) Whether the ward's rehabilitative goals as stated in the case plan have been met and whether juvenile court jurisdiction over the ward is no longer required;

(4) Whether the probation officer recommends the modification of juvenile court jurisdiction over the ward from that of a ward under section 601 or 602 to that of a nonminor dependent under section 450 and the facts in support of that recommendation;

(5) Whether the ward signed a mutual agreement with the probation department or social services agency for placement in a supervised setting as a nonminor dependent and, if so, a recommendation as to which agency should be responsible for placement and care of the nonminor dependent;

(6) Whether the ward plans to meet at least one of the conditions in section 11403(b) and what efforts the probation officer has made to help the ward meet any of the conditions;

(7) When and how the ward was informed of the benefits of remaining under juvenile court jurisdiction as a nonminor dependent and the probation officer's assessment of the ward's understanding of those benefits;

(8) When and how the ward was informed that he or she may decline to become a nonminor dependent and have the juvenile court terminate jurisdiction at a hearing under section 391 and rule 5.555; and

(9) When and how the ward was informed that if juvenile court jurisdiction is terminated, he or she can file a request to return to foster care and have the court resume jurisdiction over him or her as a nonminor.

(e) Findings

At the hearing described in (a), the court must make the following findings:

(1) Whether notice has been given as required by law;

(2) Whether the nonminor comes within the description of section 450;

(3) Whether the ward has been informed that he or she may decline to become a nonminor dependent and have juvenile court jurisdiction terminated at a hearing set under rule 5.555;

(4) Whether the ward was informed that if juvenile court jurisdiction is terminated, the ward can file a request to return to foster care and may have the court resume jurisdiction over the ward as a nonminor;

(5) Whether the benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained and whether the ward understands them;

(6) Whether the ward has signed a mutual agreement with the probation department for placement in a supervised setting as a nonminor dependent;

(7) Whether the ward's Transitional Independent Living Case Plan includes a plan for the ward to satisfy at least one of the conditions in section 11403(b); and

(8) Whether the ward has had an opportunity to confer with his or her attorney.

(f) Orders

For a child who comes within the description of section 450(a), the court must enter the following orders:

(1) An order modifying the court's jurisdiction over the child from delinquency to transition jurisdiction and setting a nonminor dependent status review hearing under section 366.31 and rule 5.903 within six months of the last hearing held under section 727.2 or 366.31. The order modifying the court's jurisdiction must contain all of the following provisions:

(A) A reference to the initial removal findings, the date those findings were made, and a statement that the findings—"continuance in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—made at that hearing remain in effect;

(B) A statement that the nonminor dependent continues to be removed from the parents or legal guardian from whom the nonminor dependent was removed under the original petition; and

(C) Identification of the agency that is responsible for placement and care of the nonminor dependent based on the modification of jurisdiction.

(2) An order continuing the appointment of the attorney of record or appointing a new attorney as the attorney of record for the nonminor dependent.

Rule 5.813 adopted effective January 1, 2014.

Rule 5.814. Modification to transition jurisdiction for a ward older than 17 years, 5 months of age and younger than 18 years of age (§§ 450, 451)

(a) Purpose

This rule provides the procedures that must be followed to modify delinquency jurisdiction to transition jurisdiction for a ward who is older than 17 years, 5 months of age, younger than 18 years of age, and:

(1) Has met his or her rehabilitative goals;

(2) Is under a foster care placement order;

(3) Wants to remain in extended foster care under the transition jurisdiction of the juvenile court;

(4) Is not receiving reunification services; and

(5) Does not have a hearing set for termination of parental rights or establishment of guardianship.

(b) Setting and conduct of hearing

(1) The probation officer must request a hearing for the court to consider modifying delinquency jurisdiction to transition jurisdiction.

(2) The hearing must be held before a judicial officer and recorded by a court reporter.

(3) The hearing must be continued for no more than five court days for the submission of additional evidence as ordered by the court if the court finds that the report and, if required, the Transitional Independent Living Case Plan submitted by the probation officer, do not provide the information required by (d) and the court is unable to make all the findings required by (e).

(c) Notice of hearing

(1) The probation officer must serve written notice of the hearing in the manner provided in section 295.

(2) Proof of service of notice must be filed by the probation officer at least five court days before the hearing.

(d) Reports

At least 10 calendar days before the hearing, the probation officer must submit a report to the court that includes information regarding:

(1) Whether the ward is subject to an order for foster care placement and is older than 17 years, 5 months of age and younger than 18 years of age;

(2) Whether the ward was removed from the physical custody of his or her parents, adjudged to be a ward of the juvenile court under section 725, and ordered into foster care placement as a ward; or whether the ward was removed from the custody of his or her parents as a dependent of the court with an order for foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under section 725 and was ordered into a foster care placement as a ward, including the date of the initial removal findings—"continuance in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—as well as whether the ward continues to be removed from the parents or legal guardian from whom the child was removed under the original petition;

(3) Whether the ward's rehabilitative goals as stated in the case plan have been met and whether juvenile court jurisdiction over the ward is no longer required;

(4) Whether each parent or legal guardian is currently able to provide the care, custody, supervision, and support the child requires in a safe and healthy environment;

(5) Whether the probation officer recommends the modification of the juvenile court's jurisdiction over the ward from that of a ward under section 601 or 602 to that of a transition dependent under section 450;

(6) Whether the ward signed a mutual agreement with the probation department or social services agency for placement in a supervised setting as a transition dependent and, if so, a recommendation as to which agency should be responsible for placement and care of the transition dependent;

(7) Whether the ward plans to meet at least one of the conditions in section 11403(b) and what efforts the probation officer has made to help the ward meet any of these conditions;

(8) When and how the ward was informed of the benefits of remaining under juvenile court jurisdiction as a transition dependent and the probation officer's assessment of the ward's understanding of those benefits;

(9) When and how the ward was informed that he or she may decline to become a transition dependent and have the juvenile court terminate jurisdiction at a hearing under section 391 and rule 5.555; and

(10) When and how the ward was informed that if juvenile court jurisdiction is terminated, he or she can file a request to return to foster care and have the court resume jurisdiction over him or her as a nonminor.

(e) Findings

At the hearing, the court must make the following findings:

(1) Whether notice has been given as required by law;

(2) Whether the ward comes within the description of section 450;

(3) Whether the ward has been informed that he or she may decline to become a transition dependent and have juvenile court jurisdiction terminated at a hearing set under rule 5.555;

(4) Whether the ward's return to the home of his or her parent or legal guardian would create a substantial risk of detriment to the ward's safety, protection, or physical or emotional well-being. The facts supporting this finding must be stated on the record;

(5) Whether reunification services have been terminated;

(6) Whether the ward's case has been set for a hearing to terminate parental rights or establish a guardianship;

(7) Whether the ward intends to sign a mutual agreement with the probation department or social services agency for placement in a supervised setting as a nonminor dependent;

(8) Whether the ward was informed that if juvenile court jurisdiction is terminated, the ward can file a request to return to foster care and may have the court resume jurisdiction over the ward as a nonminor dependent;

(9) Whether the benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained and whether the ward understands them;

(10) Whether the ward's Transitional Independent Living Case Plan includes a plan for the ward to satisfy at least one of the conditions in section 11403(b); and

(11) Whether the ward has had an opportunity to confer with his or her attorney.

(f) Orders

For a child who comes within the description of section 450(a), the court must enter the following orders:

(1) An order modifying the court's jurisdiction over the child from delinquency to transition jurisdiction and adjudging the ward a transition dependent pending his or her 18th birthday and status as a nonminor dependent under the transition jurisdiction of the court. The order modifying the court's jurisdiction must contain all of the following provisions:

(A) A reference to the initial removal findings, the date those findings were made, and a statement that the findings—"continuance in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—made at that hearing remain in effect;

(B) A statement that the child continues to be removed from the parents or legal guardian from whom the child was removed under the original petition; and

(C) Identification of the agency that is responsible for placement and care of the child based on the modification of jurisdiction.

(2) An order continuing the appointment of the attorney of record, or appointing a new attorney, as the attorney of record for the nonminor dependent.

(3) An order setting a nonminor dependent status review hearing under section 366.31 and rule 5.903 within six months of the last hearing held under section 727.2 or 727.3.

Rule 5.814 adopted effective January 1, 2014.

Rule 5.815. Appointment of legal guardians for wards of the juvenile court; modification or termination of guardianship

(a) Proceedings in juvenile court (§ 728)

Proceedings for the appointment of a legal guardian for a child who is a ward of the juvenile court under section 725(b) may be held in the juvenile court.

(Subd (a) amended effective January 1, 2007.)

(b) Recommendation for guardianship (§ 728(c))

On the recommendation of the probation officer supervising the child, the motion of the attorney representing the child, or the court's own motion and order that a legal guardian should be appointed for the child, the court must set a hearing to consider the establishment of a legal guardianship and must order the probation officer to prepare an assessment that includes:

(1) A review of the existing relationship between the child and the proposed guardian;

(2) A summary of the child's medical, developmental, educational, mental, and emotional status;

(3) A social history of the proposed guardian, including a screening for criminal records and any prior referrals for child abuse or neglect;

(4) An assessment of the ability of the proposed guardian to meet the child's needs and the proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship; and

(5) A statement confirming that the proposed guardian has been provided with a copy of *Guardianship Pamphlet* (form JV-350) or *Guardianship Pamphlet (Spanish)* (form JV-350S).

(Subd (b) amended effective January 1, 2007.)

(c) Forms

The probation officer or child's attorney may use *Juvenile Wardship Petition* (form JV-600) and *Petition to Modify Previous Orders—Change of Circumstance*s (form JV-740) to request that a guardianship hearing be set.

(Subd (c) amended effective January 1, 2007.)

(d) Notice (§ 728(c))

The clerk must provide notice of the hearing to the child, the child's parents, and other individuals as required by section 294.

(Subd (d) amended effective July 1, 2016.)

(e) Conduct of hearing

The court must read and consider the assessment prepared by the probation officer and any other evidence. The preparer of the assessment must be available for examination by the court or any party to the proceedings.

(f) Findings and orders

If the court finds that establishment of a legal guardianship is necessary or convenient and consistent with the rehabilitation and protection of the child and with public safety, the court must appoint a legal guardian and order the clerk to issue letters of guardianship (*Letters of Guardianship (Juvenile)* (form JV-330)).

(1) The court may issue orders regarding visitation and contact between the child and a parent or other relative.

(2) After the appointment of a legal guardian, the court may continue juvenile court wardship and supervision or may terminate wardship.

(Subd (f) amended effective January 1, 2007; previously amended effective July 1, 2006.)

(g) Modification or termination of the guardianship, or appointment of a co-guardian or successor guardian

A petition to terminate a guardianship established by the juvenile court, to appoint a co-guardian or successor guardian, or to modify or supplement orders regarding the guardianship must be filed and heard in juvenile court. The procedures described in rule 5.570 must be followed, and *Juvenile Wardship Petition* (form JV-600) and *Petition to Modify Previous Orders—Change of Circumstances* (form JV-740) must be used. The hearing on the motion may be held simultaneously with any regularly scheduled hearing regarding the child.

(Subd (g) amended effective January 1, 2007.)

Rule 5.815 amended effective July 1, 2016; adopted as rule 1496.2 effective January 1, 2004; previously amended effective July 1, 2006; previously amended and renumbered as rule 5.815 effective January 1, 2007.

Rule 5.820. Termination of parental rights for child in foster care for 15 of the last 22 months

(a) Requirement (§§ 727.32(a), 16508.1)

Whenever a child has been declared a ward and has been in any foster care placement for 15 of the most recent 22 months, the probation department must follow the procedures described in section 727.31 to terminate the parental rights of the child's parents. The probation department is not required to follow these procedures if it has documented a compelling reason in the probation file, as defined in section 727.3(c), for determining that termination of parental rights would not be in the child's best interest, or if it has not provided the family with reasonable efforts necessary to achieve reunification.

(1) If the probation department sets a hearing under section 727.31, it must also make efforts to identify an approved family for adoption.

(2) If the probation department has determined that a compelling reason exists, it must document that reason in the case file. The documentation may be a separate document or may be included in another court document, such as the social study prepared for a permanency planning hearing.

(Subd (a) amended effective January 1, 2007.)

(b) Calculating time in foster care (§ 727.32(d))

The following guidelines must be used to determine if the child has been in foster care for 15 of the most recent 22 months:

(1) Determine the date the child entered foster care, as defined in rule 5.502(a)(9). In some cases, this will be the date the child entered foster care as a dependent.

(2) Calculate the total number of months since the date in (1) that the child has spent in foster care. Do not start over if a new petition is filed or for any other reason.

(3) If the child is in foster care for a portion of a month, calculate the total number of days in foster care during that month. Add one month to the total number of months for every 30 days the child is in foster care.

(4) Exclude time during which the child was detained in the home of a parent or guardian; the child was living at home on formal or informal probation, at home on a trial home visit, or at home with no probationary status; the child was a runaway or "absent without leave" (AWOL); or the child was out of home in a non–foster care setting, including juvenile hall; California Department of Corrections and Rehabilitation, Division of Juvenile Justice; a ranch; a camp; a school; or any other locked facility.

(5) Once the total number of months in foster care has been calculated, determine how many of those months occurred within the most recent 22 months. If that number is 15 or more, the requirement in (a) applies.

(6) If the requirement in (a) has been satisfied once, there is no need to take additional action or provide additional documentation after any subsequent 22-month period.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2006.)

Rule 5.820 amended and renumbered effective January 1, 2007; adopted as rule 1496.3 effective January 1, 2003; previously amended effective January 1, 2006.

Rule 5.825. Freeing wards for adoption

(a) Applicable law (§§ 294, 366.26, 727.2, 727.3, 727.31)

Except as provided in section 727.31, the procedures for termination of parental rights to free children described in that section for adoption are stated in sections 294 and 366.26. Rules 5.725 and 5.730 are applicable to these proceedings.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Joint county protocol

In each county, the county probation department and the county child welfare department must jointly develop a protocol for freeing wards for adoption. The protocol should address questions such as:

(1) When and how will wards be referred to the licensed county adoption agency, or State Department of Social Services when it is acting as the adoption agency, for a determination of whether the ward is adoptable, as described by section 727.3(i)(2)?

(2) Once a finding has been made that the permanent plan for the ward must be adoption and the case is set for a section 727.31 hearing, how will the referral be made to the licensed county adoption agency, or to the State Department of Social Services when it is acting as the adoption agency, to prepare an adoption assessment, as required by section 727.3(j)?

(3) Will the probation department continue to have ongoing case management and supervision of the case, pending the termination of parental rights hearing?

(4) Will the probation department or the child welfare department prepare the notices and other legal documents required before a termination of parental rights hearing?

(5) In counties in which different judicial officers hear delinquency and dependency matters, what procedure will be used to ensure that the dependency judge will hear each 727.31 hearing?

(6) Will the probation department or the child welfare department prepare the petition for adoption and other forms needed after the 727.31 hearing to complete the adoption process?

(Subd (b) amended effective January 1, 2007.)

Rule 5.825 amended and renumbered effective January 1, 2007; adopted as rule 1496.5 effective January 1, 2001; previously amended effective January 1, 2006.

Rule 5.830. Sealing records (§ 781)

(a) Sealing records—former wards

(1) A former ward of the court may apply to petition the court to order juvenile records sealed. Determinations under section 781 may be made by the court in any county in which wardship was terminated. A court may seal the records of another court when it determines that it is appropriate to do so, and must make a determination on sealing those records if the case has been transferred to its jurisdiction under rules 5.610 and 5.612.

(2) At the time jurisdiction is terminated or the case is dismissed, the court must provide or instruct the probation department to provide form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-595, *Request to Seal Juvenile Records*, to the ward if the court does not seal the ward's records under section 786. If the court does seal the ward's records under section 786, the court must provide or instruct the probation department to provide form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, and a copy of the sealing order as provided in rule 5.840.

(3) *Application—submission*

(A) The application for a petition to seal records must be submitted to the probation department in the county in which wardship was terminated.

(B) The application for a petition to seal juvenile records may be submitted on form JV-595, *Request to Seal Juvenile Records*, or on another form that includes all required information.

(4) *Investigation*

If the applicant is at least 18 years of age, or if it has been at least five years since the applicant's probation was last terminated or since the applicant was cited to appear before a probation officer or was taken before a probation officer under section 626 or before any officer of a law enforcement agency, the probation officer must do all of the following:

(A) Prepare the petition;

(B) Conduct an investigation under section 781 and compile a list of cases and contact addresses of every agency or person that the probation department knows has a record of the ward's case—including the date of each offense, case number(s), and date when the case was closed—to be attached to the sealing petition;

(C) Prepare a report to the court with a recommendation supporting or opposing the requested sealing; and

(D) Within 90 days from receipt of the application if only the records of the investigating county are to be reviewed, or within 180 days from receipt of the application if records of other counties are to be reviewed:

(i) File the petition;

(ii) Set the matter for a hearing, which may be nonappearance; and

(iii) Notify the prosecuting attorney of the hearing.

(5) The court must review the petition and the report of the probation officer, and the court must grant or deny the petition.

(6) If the petition is granted, the court must order the sealing of all records described in section 781 using form JV-590, *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781*, or a similar form. The order must apply in the county of the court hearing the petition and in all other counties in which there are juvenile records concerning the petitioner. If the court determines that sealing the records of another court for a petition that has not been transferred is inappropriate, it must inform the petitioner that a petition to seal those records can be filed in the county where the other court is located.

(Subd (a) amended effective July 1, 2016; previously amended effective January 1, 2007.)

(b) Sealing—nonwards

(1) For all other persons described in section 781, application may be submitted to the probation department in any county in which there is a juvenile record concerning the petitioner, and the procedures of (a) must be followed.

(2) When jurisdiction is terminated or the case is closed, the probation department must provide the following forms to individuals described under section 781(h)(1)(A) and (B):

(A) If the individual's records have not been sealed under section 786, form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-595, *Request to Seal Juvenile Records;* or

(B) If the individual's records have been sealed under section 786, form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, and a copy of the sealing order.

(Subd (b) amended effective July 1, 2016; previously amended effective January 1, 2007.)

(c) Destruction of records

All records sealed must be destroyed according to section 781(d).

(Subd (c) amended effective January 1, 2007.)

(d) Distribution of order

The clerk of the issuing court must:

(1) Send a copy of the order to each agency and official listed in the order; and

(2) Send a certified copy of the order to the clerk in each county in which a record is ordered sealed.

(Subd (d) amended effective January 1, 2007.)

(e) Deadline for sealing

Each agency and official notified must immediately seal all records as ordered.

(Subd (e) amended effective January 1, 2007.)

Rule 5.830 amended effective July 1, 2016; adopted as rule 1499 effective January 1, 1991; previously renumbered as rule 1497 effective January 1, 1999; previously amended and renumbered as rule 5.830 effective January 1, 2007.

Advisory Committee Comment

This rule is intended to describe the legal process by which a person may apply to petition the juvenile court to order the sealing—that is, the prohibition of access and inspection—of the records related to specified cases in the custody of the juvenile court, the probation department, and other agencies and public officials. This rule establishes minimum legal standards but does not prescribe procedures for managing physical or electronic records or methods for preventing public inspection of the records at issue. These procedures remain subject to local discretion. Procedures may, but are not required to, include the actual sealing of physical records or files. Other permissible methods of sealing physical records pending their destruction under section 781(d) include, but are not limited to, storing sealed records separately from publicly accessible records, placing sealed records in a folder or sleeve of a color different from that in which publicly accessible records are kept, assigning a distinctive file number extension to sealed records, or designating them with a special stamp. Procedures for sealing electronic records must accomplish the same objectives as the procedures used to seal physical records, and appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

Rule 5.840. Dismissal of petition and sealing of records (§ 786)

(a) Applicability

This rule states the procedures to dismiss and seal the records of minors who are subject to section 786.

(b) Dismissal of petition

If the court finds that a minor subject to this rule has satisfactorily completed his or her informal or formal probation supervision, the court must order the petition dismissed. The court must not dismiss a petition if it was sustained based on the commission of an offense listed in subdivision (b) of section 707 when the minor was 14 or older unless the finding on that offense has been dismissed or was reduced to an offense not listed in subdivision (b) of section 707. The court may also dismiss prior petitions filed or sustained against the minor if they appear to the satisfaction of the court to meet the sealing and dismissal criteria in section 786. An unfulfilled order, condition, or restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision. The court may not extend the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786.

(c) Sealing of records

For any petition dismissed by the court under section 786, the court must also order sealed all records in the custody of the court, law enforcement agencies, the probation department, and the Department of Justice pertaining to those dismissed

petition(s) using form JV-596, *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786,* or a similar form. The court may also seal records pertaining to these cases in the custody of other public agencies upon a request by an individual who is eligible to have records sealed under section 786, if the court determines that sealing the additional record(s) will promote the successful reentry and rehabilitation of the individual. The prosecuting attorney, probation officer, and court must have access to these records as specifically provided in section 786. Access to the records for research purposes must be provided as required in section 787.

(d) Destruction of records

The court must specify in its order the date by which all sealed records must be destroyed. For court records this date may be no earlier than the date the subject of the order attains age 21 and no later than the end of the time frame set forth in section 781(d). For all other records, the date may be no earlier than the date the subject of the order attains age 18, and no later than the time frame set forth in section 781(d) unless that time frame expires prior to the date the subject attains 18 years of age.

(e) Distribution of order

The clerk of the issuing court must send a copy of the order to each agency and official listed in the order and provide a copy of the order to the individual whose records have been sealed and his or her attorney. The court shall also provide or instruct the probation department to provide the individual with form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*.

(f) Deadline for sealing

Each agency, individual, and official notified must immediately seal all records as ordered and advise the court that its sealing order has been completed using form JV-591, *Acknowledgment of Juvenile Record Sealed,* or another means.

Rule 5.840 adopted effective July 1, 2016.

Chapter 14. Nonminor Dependent

Title 5, Family and Juvenile Rules—Division 3, Juvenile rules—Chapter 14, Nonminor Dependent; adopted effective January 1, 2012.

Rule 5.900. Nonminor dependent—preliminary provisions (§§ 224.1(b), 295, 303, 366, 366.3, 388, 391, 607(a))

Rule 5.903. Nonminor dependent status review hearing (§§ 224.1(b), 295, 366.1, 366.3, 366.31)
Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e), 388.1)

Rule 5.900. Nonminor dependent—preliminary provisions (§§ 224.1(b), 295, 303, 366, 366.3, 388, 391, 607(a))

(a) Applicability

(1) The provisions of this chapter apply to nonminor dependents as defined in section 11400(v).

(2) Nothing in the Welfare and Institutions Code or in the California Rules of Court restricts the ability of the juvenile court to maintain dependency jurisdiction or delinquency jurisdiction over a person, 18 years of age and older, who does not meet the eligibility requirements for status as a nonminor dependent and to proceed as to that person under the relevant sections of the Welfare and Institutions Code and California Rules of Court.

(b) Purpose

(1) Maintaining juvenile court jurisdiction under sections 300 or 450 over a person as a nonminor dependent is the result of a consensual agreement between the person and child welfare services agency or the probation department for a voluntary placement in a supervised setting and includes the agreement between the social worker or probation officer and the person to work together to implement the mutually developed supervised placement agreement or reentry agreement.

(2) Maintaining juvenile court jurisdiction and supervision by the child welfare services agency or probation department under sections 300, 450, 601, or 602 over a person as a nonminor dependent is for the purpose of implementing the mutually developed Transitional Independent Living Case Plan and providing support, guidance, and foster care services to the person as a nonminor dependent so he or she is able to successfully achieve independence, including relationships with caring and committed adults who can serve as lifelong connections.

(Subd (b) amended effective January 1, 2014.)

(c) Legal status

(1) Nothing in the Welfare and Institutions Code, including sections 340, 366.2, and 369.5, or in the California Rules of Court provides legal custody of a nonminor dependent to the child welfare services agency or the probation department or abrogates any right the nonminor dependent, as a person who has attained 18 years of age, may have as an adult under California law.

(2) A nonminor dependent retains all his or her legal decisionmaking authority as an adult. The decisionmaking authority of a nonminor dependent under delinquency jurisdiction may be limited by and subject to the care, supervision, custody, conduct, and maintenance orders in section 727.

(Subd (c) amended effective January 1, 2014.)

(d) Conduct of hearings

(1) All hearings involving a person who is a nonminor dependent must be conducted in a manner that respects the person's legal status as an adult.

(2) Unless there is a contested issue of fact or law, the hearings must be informal and nonadversarial and all parties must work collaboratively with the nonminor dependent as he or she moves toward the achievement of his or her Transitional Independent Living Case Plan goals.

(3) The nonminor dependent may designate his or her attorney to appear on his or her behalf at a hearing under this chapter.

(e) Telephone appearance

(1) The person who is the subject of the hearing may appear, at his or her request, by telephone at a hearing to terminate juvenile court jurisdiction held under rule 5.555, a status review hearing under rule 5.903, or a hearing on a request to have juvenile court jurisdiction resumed held under rule 5.906. Rule 5.531 applies to telephone appearances under this paragraph.

(2) The court may require the nonminor dependent or the person requesting to return to juvenile court jurisdiction and foster care to appear personally on a showing of good cause and a showing that the personal appearance will not create an undue hardship for him or her.

(3) The telephone appearance must be permitted at no cost to the nonminor dependent or the person requesting to return juvenile court jurisdiction and foster care.

(f) Separate court file

The clerk of the superior court must open a separate court file for nonminor dependents under the dependency, delinquency, or transition jurisdiction of the court that ensures the confidentiality of the nonminor dependent and allows access only to those listed in section 362.5.

(Subd (f) adopted effective January 1, 2014.)

Rule 5.900 amended effective January 1, 2014; adopted effective January 1, 2012.

Advisory Committee Comment

A nonminor is entitled to be represented by an attorney of his or her choice rather than by a court-appointed attorney in proceedings under this chapter and under rule 5.555. (See Welf. & Inst. Code, § 349(b); *In re Akkiko M.* (1985) 163 Cal.App.3d 525.) Any fees for an attorney retained by the nonminor are the nonminor's responsibility.

Rule 5.903. Nonminor dependent status review hearing (§§ 224.1(b), 295, 366.1, 366.3, 366.31)

(a) Purpose

The primary purpose of the nonminor dependent status review hearing is to focus on the goals and services described in the nonminor dependent's Transitional Independent Living Case Plan and the efforts and progress made toward achieving independence and establishing lifelong connections with caring and committed adults.

(b) Setting and conduct of a nonminor dependent status review hearing

(1) A status review hearing for a nonminor dependent conducted by the court or by a local administrative review panel must occur no less frequently than once every 6 months.

(2) The hearing must be placed on the appearance calendar, held before a judicial officer, and recorded by a court reporter under any of the following circumstances:

(A) The hearing is the first hearing following the nonminor dependent's 18th birthday;

(B) The hearing is the first hearing following the resumption of juvenile court jurisdiction over a person as a nonminor dependent under rule 5.906;

(C) The nonminor dependent or the nonminor dependent's attorney requests that the hearing be conducted by the court; or

(D) It has been 12 months since the hearing was conducted by the court.

(3) The hearing may be attended, as appropriate, by participants invited by the nonminor dependent in addition to those entitled to notice under (c).

(4) The nonminor dependent may appear by telephone as provided in rule 5.900 at a hearing conducted by the court.

(5) The hearing must be continued for no more than five court days for the social worker, probation officer, or nonminor dependent to submit additional information as ordered by the court if the court determines that the report and Transitional Independent Living Case Plan submitted by the social worker or probation officer do not provide the information required by (d)(1) and the court is unable to make all the findings and orders required by (e).

(c) Notice of hearing (§ 295)

(1) The social worker or probation officer must serve written notice of the hearing in the manner provided in section 295, and to all persons required to receive notice under section 295, except notice to the parents of the nonminor dependent is not required.

(2) The written notice served on the nonminor dependent must include:

(A) A statement that he or she may appear for the hearing by telephone; and

(B) Instructions about the local court procedures for arranging to appear and appearing at the hearing by telephone.

(3) Proof of service of notice must be filed by the social worker or probation officer at least five court days before the hearing.

(d) Reports

(1) The social worker or probation officer must submit a report to the court that includes information regarding:

(A) The continuing necessity for the nonminor dependent's placement and the facts supporting the conclusion reached;

(B) The appropriateness of the nonminor dependent's current foster care placement;

(C) The nonminor dependent's plans to remain under juvenile court jurisdiction including the criteria in section 11403(b) that he or she meets;

(D) The efforts made by the social worker or probation officer to help the nonminor dependent meet the criteria in section 11403(b);

(E) Verification that the nonminor dependent was provided with the information, documents, and services as required under section 391(e);

(F) How and when the Transitional Independent Living Case Plan was developed, including the nature and the extent of the nonminor dependent's participation in its development, and for the nonminor dependent who has elected to have the Indian Child Welfare Act continue to apply, the extent of consultation with the tribal representative;

(G) The efforts made by the social worker or probation officer to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the permanent plan and prepare him or her for independence;

(H) Progress made toward meeting the Transitional Independent Living Case Plan goals and the need for any modifications to assist the nonminor dependent in attaining the goals;

(I) The efforts made by the social worker or probation officer to maintain relationships between the nonminor dependent and individuals who are important to him or her, including the efforts made to establish and maintain relationships with caring and committed adults who can serve as a lifelong connection;

(J) The efforts made by the social worker or probation officer to establish or maintain the nonminor dependent's relationship with his or her siblings who are under the juvenile court's jurisdiction as required in section 366(a)(1)(D);

(K) For a nonminor dependent whose case plan is continued court-ordered family reunification services, the information required in section 366.31(d); and

(L) For a nonminor who has returned to the home of the parent or former legal guardian, whether continued juvenile court jurisdiction is necessary and the facts in support of that conclusion.

(2) The social worker or probation officer must submit with his or her report the Transitional Independent Living Case Plan.

(3) The social worker or probation officer must file with the court the report prepared for the hearing and the Transitional Independent Living Case Plan at least 10 calendar days before the hearing, and provide copies of the report and other documents to the nonminor dependent, all attorneys of record, and for the nonminor dependent who has elected to have the Indian Child Welfare Act continue to apply, the tribal representative.

(Subd (d) amended effective January 1, 2014.)

(e) Findings and orders

The court must consider the safety of the nonminor dependent, and the following judicial findings and orders must be made and included in the written court documentation of the hearing:

(1) *Findings*

(A) Whether notice was given as required by law;

(B) Whether the nonminor dependent's continuing placement is necessary;

(C) Whether the nonminor dependent's current placement is appropriate;

(D) Whether the Transitional Independent Living Case Plan includes a plan for the nonminor dependent to satisfy one or more of the criteria in section 11403(b);

(E) The specific criteria in section 11403(b) the nonminor dependent satisfied since the last hearing held under this rule;

(F) The specific criteria in section 11403(b) it is anticipated the nonminor dependent will satisfy during the next six months;

(G) Whether reasonable efforts were made and assistance provided by the social worker or probation officer to help the nonminor dependent establish and maintain compliance with section 11403(b);

(H) Whether the nonminor dependent was provided with the information, documents, and services as required under section 391(e);

(I) Whether the Transitional Independent Living Case Plan was developed jointly by the nonminor dependent and the social worker or probation officer, reflects the living situation and services that are consistent in the nonminor dependent's opinion with what he or she needs to gain independence, and sets out the benchmarks that indicate how both will know when independence can be achieved;

(J) For the nonminor dependent who has elected to have the Indian Child Welfare Act continue to apply, whether the representative from his or her tribe was consulted during the development of the Transitional Independent Living Case Plan;

(K) Whether reasonable efforts were made by the social worker or probation officer to comply with the Transitional Independent Living Case Plan, including efforts to finalize the nonminor dependent's permanent plan and prepare him or her for independence;

(L) Whether the Transitional Independent Living Case Plan includes appropriate and meaningful independent living skill services that will assist him or her with the transition from foster care to independent living;

(M) Whether the nonminor dependent signed and received a copy of his or her Transitional Independent Living Case Plan;

(N) The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals and any modifications needed to assist in attaining the goals;

(O) Whether reasonable efforts were made by the social worker or probation officer to maintain relationships between the nonminor dependent and individuals who are important to him or her, including the efforts made to establish and maintain relationships with caring and committed adults who can serve as lifelong connections;

(P) Whether reasonable efforts were made by the social worker or probation officer to establish or maintain the nonminor dependent's relationship with his or her siblings who are under the juvenile court's jurisdiction as required in section 366(a)(1)(D);

(Q) For a nonminor dependent whose case plan is continued court-ordered family reunification services, the findings required in section 366.31(d); and

(R) For a nonminor who has returned to the home of the parent or former legal guardian, whether continued juvenile court jurisdiction is necessary.

(2) *Orders*

(A) Order the continuation of juvenile court jurisdiction and set a nonminor dependent review hearing under this rule within six months, and:

(i) Order a permanent plan consistent with the nonminor dependent's Transitional Independent Living Case Plan, and

(ii) Specify the likely date by which independence is anticipated to be achieved; and

(iii) For a nonminor dependent whose parents are receiving court-ordered family reunification services:

a. Order the continuation of reunification services;

b. Order the termination of reunification services; or

c. Order that the nonminor may reside in the home of the parent or former legal guardian and that juvenile court jurisdiction is terminated or that juvenile court jurisdiction is continued under section 303(a) and a status review hearing is set for within six months.

(B) Order the continuation of juvenile court jurisdiction and set a hearing to consider termination of juvenile court jurisdiction over a nonminor under rule 5.555 within 30 days; or

(C) Order termination of juvenile court jurisdiction pursuant to rule 5.555 if this nonminor dependent status review hearing was heard at the same time as a hearing under rule 5.555.

(Subd (e) amended effective January 1, 2014.)

Rule 5.903 amended effective January 1, 2014; adopted effective January 1, 2012.

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e), 388.1)

(a) Purpose

This rule provides the procedures that must be followed when a nonminor wants to have juvenile court jurisdiction assumed or resumed over him or her as a nonminor dependent as defined in subdivisions (v) or (aa) of section 11400.

(Subd (a) amended effective January 1, 2016; previously amended effective July 1, 2012, and January 1, 2014.)

(b) Contents of the request

(1) The request to have the juvenile court assume or resume jurisdiction must be made on the *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466).

(2) The request must be liberally construed in favor of its sufficiency. It must be verified by the nonminor or if the nonminor is unable to provide verification due to a medical condition, the nonminor's representative, and to the extent known to the nonminor or the nonminor's representative, must include the following information:

(A) The nonminor's name and date of birth;

(B) The nonminor's address and contact information, unless the nonminor requests that this information be kept confidential from those persons entitled to access to the juvenile court file, including his or her parents, by filing *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468). Form JV-468 must

be kept in the court file under seal, and only the court, the child welfare services agency, the probation department, or the Indian tribe with an agreement under section 10553.1 to provide child welfare services to Indian children (Indian tribal agency), the attorney for the child welfare services agency, the probation department, or the Indian tribe, and the nonminor's attorney may have access to this information;

(C) The name and action number or court file number of the nonminor's case and the name of the juvenile court that terminated its dependency jurisdiction, delinquency jurisdiction, or transition jurisdiction;

(D) The date the juvenile court entered the order terminating its dependency jurisdiction, delinquency jurisdiction, or transition jurisdiction;

(E) If the nonminor wants his or her parents or former legal guardians to receive notice of the filing of the request and the hearing, the name and residence addresses of the nonminor's parents or former guardians;

(F) The name and telephone number of the court-appointed attorney who represented the nonminor at the time the juvenile court terminated its dependency jurisdiction, delinquency jurisdiction, or transition jurisdiction if the nonminor wants that attorney to be appointed to represent him or her for the purposes of the hearing on the request;

(G) If the nonminor is an Indian child within the meaning of the Indian Child Welfare Act and chooses to have the Indian Child Welfare Act apply to him or her, the name of the tribe and the name, address, and telephone number of his or her tribal representative;

(H) If the nonminor had a Court Appointed Special Advocate (CASA) when he or she was a dependent or ward of the court and wants the CASA to receive notice of the filing of the request and the hearing, the CASA's name;

(I) The condition or conditions under section 11403(b) that the nonminor intends to satisfy; and

(J) Whether the nonminor requires assistance to maintain or secure an appropriate, supervised placement, or is in need of immediate placement and will agree to a supervised placement under a voluntary reentry agreement.

(3) The court may dismiss without prejudice a request filed under this rule that is not verified.

(Subd (b) amended effective January 1, 2016; previously amended effective July 1, 2012.)

(c) Filing the request

(1) The form JV-466 must be completed and verified by the nonminor or the nonminor's representative if the nonminor is unable to provide verification due to a medical condition, and may be filed by the nonminor or the county child welfare services, probation department, or Indian tribe (placing agency) on behalf of the nonminor.

(2) For the convenience of the nonminor, the form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, the *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:

(A) Filed with the juvenile court that maintained general jurisdiction or for cases petitioned under section 388.1, in the court that established the guardianship or had jurisdiction when the adoption was finalized; or

(B) Submitted to the juvenile court in the county in which the nonminor currently resides, after which:

(i) The court clerk must record the date and time received on the face of the originals submitted and provide a copy of the originals marked as received to the nonminor at no cost to him or her.

(ii) To ensure receipt of the original form JV-466 and, if submitted, the form JV-468 by the court of general jurisdiction within five court days as required in section 388(e), the court clerk must forward those originals to the clerk of the court of general jurisdiction within two court days of submission of the originals by the nonminor.

(iii) The court in the county in which the nonminor resides is responsible for all costs of processing, copying, and forwarding the form JV-466 and form JV-468 to the clerk of the court of general jurisdiction.

(iv) The court clerk in the county in which the nonminor resides must retain a copy of the documents submitted.

(v) The form JV-466 and, if submitted, the form JV-468 must be filed immediately upon receipt by the clerk of the juvenile court of general jurisdiction.

(C) For a nonminor living outside the state of California, the form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, the form JV-468 must be filed with the juvenile court of general jurisdiction.

(3) If form JV-466 is filed by the nonminor, within two court days of its filing with the clerk of the court in the county of general jurisdiction, the clerk of that court must notify the placing agency that was supervising the nonminor when juvenile court jurisdiction was terminated that the nonminor has filed form JV-466 and provide the placing agency with the nonminor's contact information. The notification must be by telephone, fax, e-mail, or other method approved by the presiding juvenile court judge that will ensure prompt notification and inform the placing agency that a copy of form JV-466 will be served on the agency and that one is currently available in the office of the juvenile court clerk.

(4) If form JV–466 has not been filed at the time the nonminor completes the voluntary reentry agreement described in section 11400(z), the placing agency must file form JV-466 on the nonminor's behalf within 15 court days of the date the voluntary reentry agreement was signed, unless the nonminor files form JV-466 prior to the expiration of the 15 court days.

(5) No filing fees are required for the filing of form JV-466 and, if filed, form JV-468. An endorsed, filed copy of each form filed must be provided at no cost to the nonminor or the placing agency that filed the request on the nonminor's behalf.

(Subd (c) amended effective January 1, 2016; previously amended effective July 1, 2012.)

(d) Determination of prima facie showing

(1) Within three court days of the filing of form JV-466 with the clerk of the juvenile court of general jurisdiction, a juvenile court judicial officer must review the form JV-466 and determine whether a prima facie showing has been made that the nonminor meets all of the criteria set forth below in (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or (d)(3).

(A) The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date he or she attained 18 years of age, or the nonminor is eligible to seek assumption of dependency jurisdiction pursuant to the provisions of subdivision (c) of section 388.1;

(B) The nonminor has not attained 21 years of age;

(C) The nonminor wants assistance to maintain or secure an appropriate, supervised placement or is in need of immediate placement and agrees to a supervised placement under a voluntary reentry agreement; and

(D) The nonminor intends to satisfy at least one of the eligibility criteria in section 11403(b).

(2) If the court determines that a prima facie showing has not been made, the court must enter a written order denying the request, listing the issues that resulted in the denial and informing the nonminor that a new form JV-466 may be filed when those issues are resolved.

(A) The court clerk must serve on the nonminor:

(i) A copy of the written order;

(ii) A blank copy of *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468);

(iii) A copy of *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO); and

(iv) The names and contact information for those attorneys approved by the court to represent children in juvenile court proceedings who have agreed to provide a consultation to any nonminor whose request was denied due to the failure to make a prima facie showing.

(B) The court clerk must serve on the placing agency a copy of the written order.

(C) Service must be by personal service or first-class mail within two court days of the issuance of the order.

(D) A proof of service must be filed.

(3) If the judicial officer determines that a prima facie showing has been made, the judicial officer must issue a written order:

(A) Directing the court clerk to set the matter for a hearing, and

(B) Appointing an attorney to represent the nonminor solely for the hearing on the request.

(Subd (d) amended effective January 1, 2016; previously amended effective July 1, 2012, and January 1, 2014.)

(e) Appointment of attorney

(1) If the nonminor included on the form JV-466 a request for the appointment of the court-appointed attorney who represented the nonminor during the period of time he or she was a ward or dependent or nonminor dependent, the judicial officer must appoint that attorney solely for the hearing on the request, if the attorney is available to accept such an appointment.

(2) If the nonminor did not request the appointment of his or her former court-appointed attorney, the judicial officer must appoint an attorney to represent the nonminor solely for the hearing on the request. The attorney must be selected from the panel or organization of attorneys approved by the court to represent children in juvenile court proceedings.

(3) In addition to complying with the requirements in (g)(1) for service of notice of the hearing, the juvenile court clerk must notify the attorney of his or her appointment as soon as possible, but no later than one court day from the date the order for his or her appointment was issued under (d)(3). This notification must be made by telephone, fax, e-mail, or other method approved by the presiding juvenile court judge that will ensure prompt notification. The notice must also include the nonminor's contact information and inform the attorney that a copy of the form JV-466 will be served on him or her and that one is currently available in the office of the juvenile court clerk.

(4) If the request is granted, the court must continue the attorney's appointment to represent the nonminor regarding matters related to his or her status as a nonminor dependent until the jurisdiction of the juvenile court is terminated, unless the court finds that the nonminor would not benefit from the appointment of an attorney.

(A) In order to find that a nonminor would not benefit from the appointment of an attorney, the court must find all of the following:

(i) The nonminor understands the nature of the proceedings;

(ii) The nonminor is able to communicate and advocate effectively with the court, other attorneys, and other parties, including social workers, probation officers, and other professionals involved in the case; and

(iii) Under the circumstances of the case, the nonminor would not gain any benefit from representation by an attorney.

(B) If the court finds that the nonminor would not benefit from representation by an attorney, the court must make a finding on the record as to each of the criteria in (e)(4)(A) and state the reasons for each finding.

(5) Representation of the nonminor by the court-appointed attorney for the hearing on the request to return to juvenile court jurisdiction and for matters related to his or her status as a nonminor dependent must be at no cost to the nonminor.

(6) If the nonminor chooses to be represented by an attorney other than a court-appointed attorney, the fees for an attorney retained by the nonminor are the nonminor's responsibility.

(Subd (e) amended effective July 1, 2012.)

(f) Setting the hearing

(1) Within two court days of the issuance of the order directing the court clerk to do so, the court clerk must set a hearing on the juvenile court's calendar within 15 court days from the date the form JV-466 was filed with the court of general jurisdiction.

(2) The hearing must be placed on the appearance calendar, heard before a juvenile court judicial officer, and recorded by a court reporter.

(Subd (f) amended effective July 1, 2012.)

(g) Notice of hearing

(1) The juvenile court clerk must serve notice as soon as possible, but no later than five court days before the date the hearing is set, as follows:

(A) The notice of the date, time, place, and purpose of the hearing and a copy of the form JV-466 must be served on the nonminor, the nonminor's attorney, the child welfare services agency, the probation department, or the Indian tribal agency that was supervising the nonminor when the juvenile court terminated its delinquency, dependency, or transition jurisdiction over the nonminor, and the attorney for the child welfare services agency, the probation department, or the Indian tribe.

(B) The notice of the date, time, place, and purpose of the hearing must be served on the nonminor's parents only if the nonminor included in the form JV-466 a request that notice be provided to his or her parents.

(C) The notice of the date, time, place, and purpose of the hearing must be served on the nonminor's tribal representative if the nonminor is an Indian child and indicated on the form JV-466 his or her choice to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

(D) The notice of the date, time, place, and purpose of the hearing must be served on the local CASA office if the nonminor had a CASA and included on the form JV-466 a request that notice be provided to his or her former CASA.

(2) The written notice served on the nonminor dependent must include:

(A) A statement that the nonminor may appear for the hearing by telephone; and

(B) Instructions regarding the local juvenile court procedures for arranging to appear and appearing at the hearing by telephone.

(3) Service of the notice must be by personal service or by first-class mail.

(4) Proof of service of notice must be filed by the juvenile court clerk at least two court days prior to the hearing.

(Subd (g) amended effective July 1, 2012.)

(h) Reports

(1) The social worker, probation officer, or Indian tribal agency case worker (tribal case worker) must submit a report to the court that includes:

(A) Confirmation that the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age and that he or she has not attained 21 years of age, or is eligible to petition the court to assume jurisdiction over the nonminor pursuant to section 388.1;

(B) The condition or conditions under section 11403(b) that the nonminor intends to satisfy;

(C) The social worker, probation officer, or tribal case worker's opinion as to whether continuing in a foster care placement is in the nonminor's best interests and recommendation about the assumption or resumption of juvenile court jurisdiction over the nonminor as a nonminor dependent;

(D) Whether the nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency;

(E) The type of placement recommended if the request to return to juvenile court jurisdiction and foster care is granted;

(F) If the type of placement recommended is a placement in a setting where minor dependents also reside, the results of the background check of the nonminor under section 16504.5.

(i) The background check under section 16504.5 is required only if a minor dependent resides in the placement under consideration for the nonminor.

(ii) A criminal conviction is not a bar to a return to foster care and the resumption of juvenile court jurisdiction over the nonminor as a nonminor dependent.

(2) At least two court days before the hearing, the social worker, probation officer, or tribal case worker must file the report and any supporting

documentation with the court and provide a copy to the nonminor and to his or her attorney of record; and

(3) If the court determines that the report and other documentation submitted by the social worker, probation officer, or tribal case worker does not provide the information required by (h)(1) and the court is unable to make the findings and orders required by (i), the hearing must be continued for no more than five court days for the social worker, probation officer, tribal case worker, or nonminor to submit additional information as ordered by the court.

(Subd (h) amended effective January 1, 2016; previously amended effective July 1, 2012, and January 1, 2014.)

(i) Findings and orders

The court must read and consider, and state on the record that it has read and considered, the report; the supporting documentation submitted by the social worker, probation officer, or tribal case worker; the evidence submitted by the nonminor; and any other evidence. The following judicial findings and orders must be made and included in the written court documentation of the hearing:

(1) *Findings*

(A) Whether notice was given as required by law;

(B) Whether the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age, or meets the requirements of subparagraph (5) of subdivision (c) of section 388.1;

(C) Whether the nonminor has attained 21 years of age;

(D) Whether the nonminor intends to satisfy a condition or conditions under section 11403(b);

(E) The condition or conditions under section 11403(b) that the nonminor intends to satisfy;

(F) Whether continuing or reentering and remaining in a foster care placement is in the nonminor's best interests;

(G) Whether the nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency; and

(H) Whether a nonminor who is an Indian child chooses to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

(2) *Orders*

(A) If the court finds that the nonminor has not attained 21 years of age, that the nonminor intends to satisfy at least one condition under section 11403(b), and that the nonminor and placing agency have entered into a reentry agreement, the court must:

(i) Grant the request and enter an order assuming or resuming juvenile court jurisdiction over the nonminor as a nonminor dependent and vesting responsibility for the nonminor's placement and care with the placing agency;

(ii) Order the social worker, probation officer, or tribal case worker to develop with the nonminor and file with the court within 60 days a new Transitional Independent Living Case Plan;

(iii) Order the social worker or probation officer to consult with the tribal representative regarding a new Transitional Independent Living Case Plan for the nonminor who chooses to have the Indian Child Welfare Act apply to him or her as a nonminor dependent and who is not under the supervision of a tribal case worker;

(iv) Set a nonminor dependent status review hearing under rule 5.903 within the next six months; and

(v) Make the findings and enter the appropriate orders under (e)(4) regarding appointment of an attorney for the nonminor.

(B) If the court finds that the nonminor has not attained 21 years of age, but the nonminor does not intend to satisfy at least one of the conditions under section 11403(b) and/or the nonminor and placing agency have not entered into a reentry agreement, the court must:

(i) Enter an order denying the request, listing the reasons for the denial, and informing the nonminor that a new form JV-466 may be filed when those circumstances change;

(ii) Enter an order terminating the appointment of the attorney appointed by the court to represent the nonminor, effective seven calendar days after the hearing; and

(iii) In addition to the service of a copy of the written order as required in (i)(3), the juvenile court clerk must cause to be served on the nonminor a blank copy of the *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468), and a copy of *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO).

(C) If the court finds that the nonminor is over 21 years of age, the court must:

(i) Enter an order denying the request to have juvenile court jurisdiction resumed; and

(ii) Enter an order terminating the appointment of the attorney appointed by the court to represent the nonminor, effective seven calendar days after the hearing.

(3) *Findings and orders: service*

(A) The written findings and order must be served by the juvenile court clerk on all persons provided with notice of the hearing under (g)(1).

(B) Service must be by personal service or first-class mail within three court days of the issuance of the order.

(C) A proof of service must be filed.

(Subd (i) amended effective January 1, 2016; previously amended effective July 1, 2012, and January 1, 2014.)

Rule 5.906 amended effective January 1, 2016; adopted effective January 1, 2012; previously amended effective July 1, 2012, and January 1, 2014.

Advisory Committee Comment

Assembly Bill 12 (Beall; Stats. 2010, ch. 559), known as the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459), implement the federal Fostering Connections to Success and Increasing Adoptions Act, Pub.L. No. 110-351, which provides funding resources to extend the support of the foster care system to children who are still in a foster care placement on their 18th birthday. Every effort was made in the development of the rules and forms to provide an efficient framework for the implementation of this important and complex legislation.