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

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Rule 5.5. Division title

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

Rule 5.5 adopted effective January 1, 2007.

Rule 5.10. 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) "Proceeding" means a proceeding under the Family Code for dissolution of marriage, nullity of marriage, legal separation, custody and support of minor children, or actions under the Domestic Violence Prevention Act, the Uniform Parentage Act, the Uniform Child Custody Jurisdiction and Enforcement Act, or the Uniform Interstate Family Support Act; local child support agency actions under the Family Code; and contempt proceedings relating to family law or local child support agency actions.

(3) "Property" includes assets and obligations.

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

Rule 5.10 amended effective January 1, 2008; adopted as rule 1201 effective January 1, 1970; previously amended effective January 1, 1994, January 1, 1999, and January 1, 2007; previously amended and renumbered effective January 1, 2003.

Rule 5.15. 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.

Rule 5.15 renumbered effective January 1, 2003; adopted as rule 1203 effective January 1, 1970.

Rule 5.20. Application of rules

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

Rule 5.20 amended effective January 1, 2007; adopted as rule 1205 effective January 1, 1970; previously amended effective January 1, 1979, January 1, 1994, and January 1, 1999; previously amended and renumbered effective January 1, 2003.

Rule 5.21. 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.

Rule 5.21 amended and renumbered effective January 1, 2003; adopted as rule 1206 effective January 1, 1970; previously amended effective January 1, 1994.

Rule 5.22. Other proceedings

In any action under the Family Code but not otherwise subject to these rules by virtue of rule 5.10(2), 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.

Rule 5.22 amended effective January 1, 2007; adopted as rule 1207 effective January 1, 1970; previously amended effective January 1, 1994; previously amended and renumbered effective January 1, 2003.

Rule 5.25. 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 FJ 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.

Rule 5.25 amended and renumbered effective January 1, 2003; adopted as rule 1278 effective January 1, 2001.

Rule 5.26. Use of 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, to the extent they are appropriate to that proceeding.

Rule 5.26 amended and renumbered effective January 1, 2003; adopted as rule 1275 effective July 1, 1985.

Rule 5.27. Use of 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 5.27 renumbered effective January 1, 2003; adopted as rule 1276 effective July 1, 1988; amended effective January 1, 1998.

Rule 5.28. Domestic partnerships

(a) Procedures for obtaining a dissolution, a legal separation, or an annulment of a domestic partnership

(1) *Petition—Domestic Partnership (Family Law)* (form FL-103) must be filed to commence an action for dissolution, legal separation, or annulment of a domestic partnership. *Response—Domestic Partnership (Family Law)* (form FL-123) must be filed in response to this petition.

(2) All other 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, except that parties who qualify for a "Notice of Termination of Domestic Partnership" under Family Code section 299 must follow that procedure rather than file a summary dissolution proceeding with the superior court.

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

(b) Terminology for rules and forms

For the purposes of family law rules and forms, the terms "spouse," "husband," and "wife" encompass "domestic partner." The terms "father" and "mother" encompass "parent." The terms "marriage" and "marital status" encompass "domestic partnership" and "domestic partnership status," respectively.

Rule 5.28 amended effective January 1, 2007; adopted effective January 1, 2005.

Rule 5.35. 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 5.35 amended effective January 1, 2007; adopted as rule 1208 effective January 1, 2000; previously amended and renumbered effective January 1, 2003.

Rule 5.70. Nondisclosure of attorney assistance in preparation of court documents

(a) Nondisclosure

In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to 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.

(b) 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.

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

(c) 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 5.70 amended effective January 1, 2007; adopted as rule 5.170 effective July 1, 2003; previously renumbered effective January 1, 2004.

Rule 5.71. Application to be relieved as counsel on completion of limited scope representation

(a) Applicability of this rule

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form FL-950) may use the procedure in this rule to request that the attorney be relieved as counsel in cases in which the attorney has appeared before the court as attorney of record and the client has not signed a *Substitution of Attorney—Civil* (form MC-050).

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

(b) Notice

An application to be relieved as counsel 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).

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

(c) Service

The application must be filed with the court and served on the client and on all other parties and counsel who are of record in the case. The client must also be served with *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956).

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

(d) No objection

If no objection is filed within 15 days from the date that the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) is served upon 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 Upon Completion of Limited Scope Representation* (form FL-958). The clerk will then forward the file with the proposed order for judicial signature.

(e) Objection

If an objection is filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Counsel Upon 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 counsel.

(f) Service of the order

After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

Rule 5.71 amended effective July 1, 2007; adopted as rule 5.171 effective July 1, 2003; previously renumbered effective January 1, 2004; previously amended effective January 1, 2007.

Chapter 2. Procedural Rules

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Rule 5.100. Designation of parties

In proceedings filed under the Family Code, except for local child support agency actions, the party initiating the proceeding is the petitioner, and the other party is the respondent. In local child support agency actions, the responding party is the 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.

Rule 5.100 amended and renumbered effective January 1, 2003; adopted as rule 1210 effective January 1, 1970; previously amended effective January 1, 1999.

Rule 5.102. Parties to proceeding

(a) Except as provided in (c) or in rules 5.150 through 5.160, the only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of marriage are the husband and wife.

(Subd (a) amended effective January 1, 2005; previously amended effective January 1, 1977, January 1, 1999, and January 1, 2003.)

(b) Except as provided in (c) or in rules 5.150 through 5.160, the only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of domestic partnership are the domestic partners.

(Subd (b) adopted effective January 1, 2005.)

(c) In a nullity proceeding commenced by a person specified in Family Code section 2211, other than a proceeding commenced by or on behalf of the husband or wife in a marriage or one of the domestic partners in a domestic partnership, the person initiating the proceeding is a party and the caption on all papers must be suitably modified to reflect that fact.

(Subd (c) amended and relettered effective January 1, 2005; adopted as subd (b); previously amended effective January 1, 1994, and January 1, 2003.)

Rule 5.102 amended effective January 1, 2005; adopted as rule 1211 effective January 1, 1970; previously amended effective January 1, 1977, January 1, 1994, and January 1, 1999; amended and renumbered effective January 1, 2003.

Rule 5.104. Other causes of action

Neither party to the proceeding may assert against the other party or any other person any cause of action or claim for relief other than for the relief provided in these rules, Family Code sections 17400, 17402, and 17404, or other sections of the Family Code.

Rule 5.104 amended and renumbered effective January 1, 2003; adopted as rule 1212 effective January 1, 1970; previously amended effective January 1, 1994, and January 1, 1999.

Rule 5.106. Injunctive relief and reservation of jurisdiction

(a) Upon application as set out in rule 5.118, the court may grant injunctive or other relief against or for the following persons to protect the rights of either or both parties to the proceeding under the Family Code:

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

(2) A person who but for rule 5.102 would be a necessary party to a complete adjudication of the controversy; 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.

(Subd (a) amended and relettered effective January 1, 2003.)

(b) 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 adjudicated in a separate action or proceeding.

(Subd (b) amended effective January 1, 2007; previously amended and relettered effective January 1, 2003.)

Rule 5.106 amended effective January 1, 2007; adopted as rule 1213 effective January 1, 1970; previously amended effective January 1, 1994; amended and renumbered effective January 1, 2003.

Rule 5.108. Pleadings

(a) The forms of pleading and the rules by which the sufficiency of pleadings is to be determined are solely those prescribed in these rules. Demurrers must not be used.

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

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

(Subd (b) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered effective January 1, 2003.)

Rule 5.108 amended effective January 1, 2007; adopted as rule 1215 effective January 1, 1970; previously amended effective January 1, 1999; amended and renumbered effective January 1, 2003.

Rule 5.110. Summons; restraining order

(a) Issuing the summons; form

Except for support proceedings initiated by a local child support agency, the procedure for issuance of summons in the proceeding is that applicable to civil actions generally. The clerk must not return the original summons, but must maintain it in the file.

(Subd (a) amended effective January 1, 2003; previously amended effective January 1, 1999, and January 1, 2001.)

(b) Standard family law restraining order; handling by clerk

Notwithstanding Family Code section 233, a summons (form FL-110 or FL-210) with the standard family law 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. If service is by publication, the publication need not include the restraining orders.

(Subd (b) amended effective January 1, 2007; adopted as subd (c) effective July 1, 1990; previously amended effective January 1, 1994, and January 1, 1999; previously amended and relettered effective January 1, 2003.)

(c) Individual restraining order

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 restraining orders included in the standard family law restraining orders. Individual orders supersede the standard family law restraining orders on the Family Law and Uniform Parentage Act summons.

(Subd (c) amended and relettered effective January 1, 2003; adopted as subd (d) effective July 1, 1990; previously amended effective January 1, 1994, and January 1, 1999.)

Rule 5.110 amended effective January 1, 2007; adopted as rule 1216 effective January 1, 1970; previously amended effective July 1, 1990, January 1, 1994, January 1, 1999, and January 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 5.112. Continuing jurisdiction

The court has jurisdiction of 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 5.112 amended and renumbered effective January 1, 2003; adopted as rule 1217 effective January 1, 1970.

Rule 5.114. Alternative relief

A party seeking alternative relief must so indicate in the petition or response.

Rule 5.114 amended and renumbered effective January 1, 2003; adopted as rule 1221 effective January 1, 1970.

Rule 5.116. Stipulation for judgment

(a) A stipulation for judgment (which must be attached to form FL-180 or form FL-250) may be submitted to the court for signature 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 stipulation for judgment must contain the following:

The foregoing is agreed to by

_____	_____
(Petitioner)	(Respondent)
_____	_____
(Attorney for Petitioner)	(Attorney for Respondent)

(Subd (a) amended and lettered effective January 1, 2003.)

(b) A stipulation for 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 stipulation for judgment constitutes a written agreement between the parties as to all matters covered by the stipulation.

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

Rule 5.116 amended and renumbered effective January 1, 2003; adopted as rule 1223 effective January 1, 1970; previously amended effective January 1, 1972.

Rule 5.118. Application for court order

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

(Subd (a) amended effective January 1, 2003; previously amended effective January 1, 1972, January 1, 1980, and January 1, 1999.)

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

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 1972; previously amended effective July 1, 1977, January 1, 1980, January 1, 1999, and January 1, 2003.)

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

(Subd (c) amended effective January 1, 2007; adopted as part of subd (b) effective January 1, 1972; previously amended and relettered effective January 1, 2003.)

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

(Subd (d) adopted effective January 1, 2003.)

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

(Subd (e) amended and lettered effective January 1, 2003; adopted as part of subd (b) effective January 1, 1972.)

(f) The court may grant or deny the relief solely on the basis of the application and responses and any accompanying memorandum of points and authorities.

(Subd (f) adopted effective January 1, 2004.)

Rule 5.118 amended effective January 1, 2007; adopted as rule 1225 effective January 1, 1970; previously amended effective January 1, 1972, July 1, 1977, January 1, 1980; and January 1, 1999, and January 1, 2004; previously amended and renumbered effective January 1, 2003.

Rule 5.120. Appearance

(a) Except as provided in Code of Civil Procedure section 418.10, a respondent or defendant is deemed to have appeared in a proceeding when he or she files:

(1) A response or answer;

(2) A notice of motion to strike, under section 435 of the Code of Civil Procedure;

(3) A notice of motion to transfer the proceeding under section 395 of the Code of Civil Procedure; or

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

(Subd (a) amended effective January 1, 2006; amended and lettered effective January 1, 2003.)

(b) After appearance, the respondent or defendant 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 (b) amended and lettered effective January 1, 2003.)

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

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

Rule 5.120 amended effective January 1, 2006; adopted as rule 1236 effective January 1, 1970; previously amended and renumbered effective January 1, 2003; previously amended effective January 1, 1972, January 1, 1999, and January 1, 2004.

Rule 5.121. Motion to quash proceeding or responsive relief

(a) 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 (a) amended effective January 1, 2006.)

(b) The motion to quash must be served in compliance with Code of Civil Procedure section 1005(b). If the respondent files a notice of motion 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.

(Subd (b) amended effective January 1, 2006.)

(c) 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).

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

(e) When a motion 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 motion has been sustained with leave to amend and the amendment is not made within the time permitted by the court.

Rule 5.121 amended effective January 1, 2006; adopted effective January 1, 2004.

Rule 5.122. Default

(a) Upon proper application of the petitioner, the clerk must enter the respondent's default if the respondent or defendant fails within the time permitted to:

(1) Make an appearance as stated in rule 5.120;

(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.

(Subd (a) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003.)

(b) 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 accordingly. 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) as to all or any part of the proof required or permitted to be offered on any issue as to which they are relevant.

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

Rule 5.122 amended effective January 1, 2007; adopted as rule 1237 effective January 1, 1970; previously amended effective January 1, 1972, and January 1, 1980; previously amended and renumbered effective January 1, 2003.

Rule 5.124. Request for default

(a) No default may be entered in any proceeding unless a request has been completed in full 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 demand for support, costs, or attorney's fees. A *Property Declaration* (form FL-160) is not required if the petition contains no demand for property.

(Subd (a) amended and lettered effective January 1, 2003.)

(b) 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.

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

Rule 5.124 amended and renumbered effective January 1, 2003; adopted as rule 1240 effective January 1, 1970; previously amended effective January 1, 1979, and January 1, 1980.

Rule 5.126. Alternate date of valuation

(a) Notice of motion

An *Application for Separate Trial* (form FL-315) must be used to provide the notice required by Family Code section 2552(b).

(Subd (a) amended effective July 1, 2003; previously amended effective January 1, 2003.)

(b) Declaration accompanying notice

Form FL-315 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 motion 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.

(Subd (b) amended effective July 1, 2003; previously amended effective January 1, 2003.)

Rule 5.126 amended effective July 1, 2003; adopted as rule 1242.5 effective July 1, 1995; previously amended and renumbered effective January 1, 2003.

Rule 5.128. Financial declaration

(a) A current *Income and Expense Declaration* (form FL-150) or a current *Financial Statement (Simplified)* (form FL-155), when such form is appropriate, and a current *Property Declaration* (form FL-160) must be served and filed by any party appearing at any hearing at which the court is to determine an issue as to which such declarations would be relevant. "Current" is defined as being completed within the past three months providing no facts have changed. Those forms must be sufficiently completed to allow determination of the issue.

(Subd (a) amended and lettered effective January 1, 2003.)

(b) When a party is represented by counsel and attorney's fees are requested by either party, the section on the *Income and Expense Declaration* pertaining to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section pertaining to the amount of attorney's fees incurred, currently owed, and the source of money used to pay such fees.

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

(c) *A Financial Statement (Simplified)* is not appropriate for use in proceedings to determine or modify spousal support or to determine attorney's fees.

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

Rule 5.128 amended and renumbered effective January 1, 2003; adopted as rule 1243 effective January 1, 1970; previously amended effective January 1, 1972, January 1, 1980, July 1, 1985, and January 1, 1999.

Rule 5.130. Summary dissolution

(a) Declaration of disclosure

For the purposes of a proceeding for summary dissolution under chapter 5 (beginning with section 2400) of part 3 of division 6 of the Family Code, attachment to the petition of completed worksheet pages listing separate and community property and obligations as well as an *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) constitutes compliance with the disclosure requirements of chapter 9 (beginning with section 2100) of part 1 of division 6 of the Family Code.

(Subd (a) amended and relettered effective January 1, 2003; adopted as subd (b) effective January 1, 1993; previously amended effective January 1, 1994.)

(b) Fee for filing

The fee for filing a *Joint Petition for Summary Dissolution of Marriage* (form FL-800) 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, except as required by Government Code section 26859.

(Subd (b) amended effective January 1, 2007; adopted as subd (b); previously relettered as subd (c) effective January 1, 1993; previously amended and relettered effective January 1, 2003.)

Rule 5.130 amended effective January 1, 2007; adopted as rule 1271 effective January 1, 1979; previously amended effective January 1, 1993, and January 1, 1994; previously amended and renumbered effective January 1, 2003.

Rule 5.134. Notice of entry of judgment

(a) 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.

(Subd (a) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003; previously amended effective January 1, 2007.)

(b) 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).

(Subd (b) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003.)

Rule 5.134 amended effective January 1, 2007; adopted as rule 1247 effective January 1, 1970; previously amended effective January 1, 1972, January 1, 1982, and January 1, 1999; previously amended and renumbered effective January 1, 2003; previously amended effective January 1, 2007.

Rule 5.136. 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; and

(2) An original and at least two additional copies of the *Notice of Entry of Judgment* (form FL-190).

(Subd (a) amended and lettered effective January 1, 2003.)

(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.

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

(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.

(Subd (c) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003.)

(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.

(Subd (d) amended and lettered effective January 1, 2003.)

(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.

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

Rule 5.136 amended effective January 1, 2007; adopted as rule 1248 effective January 1, 1970; previously amended effective January 1, 1972, January 1, 1980, July 1, 1982, and January 1, 1999; previously amended and renumbered effective January 1, 2003.

Rule 5.140. 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 5.140 amended and renumbered effective January 1, 2003; adopted as rule 1249 effective January 1, 1970; previously amended effective January 1, 1994.

Chapter 3. Joinder of Parties

Rule 5.150. Joinder of persons claiming interest
Rule 5.152. "Claimant" defined

Rule 5.154. Persons who may seek joinder
Rule 5.156. Form of joinder application
Rule 5.158. Determination on joinder
Rule 5.160. Pleading rules applicable
Rule 5.162. Joinder of employee pension benefit plan

Rule 5.150. Joinder of persons claiming interest

Notwithstanding any other rule in this division, a person who claims or controls an interest subject to disposition in the proceeding may be joined as a party to the proceeding only as provided in this chapter. Except as otherwise provided in this chapter, all provisions of law relating to joinder of parties in civil actions generally apply to the joinder of a person as a party to the proceeding.

Rule 5.150 renumbered effective January 1, 2003; adopted as rule 1250 effective November 23, 1970; amended effective January 1, 1978.

Rule 5.152. "Claimant" defined

As used in this chapter, "claimant" means a person joined or sought or seeking to be joined as a party to the proceeding.

Rule 5.152 renumbered effective January 1, 2003; adopted as rule 1251 effective November 23, 1970; amended effective January 1, 1972.

Rule 5.154. Persons who may seek joinder

(a) The petitioner or the respondent may apply to the court for an order joining a person as a party to the proceeding 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.

(Subd (a) amended effective January 1, 2006; previously amended effective January 1, 2003.)

(b) 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.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003, and January 1, 2006.)

(c) 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.

(Subd (c) amended effective January 1, 2006; previously amended effective January 1, 2003.)

Rule 5.154 amended effective January 1, 2007; adopted as rule 1252 effective November 23, 1970; amended and renumbered effective January 1, 2003; previously amended effective July 1, 1975, and January 1, 2006.

Rule 5.156. Form of joinder application

(a) 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.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1972, January 1, 1978, January 1, 1979, January 1, 1994, January 1, 2001, and January 1, 2003.)

(b) 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.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 1972; previously amended effective January 1, 1978, January 1, 1979, July 1, 1985, January 1, 2001, and effective January 1, 2003.)

Rule 5.156 amended effective January 1, 2007; adopted as rule 1253 effective November 23, 1970; previously amended effective January 1, 1972, January 1, 1978, January 1, 1979, July 1, 1985, January 1, 1994, and January 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 5.158. Determination on joinder

(a) Mandatory joinder

The court must order joined as a party to the proceeding any person the court discovers has physical custody or claims custody or visitation rights with respect to any minor child of the marriage.

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

(b) 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 to a determination of that issue or necessary to the enforcement of any judgment rendered on that issue.

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

(1) Whether the determination of that issue will unduly delay the disposition of the proceeding;

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

(3) Whether the determination of that issue will confuse other issues in the proceeding; and

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

(Subd (b) amended and lettered effective January 1, 2003; adopted as part of subd (a) effective November 23, 1970.)

(c) Procedure upon joinder

If the court orders that a person be joined as a party to the proceeding under subdivision (a) of rule 5.154, 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 within which to file an appropriate response.

(Subd (c) amended effective January 1, 2007; adopted as subd (b); previously amended and relettered effective January 1, 2003; previously amended effective July 1, 2003.)

Rule 5.158 amended effective January 1, 2007; adopted as rule 1254 effective November 23, 1970; previously amended and renumbered effective January 1, 2003; previously amended effective July 1, 1997, and July 1, 2003.

Rule 5.160. Pleading rules applicable

Except as otherwise provided in this chapter or by the court in which the proceeding is pending, 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.

Rule 5.160 amended and renumbered effective January 1, 2003; adopted as rule 1255 effective November 23, 1970.

Rule 5.162. Joinder of employee pension benefit plan

(a) 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)**.**

(Subd (a) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003.)

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

(Subd (b) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003.)

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

(Subd (c) amended effective January 1, 2007; previously amended and lettered effective January 1, 2003.)

Rule 5.162 amended effective January 1, 2007; adopted as rule 1256 effective January 1, 1979; previously amended effective January 1, 1994; previously amended and renumbered effective January 1, 2003.

Chapter 4. Bifurcation and Appeals

Rule 5.175. Bifurcation of issues
Rule 5.180. Interlocutory appeals

Rule 5.175. Bifurcation of issues

(a) Bifurcation of issues

On noticed motion of a party, the stipulation of the parties, or its own motion, the court may bifurcate one or more issues to be tried separately before other issues are tried. The motion must be heard not later than the trial-setting conference.

(Subd (a) amended effective January 1, 2003; previously amended effective January 1, 1994.)

(b) Notice by clerk

The clerk must mail copies of the order deciding the bifurcated issue and any statement of decision under rule 3.1591 to the parties within 10 days of their filing and must file a certificate of mailing.

(Subd (b) amended effective July 1, 2009; adopted as part of subd (a) effective July 1, 1989; previously amended effective January 1, 1994; previously amended and lettered effective January 1, 2003.)

(c) When to bifurcate

The court may try separately 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; or

(6) Existence or value of business or professional goodwill.

(Subd (c) amended and relettered effective January 1, 2003; adopted as subd (b).)

Rule 5.175 amended effective July 1, 2009; adopted as rule 1269 effective July 1, 1989; previously amended effective January 1, 1994; previously amended and renumbered effective January 1, 2003.

Rule 5.180. 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 mails 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 mailed.

(3) The clerk must promptly mail notice of the decision on the motion to the parties. If the motion is not determined within 40 days after mailing of the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.

(Subd (b) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(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 mailing of 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, 2007; previously amended effective January 1, 2002, and January 1, 2003.)

(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 mailed, a party notifies the Court of Appeal of additional portions of the record that are needed for a 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, 2007; previously amended effective January 1, 2002, and January 1, 2003.)

(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 5.180 amended effective January 1, 2007; adopted as rule 1269.5 effective July 1, 1989; previously amended effective January 1, 1994, and January 1, 2002; amended and renumbered effective January 1, 2003.

Chapter 5. Child Custody

Rule 5.210. Court-connected child custody mediation
Rule 5.215. Domestic violence protocol for Family Court Services
Rule 5.220. Court-ordered child custody evaluations
Rule 5.225. Appointment requirements for child custody evaluators
Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators
Rule 5.235. Ex parte communication in child custody proceedings
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 5.210. 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 Administrative Office of the Courts 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 the Administrative Office of the Courts.

(Subd (g) 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, 2007; adopted as rule 1257.1 effective July 1, 2001; amended and renumbered effective January 1, 2003; previously amended effective January 1, 2003, and January 1, 2005.

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. Where possible, the videotapes provided 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, 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, 2007; adopted as rule 1257.2 effective January 1, 2002; previously amended and renumbered effective January 1, 2003.

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 (i); 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) 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 Administrative Office of the Courts 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) relettered effective January 1, 2011; adopted as subd (n); previously amended and relettered as subd (m) effective January 1, 2005; previously amended effective January 1, 2007.)

(o) Program approval required

All education and training programs must be approved by the Administrative Office of the Courts. 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) relettered effective January 1, 2011; adopted as subd (o); previously amended and relettered as subd (n) effective January 1, 2005; previously amended effective January 1, 2007.)

Rule 5.225 amended effective January 1, 2011; adopted as rule 1257.4 effective January 1, 2002; renumbered effective January 1, 2003; previously amended effective January 1, 2005, and January 1, 2007.

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 the Administrative Office of the Courts, 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, 2005; previously amended effective January 1, 2002, January 1, 2003, and January 1, 2004.)

(e) Education and training providers

Only education and training acquired from eligible providers meets the requirements of this rule. "Eligible providers" includes the Administrative Office of the Courts 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 the Administrative Office of the Courts.

(Subd (e) 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, 2007; adopted as rule 1257.7 effective January 1, 1999; amended and renumbered effective January 1, 2003; previously amended effective January 1, 2003, January 1, 2004, and January 1, 2005.

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.

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 costs and attorney's fees;

(H) Allocation of payment of attorney'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.

(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.

(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 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 best interest of the child. The role of the child's counsel is to gather facts that bear on the best interest of the child and present those facts to the court, including the child's wishes when counsel deems it appropriate for consideration by the court under Family Code section 3042. Counsel's duties, unless under the circumstances it is inappropriate to exercise the duties, include those under Family Code section 3151:

(1) Interviewing the child;

(2) Reviewing the court files and all accessible relevant records available to both parties;

(3) Making any further investigations that counsel considers necessary to ascertain the facts relevant to the custody or visitation hearings;

(4) Participating in the proceeding to the degree necessary to adequately represent the child, including introducing and examining counsel's own witnesses and presenting arguments to the court concerning the child's welfare; and

(5) Preparing, at the court's request, a written statement of issues and contentions setting forth the facts that bear on the best interest of the child.

(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 audiotapes, 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.

Rule 5.242 adopted effective January 1, 2008.

Chapter 6. Certification of Statewide Uniform Guideline Support Calculators

Title 5, Family and Juvenile Rules—Division 1, Family Rules—Chapter 6, Certification of Statewide Uniform Guideline Support Calculators amended effective January 1, 2009.

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 rule:

(1) "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.

(2) "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, 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, 2009; adopted as rule 1258 effective December 1, 1993; previously amended effective January 1, 2000, and January 1, 2007; previously amended and renumbered effective January 1, 2003.

Chapter 7. Rules for Title IV-D Support Actions

Rule 5.300. Purpose, authority, and definitions

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Rule 5.365. Procedure for consolidation of child support orders
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Rule 5.375. Procedure for a support obligor to file a motion regarding mistaken Identity

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 4930:

(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, 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

Subdivisions (i) through (m) of rule 3.670 apply to telephone appearances under this rule.

(Subd (j) amended effective July 1, 2008; previously amended effective January 1, 2007.)

(k) Technical equipment

Courts that lack the technical equipment to implement telephone appearances are exempt from the rule.

Rule 5.324 amended effective July 1, 2008; adopted effective July 1, 2005; previously amended effective January 1, 2007, and January 1, 2008.

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 10.501(e).

Rule 5.340 amended effective January 1, 2007; adopted as rule 1280.8 effective July 1, 1999; previously amended and renumbered effective January 1, 2003.

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 5.375. 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 *Notice of Motion* (form FL-301), with appropriate attachments. The support obligor must also file as exhibits to the notice of motion 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, 2007; previously amended effective January 1, 2003.)

Rule 5.375 amended effective January 1, 2007; adopted as rule 1280.15 effective January 1, 2001; previously amended and renumbered effective January 1, 2003.

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 1. Contact and Coordination

Chapter 1 adopted effective January 1, 2008.

Rule 5.400. Contact after adoption agreement
Rule 5.410. Request for sibling contact information under Family Code section 9205
Rule 5.450. Court communication protocol for domestic violence and child custody orders
Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding (Fam. Code, § 3105; Welf. & Inst. Code, § 362.4; Prob. Code, § 1602)

Rule 5.400. Contact after adoption agreement

(a) Applicability of rule (Fam. Code, §§ 8714, 8714.5, 8714.7; Welf. & Inst. Code, §§ 358.1, 366.26)

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, 2007.)

(b) Contact after adoption agreement (Fam. Code, § 8714.7)

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 July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(c) Court approval; time of decree (Fam. Code, § 8714.7)

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, 2003.)

(d) Terms of agreement (Fam. Code, § 8714.7)

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, 2007; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(e) Child a party (Fam. Code, § 8714.7)

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 July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(f) Form and provisions of the agreement (Fam. Code, § 8714.7)

The agreement must be prepared and submitted on *Contact After Adoption Agreement* (form ADOPT-310) with appropriate attachments.

(Subd (f) amended effective January 1, 2007; previously amended effective July 1, 2001, and January 1, 2003.)

(g) Report to the court (Fam. Code, § 8715)

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 July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(h) Enforcement of the agreement (Fam. Code, § 8714.7)

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, 2007; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(i) Modification or termination of agreement (Fam. Code, § 8714.7)

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, 2007; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(j) Costs and fees (Fam. Code, § 8714.7)

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, 2007; previously amended effective July 1, 2001, January 1, 2003, and July 1, 2003.)

(k) Adoption final (Fam. Code, § 8714.7)

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.

Rule 5.400 amended effective January 1, 2007; adopted as rule 1180 effective July 1, 1998; previously amended and renumbered effective January 1, 2003; previously amended effective July 1, 2001, and July 1, 2003.

Rule 5.410. Request for sibling contact information under Family Code section 9205

(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 under Family Code section 9205(f)

(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.

(d) No waiver on file—sibling requesting contact under Family Code section 9205(g)

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.

Rule 5.410 adopted effective January 1, 2008.

Rule 5.450. 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 5.450 amended and renumbered effective January 1, 2007; adopted as rule 5.500 effective January 1, 2003; previously amended effective January 1, 2005.

Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding (Fam. Code, § 3105; Welf. & Inst. Code, § 362.4; Prob. Code, § 1602)

(a) Custody and visitation order from other court divisions

A juvenile court or probate court may transmit a custody or visitation order to a family court for inclusion in a pending family law proceeding or to open a new family law case file, after termination of a juvenile court proceeding or a probate guardianship proceeding under rules 5.700 and 7.1008.

(1) *Procedure for filing custody or visitation orders from juvenile or probate court*

(A) The custody or visitation order of a juvenile court or the visitation order of a former guardian must be filed in any pending nullity, dissolution, paternity, or other family law proceeding, or in any probate guardianship proceeding which affects custody or visitation of the child.

(B) If no dependency, family law, or probate guardianship proceeding affecting custody or visitation of the child is pending, the order may be used as the sole basis to open a file and assign a family law case number.

(C) The clerk must immediately file the custody or visitation order, without a filing fee, in the file of any family law proceeding affecting the custody and visitation of the child.

(2) *Endorsed filed copy—clerk's certificate of mailing*

Within 15 court days after receiving the order, the clerk must send, by first-class mail, an endorsed filed copy of the order showing the receiving court case number to:

(A) The persons whose names and addresses are listed on the order; and

(B) The court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the sending court's file.

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

(b) Modification of former guardian visitation orders—custodial parent

When a parent of the child has custody of the child following termination of a probate guardianship, proceedings for modification of the probate court visitation order, including an order denying visitation, must be determined in a proceeding under the Family Code.

(Subd (b) 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, 2008; adopted effective January 1, 2006; previously amended effective January 1, 2007.

Chapter 2. Indian Child Welfare Act

Chapter 2 adopted effective January 1, 2008.

Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1)
Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)

Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b))
Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)
Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))
Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))
Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e))
Rule 5.487. Adoption record keeping (Fam. Code, § 9208)

Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1)

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 all 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, including:

(1) Proceedings under Welfare and Institutions Code section 300 et seq., and sections 601 and 602 et seq. in which the child is at risk of entering foster care or is in foster care, including detention hearings, jurisdiction hearings, disposition hearings, review hearings, hearings under section 366.26, and subsequent hearings affecting the status of the Indian child;

(2) Proceedings under Family Code section 3041;

(3) Proceedings under the Family Code resulting in adoption or termination of parental rights; and

(4) 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 adopted effective January 1, 2008.

Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)

(a) Inquiry (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3)

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.

(b) Notice (Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, § 224.2)

(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., and the probation officer has assessed that it is probable the child will be entering foster care, or if the child is already in foster care, 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).

(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.

Rule 5.481 adopted effective January 1, 2008.

Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b))

(a) Timing of proceedings (Fam. Code, § 180(d), (e); Prob. Code, § 1460.2(d), (e); Welf. & Inst. Code, § 224.2(c), (d))

(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 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 in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster;

(B) The jurisdiction hearing in a delinquency case 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 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.

(b) Proof of notice (Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. & Inst. Code, § 224.2(c))

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.

(c) When there is information or a response from a tribe that requires additional steps

If after notice has been provided as required by federal and state law a tribe responds indicating that the child is eligible for membership if certain steps are followed, the court must proceed as if the child is an Indian child and direct the appropriate individual or agency to provide active efforts under rule 5.484(c) to secure tribal membership for the child.

(d) When there is no information or response from a tribe (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3(e)(3))

(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.

(e) Intervention (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.4)

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.

(f) Posthearing actions (25 U.S.C. § 1916(b))

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.

(g) Consultation with tribe

Any person or court involved in the placement of an Indian child 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.

Rule 5.482 adopted effective January 1, 2008.

Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)

(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 under subdivision (b)

(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.

(e) Evidentiary considerations under subdivision (b)

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.

(f) Evidentiary burdens under subdivision (b)

(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.

(g) Order on request to transfer

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).

(h) 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.

Rule 5.483 adopted effective January 1, 2008.

Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))

(a) Evidentiary burdens (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))

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.

(b) Standards and preferences in placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)

(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.

(c) Active efforts (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 361.7)

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.

Rule 5.484 adopted effective January 1, 2008.

Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))

(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 adopted effective January 1, 2008.

Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e))

(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 adopted effective January 1, 2008.

Rule 5.487. Adoption record keeping (Fam. Code, § 9208)

(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 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.

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), 319, 361, 361.5(a)(3), 628.1, 636, 726, 727.3(c)(2), 727.4(d); 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 disposition hearing at which the child is declared a dependent child 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.

(12) "Domestic partner" means 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 representative" means the responsible adult who holds the educational rights for a child when the parent's or guardian's educational rights have been limited by the court. The educational representative acts as the child's spokesperson, educational decision maker, and parent in regard to all educational matters, including those defined in sections 319, 361, and 726; Education Code section 56055; Government Code section 7579.5; and title 20 (commencing with section 1400) of the United States Code and part 300 (commencing with section 300.1) of title 34 of the Code of Federal Regulations. The educational representative holds educational and privacy rights as the child's parent as defined in title 20 United States Code section 1232g and 34 Code of Federal Regulations section 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) “Guardian” means legal guardian of the child.

(17) “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.

(18) “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.

(19) “Member of the household,” for purposes of section 300 proceedings, means any person continually or frequently found in the same household as the child.

(20) “Modification of parental rights” means a modification of parental rights through a tribal customary adoption under Welfare and Institutions Code section 366.24.

(21) “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.

(22) “Notify” means to inform, either orally or in writing.

(23) “Petitioner,” in section 300 proceedings, means the county welfare department; “petitioner,” in section 601 and 602 proceedings, means the probation officer or prosecuting attorney.

(24) “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.

(25) "Probation officer," in section 300 proceedings, includes a social worker in the county agency responsible for the administration of child welfare.

(26) "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.

(27) "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.

(28) "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).)

(29) "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.

(30) "Section" means a section of the Welfare and Institutions Code unless stated otherwise.

(31) "Sibling group" means two or more children related to each other by blood, adoption, or affinity through a common legal or biological parent.

(32) "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.

(33) "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.

(34) "Subdivision" means a subdivision of the rule in which the term appears.

(35) "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, 2011; adopted as rule 1401 effective January 1, 1990; previously amended and renumbered 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, and July 1, 2010.

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, 2012, 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, 2007; adopted effective January 1, 2006.)

Rule 5.504 amended effective January 1, 2007; adopted as rule 1402 effective January 1, 1991; 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 renumbered effective January 1, 2007.

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 AOC 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 AOC 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.

(d) Use of data and development of measures before CCMS implementation

Before CCMS implementation, the AOC 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 AOC;

(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.

(e) Use of data after CCMS implementation

On implementation of CCMS, the AOC 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.

Rule 5.505 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 paternity of the child under rule 5.635 and Family Code section 7630 or 7631.

(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 or 7631.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1999.)

Rule 5.510 amended and renumbered effective January 1, 2007; adopted as rule 1403 effective January 1, 1991; previously amended effective January 1, 1999.

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 requirements of the laws incorporated in rule 5.651(a)(3) 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, 2008; previously amended effective January 1, 2005, and January 1, 2007.)

(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 Administrative Office of the Courts 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 the Administrative Office of the Courts.

(Subd (i) amended effective January 1, 2007; adopted effective January 1, 2005.)

(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, 2008; adopted as rule 1405.5 effective January 1, 2004; previously amended effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

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. Fax filing

(a) Applicability

(1) This rule applies to juvenile court proceedings in courts that permit fax filing by local rule or other written instruction.

(2) As used in this rule, “facsimile transmission” or “fax transmission,” “facsimile machine” or “fax machine,” “facsimile filing” or “fax filing,” and “fax” are defined in rule 2.301.

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

(b) 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, 601, 602, 342, 387, 388, 777, and 778. Other documents may be filed by the use of a fax machine if permitted by the local rule or other written instruction specified in (a).

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

(c) Persons and agencies that may file by fax

Only the following persons and agencies may file documents stated in (b): any named party to the proceeding; any attorney of record in the proceeding; the county welfare department; the probation department; the office of the district attorney; the office of the county counsel; a CASA volunteer appointed in the case.

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

(d) Procedures for fax filing

A party or agency described in (c) may file by fax directly to any juvenile court that has provided for fax filing by local rule or other written instruction. The local rule or written instruction must provide the fax telephone number or numbers for filings and the business hours during which fax filings will be accepted.

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

(e) 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 transferred. The court is not required to retain or file a copy of the cover sheet.

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

(f) Signatures

Notwithstanding any provision of law to the contrary, a signature produced by fax transmission is an original signature.

(Subd (f) relettered effective January 1, 2007; adopted as subd (g).)

(g) Confidentiality requirements

In order to secure the confidentiality of the documents subject to filing by fax, the following procedures are required:

(1) In each clerk's office designated to receive such documents, a separate fax machine must be provided and dedicated solely to the receipt of the documents described in (b);

(2) The telephone number to be used for these filings must be made available only to those persons and agencies described in (c); and

(3) 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 (g) amended and relettered effective January 1, 2007; adopted as subd (h).)

Rule 5.522 amended and renumbered effective January 1, 2007; adopted as rule 1406.5 effective January 1, 1999.

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)

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 section 290.1 and 290.2.

(Subd (e) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered effective January 1, 2006.)

(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 and renumbered effective January 1, 2007; adopted as rule 1407 effective January 1, 1991; previously amended effective January 1, 1992, January 1, 1995, January 1, 2001, and January 1, 2006.

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
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Rule 5.553. Juvenile case file of a deceased child

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 (§§ 280, 290.1, 290.2, 332, 347, 349, 353, 656, 658, 677, 679, 681, 700; 25 U.S.C. §§ 1911, 1931–1934)

The following persons are entitled to be present:

(1) The child;

(2) All parents, de facto parents, Indian custodians, and guardians of the child or, if no parent or guardian resides within the state or, if their places of residence are not known;

(A) Any adult relatives residing within the county or, if none;

(B) Any adult relatives 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) 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 January 1, 2007; previously amended effective January 1, 1995, January 1, 1997, and January 1, 2005.)

(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.)

Rule 5.530 amended and renumbered effective January 1, 2007; adopted as rule 1410 effective January 1, 1990; previously amended effective January 1, 1995, January 1, 1997, January 1, 2001, and January 1, 2005.

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) Control of proceedings (§§ 350, 680)

The court must control all proceedings with a view to quickly and effectively ascertaining the jurisdictional facts and all information relevant to the present condition and welfare of the child.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Conduct of proceedings (§§ 350, 680)

Unless there is a contested issue of fact or law, the proceedings must be conducted in a nonadversarial atmosphere.

(Subd (b) amended effective July 1, 2002.)

(c) Testimony of child in chambers (§ 350)

In a hearing under section 300 et seq., a child may testify in chambers and outside the presence of the child's parent or guardian if the parent or guardian is represented by counsel who is present, subject to the right of the parent or guardian to have the court reporter read back the child's testimony, and if the court determines, based on the petitioner's report or other offers of proof or other evidence, that any of the following circumstances exist:

(1) Testimony in chambers is necessary to ensure truthful testimony;

(2) The child is likely to be intimidated by a formal courtroom setting; or

(3) The child is afraid to testify in front of the parent or guardian.

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

(d) Burden of proof (§§ 350, 701.1)

(1) Meeting the burden of proof:

(A) In any hearing under section 300 in which the county welfare agency has the burden of proof, after completion of the agency's case, and the presentation of evidence by the child, the court may, on motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof is not met.

(B) In any hearing under section 601 or 602, after the completion of the petitioner's case, the court may, on the motion of any party, or on the court's own motion, order whatever action the law requires if the burden of proof is not met.

(2) If the motion is denied, the child in a section 300 or section 601 or section 602 hearing, or the parent or guardian in a section 300 hearing, may offer evidence.

(Subd (d) amended effective January 1, 2007; previously amended effective July 1, 1995.)

(e) De facto parents

On a sufficient showing the court may recognize the child's present or previous custodians as de facto parents and grant standing to participate as parties in disposition hearings 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 (e) amended effective January 1, 2007.)

(f) Relatives

(1) On a sufficient showing, the court may permit relatives of the child to:

(A) Be present at the hearing; and

(B) Address the court.

(2) Relatives of the child have 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 must give that relative:

(A) The written notice required by section 309 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 court clerk must provide the social worker, all unrepresented parties, and all attorneys with a copy of the completed form or letter.

(5) When form JV-287 is received by the court, the court clerk must place it in a confidential portion of the case file.

(Subd (f) amended effective January 1, 2011; previously amended effective January 1, 2007.)

(g) Right to counsel (§§ 317, 633, 634, 700)

At each hearing the court must advise an 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 (g) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(h) Appointment of counsel (§§ 317, 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 section 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 (h) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(i) 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 (i) amended effective January 1, 2007; adopted effective January 1, 1997; previously amended effective July 1, 2002.)

(j) Appointment of educational representative (§§ 319, 361, 366, 366.27, 726; Gov. Code, § 7579.5)

If the court limits the right of a parent or guardian to make educational decisions for the child, the court must immediately proceed under rule 5.650(b) to appoint an educational representative for the child.

(Subd (j) adopted effective January 1, 2008.)

(k) 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) Any 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 (k) relettered effective January 1, 2008; adopted as subd (i); previously relettered as subd (j) effective January 1, 1997; previously amended effective July 1, 2002, and January 1, 2007.

(*l*) 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 (l) *relettered effective January 1, 2008; adopted as subd (j); previously relettered as subd (k) effective January 1, 1997, previously amended effective July 1, 2002, and January 1, 2007.)*

(m) 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.

(Subd (m) relettered effective January 1, 2008; adopted as subd (k) effective January 1, 1994; previously relettered as subd (l) *effective January 1, 1997; previously amended effective July 1, 2002, and January 1, 2007.)*

(n) 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 or fax to distribute the JV-290 form or letter and proof of service form.

(Subd (n) relettered effective January 1, 2008; adopted as subd (m) effective October 1, 2007.)

(o) Periodic reports

The court may require the petitioner or any other agency to submit reports concerning a child subject to the jurisdiction of the court.

(Subd (o) relettered effective January 1, 2008; adopted as subd (k); previously relettered as subd (l) effective January 1, 1994, as subd (m) effective January 1, 1997, and as subd (n) effective October 1, 2007.)

(p) Presence of child (§ 349)

(1) A child who is the subject of a juvenile court hearing is entitled to be present at the hearing. If the child is present at the hearing, the court must allow the child, if the child so desires, to address the court and participate in the hearing.

(2) If the child is 10 years of age or older and he or she is not present at the hearing, the court must determine whether the child was properly notified of his or her right to attend the hearing and ask why the child is not present at the hearing and whether the child was given an opportunity to attend. If the court finds that the child was not properly notified or that the child wished to

be present and was not given an opportunity to be present, the court must continue the hearing to allow the child to attend unless the court finds that it is in the best interest of the child not to continue the hearing. Any such continuance must be only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend.

(Subd (p) amended effective January 1, 2010; adopted as subd (n) effective January 1, 2005; previously relettered as subd (o) effective October 1, 2007, and as subd (p) effective October 1, 2007.)

Rule 5.534 amended effective January 1, 2011; adopted as rule 1412 effective January 1, 1991; previously amended and renumbered 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, and January 1, 2010.

Advisory Committee Comment

Because the intent of subdivision (n) 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. Service must be by mail to the last known address and is deemed complete at the time of mailing.

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

Rule 5.538 amended and renumbered effective January 1, 2007; adopted as rule 1416 effective January 1, 1990.

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.

(6) Failure of an alleged father to return a certified mail receipt of notice as described in rule 5.667 does not, in and of itself, constitute good cause to continue a hearing.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1999, and July 1, 2002.)

(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 and renumbered effective January 1, 2007; adopted effective January 1, 1991; previously amended effective January 1, 1998, January 1, 1999, and July 1, 2002.

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.

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
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;

(4) The address of the child, unless confidential under (c);

(5) The name and residence address of the parent or guardian or an adult relative of the child, if appropriate to receive notice following the procedures found in Welfare and Institutions Code sections 291 and 297(c);

(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, if the application is made by a person other than the child; and

(10) A statement whether or not all parties agree to the proposed change.

(Subd (a) amended effective January 1, 2010; previously amended effective July 1, 2002, January 1, 2007, and January 1, 2009.)

(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, and the child's caregiver may be kept confidential by filing form *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 child's attorney may have access to this information.

(Subd (c) 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 fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction or, that the requested modification would promote the best interest of the child.

(2) The petition filed under section 388(b) fails to demonstrate that the requested modification would promote the best interest of the child; or

(3) 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, 2010; adopted as subd (b); previously amended and relettered effective January 1, 2007.)

(e) Grounds for grant of petition (§§ 388, 778)

(1) If the petition filed under section 388(a) or section 778 states a change of circumstance or new evidence and it appears that the best interest of the child 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 may be promoted by the proposed recognition of a sibling relationship and other requested orders, the court may grant the petition after following the procedures in (f), (g), and (h).

(3) 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).

(4) 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).

(Subd (e) amended effective January 1, 2010; adopted as subd (c); previously amended and relettered effective January 1, 2007.)

(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 order that a hearing on the petition for modification be held within 30 calendar days after the petition is filed.

(Subd (f) amended effective January 1, 2010; adopted as subd (d); previously amended effective July 1, 2002; previously relettered effective January 1, 2007.)

(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 present custodian of a dependent child and the tribe of a dependent Indian child must be similarly notified.

(Subd (g) amended and relettered effective January 1, 2007; repealed and adopted as subd (e); previously amended effective January 1, 1992, July 1, 1995, July 1, 2000, and July 1, 2002.)

(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 removal to a more restrictive level of placement, the petitioner must show by clear and convincing evidence that the change is necessary to protect the physical or emotional well-being of the child.

(C) 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.

(D) All other requests require a preponderance of the evidence to show that the child's welfare requires such a modification.

(2) The hearing must be conducted as a disposition hearing under rules 5.690 and 5.695 if:

(A) The request is for removal from the home of the parent or guardian or to a more restrictive level of placement;

(B) The request is for termination of court-ordered reunification services; or

(C) 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, 2010; adopted as subd (f); previously amended effective July 1, 2000, July 1, 2002, and January 1, 2003; previously amended and relettered effective January 1, 2007.)

(i) Conduct of hearing (§ 778)

The petitioner requesting the modification under section 778 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.

(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (g); previously amended effective July 1, 2002.)

Rule 5.570 amended effective January 1, 2010; adopted as rule 1432 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1995, July 1, 2000, July 1, 2002, January 1, 2003, and January 1, 2009.

Rule 5.575. Joinder

(a) Basis for joinder (§§ 362, 727)

After a child has been adjudged a dependent child or a ward of the court, the court may join in the court proceedings any government agency or private service provider (as defined in § 362(e)) that the court determines has failed to meet a legal obligation to provide services to the child.

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

(b) Notice

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 to the agency or provider must be given on *Notice of Hearing on Joinder—Juvenile* (form JV-540). The notice must state the allegations of the agency's or provider's failure to meet a legal obligation, as well as any questions the court wants the agency or provider to address.

(2) The hearing must be set to occur within 30 calendar days of the signing of the notice by the court.

(3) The clerk of the juvenile court must cause the notice to be served on the agency or provider and the persons prescribed by sections 291 and 658 either personally or by first-class mail within 5 days after the signing of the notice.

(4) The court may request, by using section 8 of form JV-540, that agency representatives before the hearing and that the agency submit a written response to the court. Any such response must be filed at least 5 court days before the hearing.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(c) Conduct of hearing

The hearing must be conducted under rule 5.570(f) or (g). The court may not impose duties on a government agency or private service provider beyond those required by statute.

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

Rule 5.575 amended and renumbered effective January 1, 2007; adopted as rule 1434 effective January 1, 2002; previously amended effective January 1, 2006.

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. Notification of appeal rights in juvenile cases [Repealed]
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 5.600. Writ petition after orders setting hearing under section 366.26; appeal [Repealed]

Former rule 5.585. Renumbered effective July 1, 2010

Rule 5.585 renumbered as rule 5.590.

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.

Former rule 5.590. Notification of appeal rights in juvenile cases [Repealed]

Rule 5.590 repealed effective July 1, 2010; adopted as rule 251 effective July 1, 1973; previously amended effective July 1, 1978; previously amended and renumbered effective January 1, 2007.

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.)

Rule 5.590 amended and renumbered effective July 1, 2010; 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.

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.

Rule 5.600. Writ petition after orders setting hearing under section 366.26; appeal [Repealed]

Rule 5.600 repealed effective July 1, 2010; adopted as rule 1436.5 effective January 1, 1995; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1995, January 1, 1996, July 1, 2006, and January 1, 2009.

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 5.614. 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 that person in court or by declaration of a social worker or probation officer in the transferring or receiving county.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(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

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, 2007; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993, and January 1, 2004.)

(f) Order of transfer (§§ 377, 752)

The order of transfer must be entered on *Juvenile Court Transfer Orders* (form JV-550), which must include all required information and findings.

(Subd (f) amended effective January 1, 2007; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993, and January 1, 2004.)

(g) 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, Administrative Office of the Courts.

(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 (g) adopted January 1, 2007.)

(h) 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 within 7 court days, 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 10 court days a certified copy of the complete case file.

(3) A certified copy of the complete case file is deemed an original.

(Subd (d) amended and relettered effective January 1, 2007; repealed and adopted as subd (g); previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, and January 1, 2004.)

(i) 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 (i) amended and relettered effective January 1, 2007; repealed and adopted as subd (h); previously amended effective January 1, 1992, and January 1, 2004.)

Rule 5.610 amended and renumbered effective January 1, 2007; adopted as rule 1425 effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, and January 1, 2004.

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 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)

(1) 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 immediately place the transferred case on the court calendar for a transfer-in hearing:

(A) Within 2 court days after the transfer-out order and documents are received if the child has been transported in custody and remains detained; or

(B) Within 10 court days after the transfer-out order and documents are received if the child is not detained in custody.

(2) No requests for additional time for the transfer-in hearing may be approved. The clerk must immediately cause notice to be given to the child and the parent or guardian, orally or in writing, of the time and place of the transfer-in hearing. 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, 2007; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1999, and January 1, 2004.)

(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 and renumbered effective January 1, 2007; adopted as rule 1426 effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1999, and January 1, 2004.

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. 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) The rule applies to the placement in California of children who are dependents or wards of the juvenile court in any of the above-named jurisdictions.

(2) This rule also applies to priority placements as described below in (b)(2).

(3) This rule does not apply to placements made under the Interstate Compact on Juveniles (§ 1300 et seq.).

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

(b) Definitions

(1) "Placement" is defined in article II(d) of the compact. It includes placements with a stepparent, a grandparent, an adult brother or sister, an adult aunt or uncle, a nonagency guardian of the child, a placement recipient who is not related to the child, a residential institution, a group home, or a treatment facility.

(A) A court directing or making an award of custody to a parent of the child is not a placement within the meaning of this rule, unless the sending court retains dependency jurisdiction over the child or the order or award requests or provides for supervision or other services or places some other condition or restriction on the conduct of the parent.

(B) Except in cases in which a child is placed with a parent and jurisdiction has been terminated or in cases in which dependency is maintained only to provide services to or impose conditions on the noncustodial parent remaining in the sending jurisdiction, the following situations constitute a placement and the compact must be applied:

(i) An order causing a child to be sent or brought to another party in a compact jurisdiction without a specific date of return to the sending jurisdiction; or

(ii) An order causing a child to be sent or brought to another party 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.

(2) "Priority placement" means a placement or placement request made by a court with specific findings of one or more of the following circumstances:

(A) The proposed placement recipient is a relative belonging to a class of persons who, under article VIII(a) of the compact, could receive the child from another person belonging to such a class, without complying

with the compact, if the child is not under the jurisdiction of the court, and if:

(i) The child is under two years of age;

(ii) The child is in an emergency shelter; or

(iii) The court finds that the child has spent a substantial period of time in the home of the proposed placement recipient.

(B) The receiving compact administrator has been in possession of a properly completed interstate compact placement request form and supporting documentation for over 30 business days, but the sending agency has not received a notice under article III(d) of the compact determining whether or not the child may be placed.

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

(c) Compact requirements (Fam. Code, § 7901)

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.

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

(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 an interstate compact placement request form.

(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, 2007.)

(e) Placement of delinquent children in institutional care

A child declared a ward of the court under 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 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.

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

(f) Priority placement

A court in a sending jurisdiction may designate placement as a priority placement and use expedited procedures as described in regulation 7 of the compact.

(1) The court may designate a priority placement on express findings that:

(A) The compact administrator of the receiving jurisdiction has had possession of a properly completed interstate compact placement request form and supporting documents for over 30 business days, and the sending jurisdiction agency has not received a notice indicating whether or not placement in the receiving jurisdiction is contrary to the interest of the child; or

(B) The proposed placement recipient is a parent, stepparent, grandparent, adult sibling, adult uncle or aunt, or guardian of the child; and

(i) The child is under two years of age;

(ii) The child is in an emergency shelter; or

(iii) The court finds that the child has spent a substantial period of time in the home of the proposed placement recipient.

(2) On findings of the court under (f)(1) that a proposed priority placement is necessary, the court must proceed as follows:

(A) The findings must be noted in a written order using *Interstate Compact on the Placement of Children Findings and Orders* (form JV-567), which must include the name, address, telephone number, and fax number of the court and the judicial officer.

(B) The order must be transmitted to the sending agency of the court's jurisdiction within 2 business days.

(C) The sending agency must be ordered to transmit to the compact administrator of the sending jurisdiction within 3 business days the following:

(i) A copy of the completed *Interstate Compact on the Placement of Children Findings and Orders* (form JV-567); and

(ii) A completed interstate compact placement request form and supporting documentation as noted on that form.

(D) Within 2 business days the compact administrator of the sending jurisdiction must transmit by overnight mail the documents described in (C) to the compact administrator of the receiving jurisdiction with a notice that the request is entitled to priority placement.

(3) The compact administrator of the receiving jurisdiction must determine immediately, and no later than 20 business days after receipt, whether or not the placement is acceptable and must transmit the completed interstate compact placement request form by fax to the compact administrator of the sending jurisdiction.

(4) If the compact administrator of the receiving jurisdiction fails to comply with (f)(3) within the required time limit, the sending court may inform an appropriate court in the receiving jurisdiction that the compact administrator in that jurisdiction has not complied with the compact; provide the receiving jurisdiction court with relevant documents, including *Findings and Request for Assistance Under Interstate Compact on the Placement of Children (ICPC)* (form JV-565); and request assistance.

(5) The receiving jurisdiction court that receives notification may render appropriate assistance and may issue orders to secure compliance with the compact and regulations.

(6) The time limits for a single case may be modified by written agreement between the sending court, the sending agency, and the compact administrators of the sending and receiving jurisdictions.

(7) To fulfill its obligations under the compact, a jurisdiction, its local agencies, and the court are required to process interstate cases as quickly as intrastate cases and to devote equal efforts to interstate and intrastate hardship cases.

(A) If in doing so, a receiving jurisdiction's compact administrator finds that extraordinary circumstances make compliance within the time requirements impossible, strict compliance may be excused.

(B) The receiving jurisdiction compact administrator must immediately notify the sending jurisdiction compact administrator by fax of the inability to comply and must designate a date on or before which there will be compliance.

(C) The notice must contain a full identification and explanation of the extraordinary circumstances that are delaying compliance.

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

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

Rule 5.616 amended and renumbered effective January 1, 2007; adopted as rule 1428 effective January 1, 1999.

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 in juvenile court alleging that a child is described by a subsection of section 300, and until the petition is dismissed or dependency is terminated, the juvenile court has sole and exclusive jurisdiction over matters relating to the custody of the child and visitation with the child.

(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. The restraining orders must be prepared on *Restraining Order—Juvenile (CLETS)* (form JV-250).

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

(c) Custody and visitation (§ 361.2)

If the court sustains a petition and finds that the child is described by section 300, it may enter findings and orders as described in rule 5.695(a)(7)(A) and (B). These findings and orders may be entered at the disposition hearing under rule 5.700, or at any subsequent review hearing under rule 5.710(g) or 5.715(d)(2) or rule 5.720(b)(1)(B), or on the granting of a motion under section 388 for custody and visitation orders.

(Subd (c) 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 and renumbered effective January 1, 2007; adopted as rule 1429.1 effective January 1, 2000.

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. The restraining orders must be prepared on *Restraining Order—Juvenile (CLETS—JUV)* (form JV-250).

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

(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 and renumbered effective January 1, 2007; adopted as rule 1429.3 effective January 1, 2000; previously amended effective January 1, 2003.

Rule 5.630. Restraining orders

(a) Court's authority (§ 213.5)

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.

(b) Application (§§ 213.5, 304)

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. The written application must be submitted on *Application and Affidavit for Restraining Order—Juvenile* (form JV-245).

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003, and January 1, 2004.)

(c) Protected children (§ 213.5(a) and (b))

Restraining orders may be issued to protect any of the following children:

(1) A child who is the subject of the dependency petition or who is declared a dependent;

(2) Another child in the household of the child named in (1); and

(3) A child who is the subject of a delinquency petition or who is declared a ward.

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

(d) Other protected persons (§ 213.5(a))

The court may also issue orders protecting any parent, legal guardian, or current caregiver of the child listed in (c)(1), whether or not that child resides with that parent, legal guardian, or current caregiver.

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

(e) Available orders and restrained persons (§ 213.5(a), (b), and (d)–(f))

The court may issue, either ex parte or after notice and hearing, restraining orders that:

(1) Enjoin any person from molesting, attacking, striking, sexually assaulting, stalking, or battering any of the persons listed in (c) or (d);

(2) Exclude any person from the dwelling of the person who has care, custody, and control of the child named in (c)(1) or (3). This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling, on a showing that:

(A) The party who will stay in the dwelling has a right under color of law to possession of the premises;

(B) The party to be excluded has assaulted or threatened to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and

(C) Physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party;

(3) Enjoin any person from behavior, including contacting, threatening, or disturbing the peace of the persons named in (c) or (d), as necessary to effectuate orders under (e)(1) or (2); and

(4) Enjoin any delinquent child or any child for whom a section 601 or 602 petition has been filed from contacting, threatening, stalking, or disturbing the peace of any person:

(A) Whom the court finds to be at risk from the conduct of the child; or

(B) With whom association would be detrimental to the child.

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

(f) Ex parte applications—procedure (§ 213.5(a)–(c) and (f))

The application may be submitted ex parte, and the court may grant the petition and issue a temporary order. The matter may be heard simultaneously with any scheduled hearing regarding the child who is the subject of the section 300, 601, or 602 petition. Notice of the ex parte proceeding is required as stated under rule 3.1204.

(1) In determining whether or not to issue the temporary restraining order ex parte, 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 *Restraining Order—Juvenile (CLETS—JUV)* (form JV-250) and must state on its face the date of expiration of the order.

(Subd (f) amended effective January 1, 2007; adopted as subd (c); previously amended and relettered effective January 1, 2003.)

(g) Order to show cause and reissuance (§ 213.5(c))

When a temporary restraining order is granted without notice, the matter must be made returnable on an order to show cause why the order should not be granted, no later than 15 days or, on a showing of good cause, 20 days from the date the temporary restraining order is granted.

(1) On the motion of the person seeking the restraining order or on its own motion, the court may shorten the time for service of the order to show cause on the person to be restrained.

(2) The court may, on its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by the law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order must state on its face the date of expiration of

the order. *Application and Order for Reissuance of Order to Show Cause* (form FL-306/JV-251) must be used for this purpose.

(Subd (g) amended effective January 1, 2007; adopted effective January 1, 2003; previously amended effective January 1, 2004.)

(h) Hearing on application for restraining order (§ 213.5(d) and (f))

The court may issue, after notice and hearing, any of the orders in (e). The restraining order must remain in effect for a period of time determined by the court, but in any case not more than three years.

(1) The matter may be heard simultaneously with any scheduled hearing regarding the child who is the subject of the section 300, 601, or 602 petition.

(2) 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.

(3) The order after hearing must be prepared on *Restraining Order—Juvenile (CLETS—JUV)* (form JV-250) and must state on its face the date of expiration of the order.

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

(i) Criminal records search (§ 213.5(k) 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 (i) amended effective January 1, 2007; adopted effective January 1, 2003.)

(j) Termination or extension of restraining order (§ 213.5(d))

(1) The restraining order may be terminated by the court before the expiration date listed on its face.

(2) The restraining order may be extended beyond the expiration date listed on its face by mutual consent of all parties to the order, or by further order of the court on motion of any party to the order.

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

(k) Violation (§ 213.5(h))

Any willful and knowing violation of any order, temporary order, or order after hearing granted under section 213.5 is a misdemeanor, punishable under Penal Code section 273.65.

(Subd (k) amended effective January 1, 2007; adopted effective January 1, 2003.)

(*l*) Restraining orders issued by other courts (§ 304)

If a restraining order has been issued by the juvenile court under section 213.5, no court other than a criminal court may issue any order contrary to the juvenile court's restraining order.

(Subd (l) amended effective January 1, 2007; adopted effective January 1, 2003.)

Rule 5.630 amended and renumbered effective January 1, 2007; adopted as rule 1429.5 effective January 1, 2000; previously amended effective January 1, 2003, and January 1, 2004.

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, if not otherwise determined, 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. 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 of the action has exclusive jurisdiction to hear an action filed under Family Code section 7630 or 7631.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001, and January 1, 2006.)

(b) Parentage inquiry (§§ 316.2, 726.4)

At the initial hearing on a petition filed under section 300, 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, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2006.)

(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 Social 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, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2006, and July 1, 2006.)

(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 or not 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 such order or judgment or proof of the filing of a voluntary declaration attached; and

(4) The juvenile court must take judicial notice of the prior determination of parentage.

(Subd (d) amended effective January 1, 2007; adopted as subd (b); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

(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) The alleged father and his counsel must complete and submit *Statement Regarding Paternity (Juvenile Dependency)* (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 indicating a wish to be declared the parent of the child that if parentage is declared, the declared parent will have responsibility for the financial support of the child, and, if the child receives welfare benefits, the declared parent may be subject to an action to obtain support payments.

(Subd (e) amended effective January 1, 2007; adopted as subd (c); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

(f) Notice to office of child support enforcement

If the court establishes parentage of the child, the court must sign and then direct the clerk to transmit *Parentage–Finding and Judgment* (form JV-501) to the local child support agency.

(Subd (f) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

(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 parent has previously filed a form JV-505 denying parentage and waiving further notice; or

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

(Subd (g) amended effective January 1, 2007; adopted as subd (e); previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2006.)

(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, 2007; adopted as rule 1413 effective July 1, 1995; previously amended effective January 1, 1999, January 1, 2001, January 1, 2006, and July 1, 2006.

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 5.650. Appointment of educational representative
Rule 5.651. Educational rights of children before the juvenile court
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.

(Subd (b) amended effective January 1, 2009.)

(c) Procedure to obtain authorization

(1) *Application Regarding Psychotropic Medication* (form JV-220), *Prescribing Physician's Statement—Attachment* (form JV-220(A)), *Proof of Notice: Application Regarding Psychotropic Medication* (form JV-221), *Opposition to Application Regarding Psychotropic Medication* (form JV-222), and *Order Regarding Application for Psychotropic Medication* (form JV-223) must be used 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.

(2) Additional information may be provided to the court through the use of local forms that are consistent with this rule.

(3) 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.

(4) An application must be completed and presented to the court, using *Application Regarding Psychotropic Medication* (form JV-220) and *Prescribing Physician's Statement—Attachment* (form JV-220(A)). The court must approve, deny, or set the matter for a hearing within seven court days of the receipt of the completed application.

(5) *Application Regarding 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. The physician prescribing the administration of psychotropic medication for the child must complete and sign *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

(6) *Prescribing Physician's Statement—Attachment* (form JV-220(A)) must include all of the following:

(A) The diagnosis of the child's condition that the physician asserts can be treated through the administration of the medication;

(B) The specific medication recommended, with the recommended maximum daily dosage and length of time this course of treatment will continue;

(C) The anticipated benefits to the child of the use of the medication;

(D) A description of possible side effects of the medication;

(E) A list of any other medications, prescription or otherwise, that the child is currently taking, and a description of any effect these medications may produce in combination with the psychotropic medication;

(F) A description of any other therapeutic services related to the child's mental health status; and

(G) A statement that the child has been informed in an age-appropriate manner of the recommended course of treatment, the basis for it, and its possible results. The child's response must be included.

(7) 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 Regarding Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) are pending before the court;

(iii) A copy of *Information About Psychotropic Medication Forms* (form JV-219-INFO) or information on how to obtain a copy of the form; and

(iv) A blank copy of *Opposition to Application Regarding Psychotropic Medication* (form JV-222) or information on how to obtain a copy of the form.

(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; and

(ii) A statement that an *Application Regarding Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) are pending before the court;

(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 the *Application Regarding Psychotropic Medication* (form JV-220);

(ii) A completed copy of the *Prescribing Physician's Statement—Attachment* (form JV-220(A));

(iii) A copy of *Information About Psychotropic Medication Forms* (form JV-219-INFO) or information on how to obtain a copy of the form; and

(iv) A blank copy of *Opposition to Application Regarding Psychiatric Medication* (form JV-222) or information on how to obtain a copy of the form.

(D) Proof of notice of the application regarding psychotropic medication must be filed with the court using *Proof of Notice: Application Regarding Psychotropic Medication* (form JV-221).

(8) A parent or guardian, his or her attorney of record, a child's attorney of record, or a child's Child Abuse Prevention and Treatment Act guardian ad litem appointed under rule 5.662 of the California Rules of Court who is opposed to the administration of the proposed psychotropic medication must file a completed *Opposition to Application Regarding Psychotropic Medication* (form JV-222) within two court days of receiving notice of the pending application for psychotropic medication.

(9) 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, the social worker's attorney of record, the child's Child Abuse Prevention and Treatment Act guardian ad litem, and the child's Court Appointed Special Advocate, if any, 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 January 1, 2009; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Conduct of hearing

At the hearing on the application, the procedures described in rule 5.570 must be followed. The court may deny, grant, or modify the application for authorization and may set a date for review of the child's progress and condition.

(Subd (d) 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. If a progress review is set, it may be by an appearance hearing or a report to the court and parties and attorneys, at the discretion of the court.

(g) 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 (g) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(h) 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 and 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 (h) amended effective January 1, 2009; adopted as subd (i); previously amended effective January 1, 2007; previously relettered effective January 1, 2008.)

Rule 5.640 amended effective January 1, 2009; adopted as rule 1432.5 effective January 1, 2001; previously amended effective January 1, 2003, and January 1, 2008; previously amended and renumbered effective January 1, 2007.

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)

If the court finds that there is reason to doubt that a child who is the subject of a petition filed under section 601 or 602 is capable of understanding the proceedings or of cooperating with the child's attorney, the court must stay the proceedings and conduct a hearing regarding the child's competence.

(1) The court may appoint an expert to examine the child to evaluate the child's capacity to understand the proceedings and to cooperate with the attorney.

(2) If the court finds that the child is not capable of understanding the proceedings or of cooperating with the attorney, the court must proceed under section 6550 and (a)–(c) of this rule.

(3) If the court finds that the child is capable of understanding the proceedings and of cooperating with the attorney, the court must proceed with the case.

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

Rule 5.645 amended effective January 1, 2009; adopted as rule 1498 effective January 1, 1999; previously amended and renumbered effective January 1, 2007.

Rule 5.650. Appointment of educational representative

(a) Parent's or guardian's educational rights limited (§§ 319, 361, 366, 366.27, 726; 20 U.S.C. § 1415; 34 C.F.R. § § 300.519, 300.300)

The court may limit a parent's or guardian's right to make educational decisions for a child who is declared a dependent or ward of the court under section 300, 601, or 602, but the limitations may not exceed those necessary to protect the child. Before disposition, the court may temporarily limit a parent's or guardian's right to make educational decisions under section 319(g). The court may limit a parent's or guardian's educational rights regardless of whether the child is, or may be eligible for, special education and related services.

(1) If the court temporarily limits the parent's or guardian's right to make educational decisions under section 319(g), the court must reconsider the need, if any, to limit educational rights at the disposition hearing.

(2) The child's initial evaluation for special education services need not be postponed to await parental or guardian consent or appointment of an educational representative if one or more of the following circumstances are met:

(A) The court has limited or temporarily limited the educational 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;

(B) The local education agency cannot discover the whereabouts of the parent or guardian; or

(C) The parent's rights have been terminated or the guardianship has been set aside.

(3) If the court determines that the child is in need of any assessments, evaluations, or services, including special education, mental health, and other

related services, the court must direct an appropriate person to take the necessary steps to request those assessments, evaluations, or services.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2004, and January 1, 2007.)

(b) Appointment of educational representative (§ § 319, 361, 366, 366.27, 726; 20 U.S.C. § 1415; 34 C.F.R. § 300.519)

The court must use *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) when it limits the rights of a parent or guardian to make educational decisions for the child. In its order, the court must document that one of the following actions in (1) or (2) has been taken, or, in the alternative, that a finding under (3) has been made:

(1) The court has appointed an educational representative for the child;

(2) The court has ordered a permanent plan for the child, and the court finds that the foster parent, relative caregiver, or nonrelative extended family member may exercise educational rights as provided in Education Code section 56055 and rule 5.502(13) and is not prohibited from exercising educational rights by section 361 or 726 or by 34 Code of Federal Regulations section 300.519 or 303.19; or

(3) The court cannot identify a responsible adult to serve as the child's educational representative; and

(A) The child is or may be eligible for special education and related services, and the court is referring the child to the responsible local educational agency for appointment of a surrogate parent under section 361 or 726, title 20 United States Code section 1415, and rules 5.502 and 5.650; or

(B) The child is not eligible for special education and related services, there is no foster parent to exercise the authority granted by section 56055 of the Education Code, and the court will, with the input of any interested person, make educational decisions for the child.

(Subd (b) amended effective January 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.)

(c) Limits on appointment (§ § 361, 726; Ed. Code, § 56055; Gov. Code, § 7579.5(i)–(j); 34 C.F.R. §§ 300.519, 303.19)

(1) The court should consider appointing a responsible adult relative, nonrelative extended family member, foster parent, family friend, mentor, or CASA

volunteer as the educational representative if one is available and willing to serve.

(2) The court may not appoint any individual as the educational representative if that person is excluded under, or would have a conflict of interest as defined by section 361(a) or 726(b); Education Code section 56055; Government Code section 7579.5(i)–(j); title 20 United States Code section 1415(b)(2); or 34 Code of Federal Regulations section 300.519 or 303.19.

(Subd (c) amended effective January 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.)

(d) Referral to local educational agency to appoint a surrogate parent for a child who is or may be eligible for special education and related services (§§ 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 but cannot identify an educational representative for the child 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 served by first-class mail on the local educational agency along with form JV-535, no later than seven calendar days after the date of the order.

(3) The court must direct the local education agency that when the local education agency receives form JV-535, requesting prompt appointment of a surrogate parent, the local education agency must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court's 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 seven calendar days of the appointment and must send copies of the notice to the social worker or probation officer identified on the form.

(B) If the local education agency does not appoint a surrogate parent within 30 days of receipt of the form, within the next seven calendar days it must notify the court on form JV-536 of the following:

(i) Its inability to appoint a surrogate parent; and

(ii) Its continuing reasonable efforts to assign a surrogate parent.

(4) Whenever the surrogate parent resigns or the local education agency terminates the appointment of a surrogate parent for a dependent or ward under Government Code section 7579.5(h) or replaces the surrogate parent for any other reason, it must notify the court and the child's attorney on form JV-536 within seven calendar days of the resignation, termination, or replacement. The child's attorney may request a hearing for appointment of a new educational representative by filing *Request for Hearing Regarding Child's Education* (form JV-539) and must provide notice of the hearing as provided in (g)(2). The court on its own motion may direct the clerk to set a hearing.

(Subd (d) amended effective January 1, 2008; adopted as subd (b); previously amended and relettered effective January 1, 2004; previously amended effective January 1, 2007.)

(e) Transfer of parent's or guardian's educational rights to educational representative

When an educational representative is appointed, the educational rights of the parent or guardian—including the right to notice of educational meetings and activities, participation in educational meetings and activities, and decisionmaking authority regarding the child's education, including the authority under title 20 United States Code sections 1232g and 1401(23), 34 Code of Federal Regulations section 300.30, and Education Code section 56028—are transferred to the educational representative.

(1) When returning a child to a parent or guardian, the court must consider the child's educational needs. The parent's or guardian's educational rights are reinstated when the court returns custody to the parent or guardian unless the court finds that the parent is not able to act in the child's best interest regarding education.

(2) If the court appoints a guardian for the child under rule 5.735 or 5.815, all of the parent's or guardian's educational rights transfer to the newly appointed guardian unless the court determines that the guardian is not able to act in the child's best interest regarding education.

(Subd (e) amended effective January 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.)

(f) Authority and responsibilities of educational representative (§§ 319, 360, 361, 635, 706.5, 726; Ed. Code, § 56055; Gov. Code, § 7579.5; 34 C.F.R. § 300.519)

(1) The educational representative is responsible for representing the child in the identification, evaluation, and educational placement of the child and with the provision of the child's free, appropriate public education. This includes

representing the child in all matters relating to the child's education including:

(A) The stability of the child's school placement;

(B) Placement in the least restrictive educational program appropriate to the child's individual needs;

(C) The child's access to academic resources, services, and extracurricular and enrichment activities;

(D) The child's access to educational supports necessary to meet state academic achievement standards;

(E) School disciplinary matters; and

(F) Other aspects of the provision of a free, appropriate public education.

(2) The educational representative has the following additional responsibilities:

(A) Meeting with the child at least once and as often as necessary to make educational decisions that are in the best interest of the child;

(B) Being culturally sensitive to the child;

(C) Complying with federal and state confidentiality laws including section 827 and Government Code section 7579.1(f);

(D) Participating in, and making decisions regarding, all matters affecting the child's educational needs in a manner consistent with the child's best interest; and

(E) Having knowledge and skills that ensure adequate representation of the child.

(3) The educational representative acts as the parent or guardian in all educational matters regarding the child and has a right to the following:

(A) To the rights afforded the parent or guardian under the Family Education Rights and Privacy Act, title 20 United States Code section 1232g;

(B) To the rights of a parent relating to school discipline issues, meetings, and proceedings;

(C) To represent a child with exceptional needs in matters relating to identification and assessment of those needs, instructional planning and development, educational placement, reviewing and revising the individualized education program, and other aspects of the provision of a free, appropriate public education;

(D) To attend the child's individualized education program and other educational meetings, to consult with persons involved in the child's education, and to sign any consents to education-related services and plans; and

(E) Notwithstanding any other provision of law, to consent to the child's individualized education program, nonemergency medical services, mental health treatment services, and occupational or physical therapy services provided under chapter 26.5 of title 1 of the Government Code.

(Subd (f) adopted effective January 1, 2008.)

(g) Educational representative's term of service (§ § 361, 726; Gov. Code § 7579.5)

(1) The educational representative must make educational decisions for the child until:

(A) The court restores the right of the parent or guardian to make educational decisions for the child;

(B) The child reaches 18 years of age, unless the child chooses not to make his or her own educational decisions or is deemed incompetent by the court;

(C) The court appoints another educational representative for the child under this rule;

(D) The court appoints a successor guardian or conservator; or

(E) The court finds that the foster parent, relative caregiver, or nonrelative extended family member may make educational decisions for the child under Education Code section 56055(a) because:

(i) The child is placed in a planned permanent living arrangement under section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6);

(ii) The court has limited the parent's or guardian's educational rights; and

(iii) The foster parent, relative caregiver, or nonrelative extended family member is not otherwise excluded from making education decisions by the court, by section 361 or 726, or by 34 Code of Federal Regulations section 300.519 or 303.19.

(2) If the educational representative resigns from the appointment, he or she must provide notice to the court and to the child's attorney and may use *Educational Representative or Surrogate Parent Information* (form JV-537) to provide this notice. Once notice is received, the child's attorney may request a hearing for appointment of a new educational representative by filing form JV-539 and must provide notice of the hearing to the following: the parents or guardians, unless otherwise indicated on the most recent form JV-535; the social worker; the probation officer; the Court Appointed Special Advocate (CASA) volunteer; and all other persons required to be given notice under section 293. The hearing must be set within 14 days of receipt of the request for hearing. The court on its own motion may direct the clerk to set a hearing.

(Subd (g) adopted effective January 1, 2008.)

(h) Service of order

The clerk will provide a copy of the completed form JV-535 and any received form JV-536 or JV-537 to the child if 10 years or older, the child's attorney, the social worker and the probation officer, the foster youth liaison, as defined in Education Code section 48853.5, and the educational representative at the end of the proceeding or no later than seven calendar days after the date of the order. The clerk will make the form available to the parents or guardians, unless otherwise indicated on the form; the CASA volunteer; and, if requested, all other persons provided notice under section 293. Whoever is directed by the court on form JV-535 must provide a copy of the form to the local education agency.

(Subd (h) adopted effective January 1, 2008.)

(i) Education and training of educational representative

If the educational representative 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 representative of all available resources, including resources available through the California Department of Education and the local education agency.

(Subd (i) adopted effective January 1, 2008.)

(j) Notice and participation in juvenile court hearings

(1) The educational representative must receive notice of all juvenile court hearings regarding or affecting the child's education. This includes the notice and participation provided in rule 5.530 for all regularly scheduled juvenile hearings, rule 5.512 for joint assessment hearings, and rule 5.575 for joinder proceedings.

(2) The educational representative may use form JV-537 to explain the child's educational needs. The court may allow the educational representative to be present for the purposes of participating in the portions of the juvenile court hearing that concern the child's education, including school placement, and of responding to questions or issues raised by the form. The court may allow the educational representative to participate in any mediation as provided in rule 5.518.

(Subd (j) adopted effective January 1, 2008.)

Rule 5.650 amended effective January 1, 2008; adopted as rule 1499 effective July 1, 2002; previously amended effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Under the Individuals With Disabilities Education Act (IDEA), the court may appoint a surrogate parent for a child to represent the child 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 may appoint a responsible adult as an educational representative to represent the child's educational needs when the parent's educational rights have been limited. When the court appoints an educational representative, that person is responsible for representing all the child's educational needs, including any special education and related services needs. When making this appointment, the court and all court participants are encouraged to look to all persons in the child's life, including relatives, nonrelated extended family members, and those persons with whom the child has an important relationship, to represent the child's educational needs.

If the court cannot find anyone to appoint as the child's educational representative and special education needs are not indicated, sections 361 and 726 state that the court can make education decisions for the child with the input of interested persons. However, if the court cannot find someone to appoint as educational representative and special education is indicated, the court must refer the matter to the local education agency (LEA) for appointment of a surrogate parent. Sections 361 and 726 do not permit the court to make educational decisions for a child in these cases. The surrogate parent assigned by the LEA acts as a parent for the purpose of making educational decisions 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).)

Rule 5.651. Educational rights of children before the juvenile court

(a) Applicability (§§ 213.5, 319, 358, 358.1, 364, 366.21, 366.22, 366.23, 366.26, 366.28, 366.3, 727.2, 11404.1; Gov. Code, § 7579.1; 20 U.S.C. § 1400 et seq.; 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq.)

This rule has the following applicability and incorporates the rights established by the following laws:

(1) The rule applies to all children for whom petitions have been filed under section 300, 601, or 602;

(2) The rule applies to every hearing before the court affecting or related to the child's education, including detention, jurisdiction, disposition, and all regularly scheduled review hearings; and

(3) The rule incorporates the rights established by the following laws: the Individuals With Disabilities Education Act (20 U.S.C. § 1400 et seq.), the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and the education rights of foster children as provided in Assembly Bill 490 (Stats. 2003, ch. 862) and Assembly Bill 1858 (Stats. 2004, ch. 914).

(b) Conduct of hearings related to, or that may affect, a child's education

(1) To the extent the information is available, at the initial or detention hearing the court must consider:

(A) Who holds educational rights;

(B) If the child was enrolled in, and is attending, the child's school of origin as defined in Education Code section 48853.5(e);

(C) If the child is no longer attending the school of origin, whether;

(i) In accordance with the child's best interest, the educational liaison, as defined in Education Code section 48853.5(b), in consultation with, and with the agreement of, the child and the parent or guardian or other educational representative, recommends that the child's right to attend the school of origin be waived;

(ii) Prior to making any recommendation to move a foster child from his or her school of origin, the educational liaison provided the child and the person holding the right to make educational decisions for the child with a written explanation stating the basis for the recommendation and how this recommendation serves the

foster child's best interest as provided in Education Code section 48853.5(d)(3);

(iii) Without obtaining a waiver, the child was not afforded his or her right to attend his or her school of origin under Education Code section 48853.5(d)(1); and

(iv) The child was immediately enrolled in the new school as provided in Education Code section 48853.5(d)(4).

(D) Whether the parent's or guardian's educational rights should be temporarily limited; 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 unique needs of children with disabilities and to serve the child's best interest if he or she has a disability; and

(ii) Promotes educational stability through proximity to the child's school.

(2) At the disposition hearing and at all subsequent hearings provided for in (a), the juvenile court must address and determine the child's general and special education needs, identify a plan for meeting those needs, and provide a clear, written statement using *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535), specifying the person who holds the educational rights for the child. The court's findings and orders must address the following:

(A) Whether the child's educational, physical, mental health, and developmental needs are being met;

(B) Any services, assessments, or evaluations, including those for special education and related services, that the child may need;

(C) Who is directed to take the necessary steps for the child to begin receiving any necessary assessments, evaluations, or services;

(D) If the child's educational placement changed during the reporting period, whether

(i) The child's educational records, including any evaluations of a child with a disability, were transferred to the new educational

placement within two business days of the request for the child's enrollment in the new educational placement; and

(ii) The child is enrolled in and attending school; and

(E) Whether the parent's or guardian's educational rights should be limited;

(i) If the court finds the parent's or guardian's educational rights should not be limited, the court must direct the parent to his or her rights and responsibilities in regard to the child's education as provided in rule 5.650(e) and (f); or

(ii) If the court finds the parent's or guardian's educational rights should be limited, the court must determine who will hold the child's educational rights. The court must explain to the parent or guardian why the court is limiting his or her educational rights and must direct the parent or guardian to the rights and responsibilities of the education representative as provided in rule 5.650(e) and (f).

(c) Reports for hearings related to, or that may affect, a child's education

This subdivision applies at all hearings, including disposition and joint assessment hearings. The court must ensure that, to the extent the information was available, the social worker and the probation officer provided the following information in the report for the hearing:

(1) The child's age, behavior, educational and developmental achievement, and any discrepancies in achievement in education and in cognitive, physical, and emotional development;

(2) Identification of the child's educational, physical, mental health, or developmental needs;

(3) Whether the child is participating in developmentally appropriate extracurricular and social activities;

(4) Whether the child is attending a comprehensive, regular, public or private school;

(5) Whether the child may have physical, mental, or learning-related disabilities or other special education needs and is in need of or is already receiving special education and related services as provided by the laws incorporated in rule 5.651(a)(3);

(6) If the child is 0 to 3 years old, whether the child may be eligible for or is already receiving services available under the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), and whether those services are appropriate;

(7) If the child is between 3 and 5 years and is or may be eligible for special education services, whether the child is receiving the early educational opportunities provided by Education Code section 56001;

(8) Whether the child is receiving appropriate services through a current individualized education program;

(9) Whether the child is or may be eligible for regional center services or is already receiving regional center services. Copies of the current individual family plan as defined in section 1436 under title 20 of the United States Code and the current life quality assessments as defined in Welfare and Institutions Code section 4570 should be attached to the report;

(10) Whether the parent's or guardian's educational rights have been or should be limited;

(11) If the social worker or probation officer recommends limiting the parent's or guardian's right to make educational 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;

(12) If the parent's or guardian's educational rights have been limited, who holds the child's educational rights;

(13) Recommendations and case plan goals to meet the child's identified educational, physical, mental health, and developmental needs;

(14) Whether any orders to direct an appropriate person to take the necessary steps for the child to begin receiving assessments, evaluations, or services, including those for special education and related services, are requested; and

(15) In the case of joint assessments, a separate statement by each of the two departments regarding whether the respective social worker and probation officer believe that the child may have a disability and whether the child is in need of special education and related services or requires evaluation as required by title 20 United States Code section 1412(a)(3), Education Code section 56425, or section 504 of the Rehabilitation Act of 1973.

(d) Continuances or stay of jurisdiction

If any continuance provided for in rules 5.686 and 5.782 or stay of jurisdiction provided for in rule 5.645 is granted, the child must continue to receive all services or accommodations required by the laws incorporated in rule 5.651(a)(3).

(e) Change of placement affecting the child's right to attend the school of origin

This subdivision applies to all changes of placement including the initial placement and all subsequent changes of placement.

(1) At any hearing that relates to or may affect the child's education and that follows a removal of the child from the school of origin the court must find that:

(A) The social worker or probation officer notified the court, the child's attorney, and the educational representative or surrogate parent that the proposed placement or change of placement would result in a removal of the child from the child's school of origin. The court must find that the notice was provided within 24 hours, excluding nonjudicial days, of the social worker's or probation officer's determination that the proposed change of placement would result in removal of the child from the school of origin.

(B) If the child had a disability and an active individualized education program prior to 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 prior to removal and the receiving special education local plan area, as defined in Government Code section 7579.1, of the impending change of placement.

(2) After receipt of the notice in (1):

(A) The child's attorney must, as appropriate, discuss the proposed move from the school of origin with the child and the person who holds educational rights. The child's attorney may request a hearing by filing *Request for Hearing Regarding Child's Education* (form JV-539). If requesting a hearing, the child's 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 court date, which will be no later than seven calendar days after the form was filed, to the parents or guardians, unless otherwise indicated on form JV-535; the social worker; the probation officer; the educational representative or surrogate parent; the foster youth liaison, as defined in Education

Code section 48853.5; the Court Appointed Special Advocate (CASA) volunteer; and all other persons required by 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 must be allowed to remain in the school of origin pending this hearing and pending any disagreement between the child, parent, guardian, or educational representative and the school district.

(4) If the court, the child's attorney, or the person who holds educational rights requests a hearing, at the hearing the court must find that the social worker or probation officer provided a report no later than two court days after form JV-539 was filed and that the report included the information required by (b)(1)(C)(i) and (ii) and:

(A) Whether the foster child has been allowed to continue his or her education in the school of origin for the duration of the academic school year;

(B) Whether a dispute exists regarding the request of a foster child to remain in the school of origin and whether the foster child has been afforded the right 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)(2) and Education Code section 49069.5 have been followed;

(D) Information addressing how the proposed change serves the best interest of the child;

(E) The responses to the proposed change of placement from the child if over 10 years old, the child's attorney, the parent or guardian, the foster youth liaison, as defined in Education Code section 48853.5, and the child's CASA volunteer, specifying whether each person agrees or disagrees with the proposed change and, if any person disagrees, stating why;

(F) A statement from the person holding educational rights regarding whether the proposed change of placement is in the child's best interest

and what efforts have been made to keep the child in the school of origin; and

(G) A statement from the social worker or probation officer confirming that the child has not been segregated in a separate school, or in a separate program within a school, based on the child's status as a child in foster care.

(f) Court review of proposed change of placement affecting the child's right to attend the school of origin

(1) At the hearing set under (e)(2), the court must:

(A) Determine whether the proposed placement meets the requirements of this rule and Education Code sections 48853.5 and 49069.5 and whether the proposed plan is based on the best interest of the child;

(B) Determine what actions are necessary to ensure the child's educational and disability rights; and

(C) Make the necessary findings and orders to enforce these 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 may remain in his or her school of origin.

(2) When considering whether it is in the child's best interest to remain in the school of origin, the court must consider the following:

(A) Whether the parent, guardian, or other educational representative believes that remaining in the school of origin is in the child's best interest;

(B) How the proposed change of placement will affect the stability of the child's school placement and the child's access to academic resources, services, and extracurricular and enrichment activities;

(C) Whether the proposed school placement would allow the child to be placed in the least restrictive educational program; and

(D) Whether the child has the educational supports necessary, including those for special education and related services, 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).

Rule 5.651 adopted effective January 1, 2008.

Advisory Committee Comment

This rule incorporates the requirement of, and rights established by, Assembly Bill 490 (Steinberg; Stats. 2003, ch. 862), Assembly Bill 1858 (Steinberg; Stats. 2004, ch. 914), the Individuals With Disabilities Education Act (IDEA), the Americans With Disabilities Act (ADA), and section 504 of the Rehabilitation Act of 1973. This rule does not limit these requirements or rights. To the extent necessary, this rule establishes procedures to make these laws meaningful to children in foster care.

With the passage of Assembly Bill 490, a child 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 which all students are held. To afford the child this right, the juvenile court, advocates, placing agencies, care providers, and educators must work together to maintain stable school placements and ensure that the child 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 students. This rule, sections 362 and 727, and rule 5.575 provide procedures for ensuring that the child's educational 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 in foster care are disproportionately represented in the population of children with disabilities and inherently face systemic challenges to attaining self-sufficiency. Children in foster care have rights arising out of the IDEA, the ADA, and section 504 of the Rehabilitation Act of 1973. To comply with federal requirements regarding the identification of children with disabilities and the provision of services to those children who qualify, the court, parent or guardian, placing agency, attorneys, CASA volunteer, local education agencies, and educational representatives must affirmatively address the child's educational needs. The court must continually inquire about the education of the child and the progress being made to enforce any rights the child 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, 317.6, 16010.6, 366.26)
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 5.655. 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) The Judicial Council's Administrative Office of the Courts (AOC) may create a *CASA Program Policies and Procedures Manual* containing recommended program policies and procedures. If the AOC creates 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, 2007; adopted as subd (a); previously amended and relettered effective January 1, 2005.)

(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 AOC 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, 2007; adopted as subd (i); previously amended effective January 1, 1995, and January 1, 2000; previously amended and relettered effective January 1, 2005.)

(*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 Administrative Office of the Courts.

(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) 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, 2010; adopted as rule 1424 effective July 1, 1994; previously amended effective January 1, 1995, January 1, 2000, January 1, 2001, and January 1, 2005; previously amended and renumbered effective January 1, 2007.

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, 317.6, 16010.6, 366.26)

(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*

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. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. 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.

(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, 2007; adopted as subd (b); amended and relettered as subd (c) effective July 1, 2001; previously amended effective July 1, 1999, and January 1, 2005; previously relettered effective January 1, 2006.)

(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 and renumbered effective January 1, 2007; adopted as rule 1438 effective January 1, 1996; previously amended effectively July 1, 1999, July 1, 2001, January 1, 2003, January 1, 2005, and January 1, 2006.

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 expend 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 Cal. Bar Rules, Prof. Conduct R 3-310, Subd (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

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.

(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 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.

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
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

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 aged three or over at the time of the initial removal and must not exceed 6 months for a child who was under the age of three 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, 2007; adopted effective January 1, 1999; previously amended effective January 1, 2001.)

(b) Paternity 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 and alleged fathers of the child. Questions, at the discretion of the court, may include:

(1) Has there been a judgment of paternity?

(2) Was the mother married, or did she believe she was married, at or any time after the time of conception?

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

(4) Has the mother received support payments or promises of support for the child or for the mother during her pregnancy?

(5) Has a man formally or informally acknowledged paternity, including the execution of a voluntary declaration of paternity under Family Code section 7571?

(6) Have paternity tests been administered and, if so, what were the results?

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 1999.)

(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, 2008; repealed and adopted as rule 1441 effective January 1, 1998; previously amended effective January 1, 1999, January 1, 2001, and January 1, 2002; previously amended and renumbered effective January 1, 2007.

Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation

(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) Time limit on custody, filing petition, setting hearing (§§ 311, 313)

If the social worker takes the child into custody, the social worker must immediately file a petition with the clerk of the juvenile court, and the clerk must immediately set the matter for hearing on the detention hearing calendar. A child who is detained must be released within 48 hours, excluding noncourt days, unless a petition has been filed.

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

(c) Detention—child in medical facility (§ 309(b))

For purposes of these rules, a child is deemed taken into custody and delivered to the social worker if the child is under medical care and cannot immediately be moved and there is reasonable cause to believe the child is described by section 300.

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

(d) Detention hearing—time of (§ 315)

Unless the child has been released sooner, the matter concerning a child who is taken into custody must be brought before the juvenile court for a detention hearing as soon as possible, but in any event before the end of the next court day after a petition has been filed. At the detention hearing, the court must determine whether the child is to continue to be detained in custody. If the detention hearing is not commenced within that time, the child must be immediately released from custody.

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

(e) Detention hearing—warrant cases, transfers in, changes in placement

Notwithstanding (c), 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 (e) amended effective January 1, 2007.)

(f) Setting jurisdiction hearing (§ 334)

If the child is not detained, the court must set a jurisdiction hearing to be held within 30 days of the date the petition is filed. If the court orders the child to be detained, the court must set a jurisdiction hearing within 15 court days of the order of detention.

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

(g) Visitation

The court must consider the issue of visitation between the child and other persons, including siblings, determine if contact pending the jurisdiction hearing would be beneficial or detrimental to the child, and make appropriate orders.

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

Rule 5.670 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1442 effective January 1, 1998.

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.)

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 be made on the record and appear in the written orders of the court.

(Subd (b) amended effective January 1, 2007; adopted effective July 1, 2002.)

(c) Detention hearing; examination by court (§ 319)

Subject to (d), the court must examine the child's parent, guardian, or other person having knowledge relevant to the issue of detention and must receive any relevant evidence that the petitioner, the child, a parent, a guardian, or counsel for a party wishes to present.

(Subd (c) amended effective January 1, 2007; adopted as subd (b); previously amended and relettered effective July 1, 2002.)

(d) 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 (c). 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 (d) amended effective January 1, 2007; adopted as subd (c); previously amended and relettered effective July 1, 2002.)

Rule 5.674 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1444 effective January 1, 1998; previously amended effective July 1, 2002.

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) Identification of the need, if any, for the child to remain in custody; and

(4) 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 or about any relative with whom the child may be detained.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2002.)

Rule 5.676 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1445 effective January 1, 1998; previously amended effective July 1, 2002.

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 whether the child can be returned home if the court orders services to be provided, including services under section 306.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(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 and renumbered effective January 1, 2007; repealed and adopted as rule 1446 effective January 1, 1998; previously amended effective January 1, 1999, and July 1, 2002.

Rule 5.680. Detention rehearings; prima facie hearings

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

(b) Parent or guardian noticed, not present (§ 321)

If the court determines that the parent or guardian received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, the request of the parent or guardian for a detention rehearing must be denied absent a finding that the failure to appear at the hearing was due to good cause.

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

(c) Parent or guardian present; preparers available (§ 321)

If a parent or guardian has received notice of the detention hearing, is present at the hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present in court or otherwise available for cross-examination, the request for a detention rehearing must be denied.

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

(d) 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 petitioner fails to establish the prima facie case, the child must be released from custody.

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

Rule 5.680 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1447 effective January 1, 1998.

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
Rule 5.688. Failure to cooperate with services (§ 360(b))

Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission

(a) Petition read and explained (§ 353)

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 and the nature of the hearing, its procedures, and the possible consequences.

(Subd (a) amended effective January 1, 2005.)

(b) 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;

(2) The right to assert any privilege against self-incrimination;

(3) The right to confront and to cross-examine all witnesses called to testify;

(4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and

(5) 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 (b) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(c) 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 (b).

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

(d) Parent or guardian must admit

An admission by the parent or guardian must be made personally by the parent or guardian.

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

(e) Admission, no contest, submission

The parent or guardian may elect to 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. *Waiver of Rights—Juvenile Dependency* (form JV-190) may be completed by the parent or guardian and counsel and submitted to the court.

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

(f) 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; and

(8) The child is described under one or more specific subdivisions of section 300.

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

(g) Disposition

After accepting an admission, plea of no contest, or submission, the court must proceed to a disposition hearing under rules 5.686 and 5.690.

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

Rule 5.682 amended and renumbered effective January 1, 2007; adopted as rule 1449 effective January 1, 1991; previously amended effective January 1, 2005.

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 section 355.1 and (c), (d), and (e), 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, 2007; previously amended effective July 1, 1997.)

(c) Reports

A social study, with hearsay evidence contained in it, is admissible and is sufficient to support a finding that the child is described by section 300.

(1) The social study must be provided to all parties and their counsel by the county welfare department within a reasonable time before the hearing.

(2) The preparer of the report must be made available for cross-examination on the request of any party. The preparer may be on telephone standby if the preparer can be present in court within a reasonable time.

(Subd (c) amended effective January 1, 2007; previously amended effective July 1, 1997.)

(d) Hearsay in the report (§ 355)

If a party makes an objection with reasonable specificity to particular hearsay in the report and provides petitioner a reasonable period to meet the objection, that evidence must not be sufficient in and of itself to support a jurisdictional finding, unless:

(1) The hearsay is admissible under any statutory or judicial hearsay exception;

(2) The hearsay declarant is a child under 12 years of age who is the subject of the petition, unless the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is therefore unreliable;

(3) The hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher and the statement would be admissible if the declarant were testifying in court; or

(4) The hearsay declarant is available for cross-examination.

(Subd (d) amended effective January 1, 2007; previously amended effective July 1, 1997.)

(e) 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 (e) amended effective January 1, 2007; previously amended effective July 1, 1997.)

(f) 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 under one or more specific subdivisions of section 300.

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

(g) Disposition (§ 356)

After making the findings in (f), the court must proceed to a disposition hearing under rules 5.686 and 5.690.

(Subd (g) amended effective January 1, 2007; previously amended effective July 1, 1997.)

(h) 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 (h) amended effective January 1, 2007; previously amended effective July 1, 1997, and January 1, 2005.)

Rule 5.684 amended and renumbered effective January 1, 2007; adopted as rule 1450 effective January 1, 1991; previously amended effective July 1, 1997, and January 1, 2005.

Rule 5.686. Continuance pending disposition hearing

(a) Continuance pending disposition hearing (§ 358)

Except as provided in (b), the court may continue the disposition hearing to a date not to exceed 10 court days if the child is detained or, if the child is not detained, to a date not to exceed 30 calendar days from the date of the finding under section 356. The court may for good cause continue the hearing for an additional 15 calendar days if the child is not detained.

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

(b) Continuance if nonreunification is requested

If petitioner alleges that section 361.5(b) is applicable, the court must continue the proceedings not more than 30 calendar days. The court must order the petitioner to notify each parent or guardian of the contents of section 361.5(b) and must inform each parent that if reunification is not ordered at the disposition hearing, a section 366.26 implementation hearing will be held and parental rights may be terminated.

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

(c) Detention pending continued hearing (§ 358)

The court in its discretion may order release or detention of the child during the continuance.

Rule 5.686 amended and renumbered effective January 1, 2007; adopted as rule 1451 effective January 1, 1990.

Rule 5.688. Failure to cooperate with services (§ 360(b))

(a) Petition

If the court has ordered services under section 360(b), and within the time period consistent with section 301 the family is unable or unwilling to cooperate with the services provided, a petition may be filed as provided in section 360(c).

(Subd (a) amended effective July 1, 2000.)

(b) Order

At the hearing on the petition the court must dismiss the petition or order a new disposition hearing to be conducted under rule 5.690.

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

Rule 5.688 amended and renumbered effective January 1, 2007; adopted as rule 1452 effective January 1, 1990; previously amended effective July 1, 2000.

Article 3. Disposition

Rule 5.690. General conduct of disposition hearing
Rule 5.695. Findings and orders of the court—disposition
Rule 5.700. Order determining custody (§§ 304, 361.2, 362.4)
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)

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 should 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 petitioner alleges that section 361.5(b) applies, the social study must state why reunification services should not be provided.

(E) 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, 2011; previously amended effective July 1, 1995, January 1, 2000, and January 1, 2007.)

(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.

(Subd (c) amended effective July 1, 2010; adopted effective January 1, 2007; previously amended effective January 1, 2009.)

Rule 5.690 amended effective January 1, 2011; 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, and July 1, 2010.

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 as provided in section 301 and order that services be provided;

(3) Appoint a legal guardian for the child;

(4) Declare dependency and appoint a legal guardian for the child;

(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 the noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700;

(B) After stating on the record or in writing the factual basis for the order, order custody to the 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, 2007; previously amended effective July 1, 1995.)

(b) Appointment of a legal guardian (§ 360)

(1) At the disposition hearing, the court may appoint a legal guardian for the child if:

(A) The parent has advised the court that the parent does not wish to receive family maintenance services or family reunification services;

(B) The parent has executed and submitted *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195);

(C) The court finds that the parent, and the child if of sufficient age and comprehension, knowingly and voluntarily waive their rights to reunification services and agree to the appointment of the legal guardian; and

(D) The court finds that the appointment of the legal guardian is in the best interest of the child.

(2) If the court appoints a legal guardian, it must:

(A) State on the record or in the minutes that it has read and considered the assessment;

(B) State on the record or in the minutes its findings and the factual bases for them;

(C) Advise the parent that no reunification services will be offered or provided;

(D) Make any appropriate orders regarding visitation between the child and the parent or other relative, including any sibling; and

(E) 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.

(3) The court may appoint a legal guardian without declaring the child a dependent of the court. If dependency is declared, a six-month review hearing must be set.

(Subd (b) amended effective January 1, 2007; adopted effective July 1, 1995; previously amended effective July 1, 1999, and July 1, 2002.)

(c) Limitations on parental control (§§ 245.5, 319, 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 right of the parent or guardian to make educational decisions for the child. If the court limits the right, it must follow the procedures stated in rule 5.650.

(Subd (c) amended effective January 1, 2008; adopted as subd (b); relettered effective July 1, 1995; previously amended effective July 1, 2002, January 1, 2004, and January 1, 2007.)

(d) 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 finds by clear and convincing evidence any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child, or will be if the child is returned home, and there is no reasonable alternative means to protect that child;

(2) The parent or guardian is unwilling to have physical custody of the child and has been notified that if the child remains out of the parent's or guardian's physical custody for the period specified in section 366.26, the child may be declared permanently free of his or her custody and control;

(3) The child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and no reasonable alternative means to protect the child's emotional health exists;

(4) The child has been sexually abused by a parent or guardian or member of the household or other person known to his or her parent and there is no reasonable alternative means to protect the child or the child does not wish to return to the parent or guardian; or

(5) The child has been left without any provisions for his or her support and there is no parent or guardian available to maintain or provide for the care, custody, and control of the child.

(Subd (d) amended effective January 1, 2007; adopted as subd (c); relettered effective July 1, 1995; previously amended effective July 1, 1997, July 1, 1999, and July 1, 2002.)

(e) 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; or

(2) Reasonable efforts have not been made.

(Subd (e) amended effective January 1, 2006; adopted as subd (d); relettered effective July 1, 1995; amended effective July 1, 2002.)

(f) Family-finding determination

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

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

(2) The court must make one of the following findings:

(A) The social worker has used due diligence in conducting its investigation to identify, locate, and notify the child's relatives; or

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

(Subd (f) adopted effective January 1, 2011.)

(g) When making the finding required under paragraph (f)(2) of this rule, the court may consider, among other examples of due diligence to identify, locate, and notify the child's relatives, 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 (g) adopted effective January 1, 2011.)

(h) Provision of reunification services (§ 361.5)

(1) Except as provided in (6), if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to

provide reunification services to the child and the child's mother and statutorily presumed father, or the child's legal guardian, to facilitate reunification of the family. For a child who was three years of age or older on the date of initial removal, services must be provided during the time period beginning with the dispositional hearing and ending 12 months after the date the child entered foster care, as defined by section 361.49. For a child who was under three years of age on the date of initial removal, services must be provided for a period of 6 months from the dispositional hearing, but no longer than 12 months from the date the child entered foster care, as defined by section 361.49. The time period for the provision of family reunification services must be calculated consistent with section 361.5(a). The court must inform the parent or legal guardian of a child who was under three when initially removed that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification efforts after 6 months from the date of the dispositional hearing.

(2) If a child is a member of a sibling group removed from parental custody at the same time, and one member of the sibling group was under three at the time of the initial removal, reunification services for some or all members of the sibling group may be limited to 6 months from the dispositional hearing, and no later than 12 months from the date the children entered foster care. The court must inform the parent or legal guardian of a child who is a member of such a sibling group that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in termination of reunification efforts after 6 months for one or more members of the sibling group.

(3) 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.

(4) Any motion to terminate reunification services before the permanency hearing set under section 366.21(f) for a child age three or older, or before the 6-month review hearing set under section 366.21(e) for a child under age three, must follow the requirements in section 388(c) and rule 5.570. A motion to terminate reunification services at the 6-month review hearing is not required if the court finds by clear and convincing evidence that one or more of the circumstances described in section 361.5(a)(2) and rule 5.710(c)(1)(A) is true.

(5) 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.

(6) 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. Reunification services need not be provided to a mother, statutorily presumed father, or guardian if the court finds, by clear and convincing evidence, any of the following:

(A) The whereabouts of the parent or guardian are unknown. This finding must be supported by a declaration or by proof that a reasonably diligent search has failed to locate the parent. Posting or publishing notice is not required.

(B) The parent or guardian is suffering from a mental disability described in chapter 2 (commencing with section 7820) of part 4 of division 12 of the Family Code that renders the parent incapable of using those services.

(C) The child had been previously declared a dependent under any subdivision of section 300 as a result of physical or sexual abuse; following that adjudication the child had been removed from the custody of the parent or guardian under section 361; the child has been returned to the custody of the parent or guardian from whom the child had been taken originally; and the child is being removed under section 361 because of additional physical or sexual abuse.

(D) The parent or guardian of the child has caused the death of another child through abuse or neglect.

(E) The child was brought within the jurisdiction of the court under (e) of section 300 because of the conduct of that parent or guardian.

(F) The child is a dependent as a result of the determination that the child, a sibling, or a half-sibling suffered severe sexual abuse, as defined in section 361.5(b)(6), by the parent or guardian or that the parent or guardian inflicted severe physical harm, as defined in section 361.5(b)(6), on the child, a sibling, or a half-sibling, and the court finds that attempts to reunify would not benefit the child. The court must specify on the record the basis for the finding that the child suffered severe sexual abuse or the infliction of severe physical harm.

(G) The parent or guardian is not receiving reunification services for a sibling or half-sibling of the child, for reasons under (C), (E), or (F).

(H) The child was conceived as a result of the parent having committed an offense listed in Penal Code section 288 or 288.5, or by an act described by either section but committed outside California.

(I) The court has found that the child is described by (g) of section 300, that the child was willfully abandoned by the parent or guardian, and that the abandonment constituted serious danger to the child as defined in section 361.5(b)(9).

(J) The court has terminated reunification services for a sibling or half-sibling of the child because the parent failed to reunify with the sibling or half-sibling, and the parent or guardian has not made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling from that parent or guardian.

(K) The parental rights of a parent over any sibling or half-sibling of the child have been terminated, and the parent has not subsequently made a reasonable effort to treat the problem that led to the removal of the sibling or half-sibling.

(L) The parent or guardian has been convicted of a violent felony as defined in Penal Code section 667.5(c).

(M) The parent or guardian has a history of extensive, abusive, and chronic use of alcohol or other drugs and has not sought or participated in treatment during the three years immediately prior to the filing of the petition under section 300, or has failed, on at least two prior occasions, to comply with an available and accessible treatment program described in the case plan required by section 358.1, and the removal of the child is based in whole or in part on the risk to the child presented by the use of alcohol or other drugs.

(N) The parent or guardian, who must be represented by counsel, has advised the court through the execution and submission of *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195) that that parent or guardian does not wish to receive family maintenance or reunification services and does not wish the child returned or placed in the custody of that parent or guardian. The court may accept the waiver only on a finding on the record that the parent or guardian has knowingly and intelligently waived the right to services.

(O) On at least one occasion, the parent or guardian has abducted the child or a sibling or half-sibling from placement and has refused to disclose the abducted child's whereabouts or has refused to return custody of the abducted child to the placement or to the social worker.

(7) In deciding whether to order reunification in any case in which petitioner alleges that section 361.5(b) applies, the court must consider the report

prepared by petitioner, which must discuss the factors contained in section 361.5(c).

(8) If the petitioner alleges that section 361.5(c) applies, the report prepared for disposition must address the issue of reunification services. At the disposition hearing, the court must consider the factors stated in section 361.5.

(9) If the court finds under (6)(A) that the whereabouts of the parent or guardian are unknown and that a diligent search has failed to locate the parent or guardian, the court may not order reunification services and must set the matter for a 6-month review hearing. If the parent or guardian is located prior to the 6-month review and requests reunification services, the welfare department must seek a modification of the disposition orders. The time limits for reunification services must be calculated from the date of the initial removal, and not from the date the parent is located or services are ordered.

(10) If the court finds that allegations under (6)(B) are proved, the court must nevertheless order reunification services unless evidence by mental health professionals establishes by clear and convincing evidence that the parent is unlikely to be able to care for the child within the next 12 months.

(11) If the court finds that the allegations under (6)(C), (D), (F), (G), (H), (I), (J), (K), (L), (M), (N), or (O) have been proved, the court may not order reunification services unless the party seeking the order for services proves by clear and convincing evidence that reunification is in the best interest of the child. If (6)(F) is found to apply, the court must consider the factors in section 361.5(h) in determining whether the child will benefit from services and must specify on the record the factual findings on which it based its determination that the child will not benefit.

(12) If the court finds that the allegations under (6)(E) have been proved, the court may not order reunification services unless it finds, based on consideration of factors in section 361.5(b) and (c), that services are likely to prevent reabuse or continued neglect or that failure to attempt reunification will be detrimental to the child.

(13) If the mother, statutorily presumed father, or guardian is institutionalized or incarcerated, the court must order reunification services unless it finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in section 361.5(e). The court may order reunification services with an institutionalized or incarcerated biological father whose paternity has been declared by the juvenile court or another court of competent jurisdiction, if the court determines that such services would benefit the child, with consideration of the factors in section 361.5(e).

(14) If, with the exception of (6)(A), the court orders no reunification services for every parent otherwise eligible for such services under (f)(1) and (2), the court must conduct a hearing under section 366.26 within 120 days.

(15) 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 *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, 8.452, and 5.600.

(16) 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 *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.

(17) 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.

(18) Failure to file a petition for extraordinary writ review within the period specified by rules 8.450, 8.452, and 5.600 to substantively address the issues challenged, or to support the challenge by an adequate record, precludes subsequent review on appeal of the findings and orders made under this rule.

(19) 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 (h) relettered effective January 1, 2011; adopted as subd (e); previously relettered as subd (f) effective July 1, 1995; 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, and January 1, 2010.)

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

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

(1) 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 or 12 months of the specific date the child is determined to have entered foster care, whichever time limit is applicable.

(Subd (i) relettered effective January 1, 2011; adopted as subd (f); previously relettered as subd (g) effective July 1, 1995; previously amended effective January 1, 2001, and July 1, 2002.)

(j) Setting 6-month review (§§ 361.5, 366)

Review of the status of every dependent child must be performed within 6 months after the date of the original disposition order, and no later than 6 months after the date the child is determined to have entered foster care; the review must be scheduled on the appearance calendar. The court must advise the dependent child of the child's right to petition for modifications of court orders as required in section 353.1.

(Subd (j) relettered effective January 1, 2011; adopted as subd (g); previously relettered as subd (h) effective July 1, 1995; previously amended effective January 1, 1995, January 1, 2001, July 1, 2002, and January 1, 2007.)

(k) Fifteen-day reviews (§ 367)

If a child is detained pending the execution of the disposition order, the court must review the case at least every 15 calendar days to determine whether the delay is reasonable. During each review the court must inquire about the action taken by the probation or welfare department to carry out the court's order, the reasons for the delay, and the effect of the delay on the child.

(Subd (k) relettered effective January 1, 2011; adopted as subd (h); previously relettered as subd (i) effective July 1, 1995; previously amended effective July 1, 2002, and January 1, 2007.)

(*l*) Setting a hearing under section 366.26

At the disposition hearing, the court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

(Subd (l) *relettered effective January 1, 2011; adopted as subd (j) effective July 1, 1997; previously amended effective July 1, 2002.)*

Rule 5.695 amended effective January 1, 2011; 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, and January 1, 2010.

Rule 5.700. Order determining custody (§§ 304, 361.2, 362.4)

(a) Order determining custody—termination of jurisdiction

If the juvenile court orders custody to a parent and terminates jurisdiction, the court may make orders for visitation with the other parent. The court may also issue orders to either parent enjoining any action specified in Family Code section 2045.

(1) *Modification of existing custody orders—new case filings*

The order of the juvenile court must be filed in an existing nullity, dissolution, legal guardianship, or paternity proceeding. If no custody proceeding is filed or pending, the order may be used as the sole basis to open a file.

(2) *Preparation and transmission of order*

The order must be prepared on *Custody Order—Juvenile—Final Judgment* (form JV-200). The court may direct the parent, parent's attorney, county counsel, or the clerk to:

(A) Prepare the order for the court's signature; and

(B) Transmit the order within 10 calendar days after the order is signed to the superior court of the county where a custody proceeding has already

been commenced or, if none, to the superior court of the county in which the parent who has been given custody resides.

(3) *Procedures for filing order—receiving court*

After receipt of the juvenile court custody order, the superior court clerk of the receiving county must immediately file the juvenile court order in the existing proceeding or immediately open a file, without a filing fee, and assign a case number.

(4) *Endorsed filed copy—clerk's certificate of mailing*

Within 15 court days after receiving the order, the clerk of the receiving court must send by first-class mail an endorsed filed copy of the order showing the case number of the receiving court to (1) the persons whose names and addresses are listed on the order, and (2) the originating juvenile court, with a completed clerk's certificate of mailing, for inclusion in the child's file.

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

(b) Order determining custody—continuation of jurisdiction

If the court orders custody to a parent subject to the continuing jurisdiction of the court, with services to one or both parents, the court may direct the order be prepared and filed in the same manner as described in (a).

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

Rule 5.700 amended and renumbered effective January 1, 2007; adopted as rule 1457 effective January 1, 1990; previously amended effective January 1, 1994, and January 1, 2001.

Rule 5.705. Setting a hearing under section 366.26

At a disposition hearing, a review hearing, or at any other hearing regarding a dependent child, the court must not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

Rule 5.705 amended and renumbered effective January 1, 2007; adopted as rule 1459 effective July 1, 1990; previously amended effective January 1, 1994, and July 1, 1997.

Article 4. Reviews, Permanent Planning

Rule 5.706. Family maintenance review hearings (§ 364)

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 (§§ 366.26, 727.31)
Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))
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, 391)

Rule 5.706. Family maintenance review hearings (§ 364)

(a) Setting of hearing (§ 364)

If the child remains in the custody of the parent or legal guardian, a review hearing must be held within six months after the date of the original dispositional hearing and no less frequently than once every six months thereafter as long as the child remains a dependent.

(b) 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.

(c) Reports (§ 364)

At least 10 calendar days before the hearing, the petitioner must file a supplemental report with the court describing the services offered to the family, the progress made by the family in eliminating the conditions or factors requiring court supervision, and the petitioner's recommendation regarding the necessity of continued supervision. A copy of the report must be provided to all parties at least 10 calendar days before the hearing.

(d) 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.

(e) Conduct of hearing (§ 364)

(1) The court must determine whether continued supervision is necessary. The court must terminate its dependency jurisdiction unless the court finds that the petitioner has established by a preponderance of the evidence that existing conditions would justify initial assumption of jurisdiction under section 300 or that such conditions are likely to exist if supervision is withdrawn. Failure of the parent or legal guardian to participate regularly in any court-ordered treatment program constitutes prima facie evidence that the conditions that justified initial assumption of jurisdiction still exist and that continued supervision is necessary.

(2) If the court retains jurisdiction, the court must order continued services and set a review hearing within six months under this rule.

(f) 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.

(g) 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 decisions for the child, following the requirements and procedures in rules 5.650 and 5.651 and in section 361(a).

Rule 5.706 adopted effective January 1, 2010.

Rule 5.708. General review hearing requirements

(a) Setting of review hearings (§ 366)

The status of every dependent child who has been removed from the custody of the parent or legal guardian must be reviewed periodically but no less frequently than once every 6 months until the section 366.26 hearing is completed. Review hearings must be set as described in rule 5.710 (for 6-month review hearings), rule 5.715 (for 12-month permanency hearings), rule 5.720 (for 18-month permanency review hearings), or rule 5.722 (for 24-month subsequent permanency review hearings).

(b) Notice of hearing (§ 293)

The petitioner or the court clerk must serve written notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in section 293, to all persons required to receive notice under section 293 and to any CASA volunteer who has been appointed on a given case.

(c) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25)

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; and

(C) A factual discussion of each item listed in sections 366.1 and 366.21(c).

(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 (c) amended effective July 1, 2010.)

(d) Return of child–detriment finding (§§ 366.21, 366.22, 366.25)

(1) If the child was removed from the custody of the parent or legal guardian, the court must order the child returned unless the court finds by a preponderance of the evidence that return of the child to the parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker has the burden of establishing that detriment.

(2) Failure of the parent or legal guardian to regularly participate and make substantive progress in any court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental.

(3) In making its determination about whether returning the child would be detrimental, the court must consider the following:

(A) The social worker's report and recommendations and the report and recommendations of any CASA volunteer who has been appointed on the case;

(B) The efforts or progress demonstrated by the parent or legal guardian; and

(C) The extent to which the parent or legal guardian availed himself or herself of the services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to court-mandated services and the ability to maintain contact with his or her child.

(4) If the parent or legal guardian agreed to submit fingerprints to obtain criminal history information as part of the case plan, the court must consider the criminal history of the parent or legal guardian after the child's removal to the extent that the criminal record is substantially related to the welfare of the

child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child.

(5) Regardless of whether the child is returned home, the court must specify the factual basis for its conclusion that the return would or would not be detrimental.

(e) Reasonable services (§§ 366, 366.21, 366.22, 366.25)

(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:

(A) Reasonable services have been offered or provided; or

(B) Reasonable services have not been offered or provided.

(2) The following factors are not sufficient, in and of themselves, to support a finding that reasonable services have not been offered or provided:

(A) The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;

(B) The case plan includes services to achieve legal permanence for the child if reunification cannot be accomplished; or

(C) Services to achieve legal permanence for the child if reunification efforts fail are being provided concurrently with reunification services.

(f) 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 decisions for the child, following the requirements and procedures in rules 5.650 and 5.651 and in section 361(a).

(g) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must find as follows:

(1) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate; or

(2) The child was not actively involved in the development of his or her own case plan and plan for permanent placement. 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 and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate; and

(3) Each parent was actively involved in the development of the case plan and plan for permanent placement; or

(4) Each parent was not actively involved in the development of the case plan and plan for permanent placement. 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 and plan for permanent placement, unless the court finds that each parent is unable, unavailable, or unwilling to participate; and

(5) In the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or

(6) In the case of an Indian child, the agency did not consult with the child's tribe. If the court makes such a finding, the court must order the agency to consult with the tribe, unless the court finds that the tribe is unable, unavailable, or unwilling to participate; and

(7) For a child 12 years of age or older and in a permanent placement, the court must make a finding whether or not 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.

(Subd (g) amended effective July 1, 2010.)

(h) Out-of-state placement (§§ 361.21, 366)

If the child has been placed out of the state, the court must consider whether the placement continues to be the most appropriate placement for the child and in the child's best interest. If the child is in an out-of-state group home, the court must follow the requirements in section 361.21.

(i) Title IV-E findings (§ 366)

Regardless of whether or not the child is returned home, the court must consider the safety of the child and must determine all of the following:

(1) The continuing necessity for and appropriateness of the placement;

(2) The extent of the agency's compliance with the case plan in making reasonable efforts or, in the case of an Indian child, active efforts as described in section 361.7, to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child. These steps include efforts to maintain relationships between a child who is 10 years or older who has been in an out-of-home placement for 6 months or longer and individuals other than the child's siblings who are important to the child, consistent with the child's best interest;

(3) The extent of progress that has been made by the parents or legal guardians toward alleviating or mitigating the causes necessitating placement in foster care; and

(4) The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(j) Sibling findings; additional findings (§ 366)

(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.

(k) 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.

(*l*) 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.

(m) Setting a hearing under section 366.26; reasonable services requirement (§ § 366.21, 366.22)

At any 6-month, 12-month, or 18-month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(n) Requirements upon 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 terminate reunification services to the parent or legal guardian;

(2) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child;

(3) If the child is 10 years of age or older and is placed in an out-of-home placement for 6 months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:

(A) Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;

(B) Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and

(C) May make any appropriate order to ensure that those relationships are maintained.

(4) The court must direct the county child welfare agency and the appropriate county or state adoption agency to prepare an assessment under section 366.21(i), 366.22(c), or 366.25(b);

(5) The court must ensure that notice is provided as follows:

(A) Within 24 hours of the review hearing, the clerk of the court must provide notice by first-class mail to the last known address of any party who is not present at the review hearing. The notice must include the advisements required by rule 5.590(b).

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

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

(ii) An alleged parent who has denied parentage and has completed item 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(6) The court must follow all procedures in rule 5.590 regarding writ petition rights, advisements, and forms.

(Subd (n) amended effective July 1, 2010.)

(o) 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.

Rule 5.708 amended effective July 1, 2010; adopted effective January 1, 2010.

Rule 5.710. Six-month review hearing

(a) Setting 6-month review; notice (§§ 364, 366, 366.21)

The case of any dependent child whom the court has removed from the custody of the parent or legal guardian under section 361 or 361.5 must be set for a review hearing within 6 months of the date of the dispositional hearing, but no later than 12 months from the date the child entered foster care, as defined by section 361.49,

whichever occurs earlier. Notice must be provided as described in section 293 and rule 5.708.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2001, July 1, 2002, and January 1, 2007.)

(b) 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 as follows:

(1) *Order return of the child or find that return would be detrimental*

The court must order the child returned to the custody of the parent or legal guardian unless the court finds that the petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) must be followed in entering a reasonable services finding. 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(k) and section 361.2.

(3) *Set a section 366.26 hearing*

If the court does not return custody of the child, the court may set a hearing under section 366.26 within 120 days, as provided in (c).

(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.

(Subd (b) amended effective January 1, 2010; 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.)

(c) 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:

(A) The child was removed under section 300(g) and the court finds by clear and convincing evidence that the parent's whereabouts are still unknown, or the parent has failed to contact and visit the child, or the parent has been convicted of a felony indicating parental unfitness. The court must take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization;

(B) The court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness;

(C) The parent is deceased; or

(D) The child was under the age of three when initially removed, or a member of a sibling group described in section 361.5(a)(1)(C), and the court finds by clear and convincing evidence that the parent has failed to participate regularly and make substantive progress in any court-ordered treatment plan. If, however, the court finds a substantial probability that the child may be returned within 6 months or within 12 months of the date the child entered foster care, whichever is sooner, or that reasonable services have not been offered or provided, the court must continue the case to the 12-month permanency hearing.

(i) In order to find a substantial probability that the child may be returned within the applicable time period, the court should consider the following factors along with any other relevant evidence:

a. Whether the parent or legal guardian has consistently and regularly contacted and visited the child;

b. Whether the parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and

c. Whether the parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety,

protection, physical and emotional health, and special needs.

(ii) The court, in determining whether court-ordered services may be extended to the 12-month point, must take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization. The court may also consider, among other factors, whether the incarcerated or institutionalized parent has made good faith efforts to maintain contact with the child and whether there are any other barriers to the parent's access to services.

(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 (c) amended effective January 1, 2011; 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, and January 1, 2010.)

(d) Sibling groups (§ 366.21)

In determining whether to set a hearing under section 366.26 for one or more members of a sibling group when one member of that group was under the age of three at the time of the initial removal, the court may terminate or continue services for any or all members of the group, based on the following considerations and for reasons specified on the record:

(1) Whether the siblings were removed as a group;

(2) The closeness and strength of the sibling bond;

(3) The ages of the siblings;

(4) The appropriateness of maintaining the sibling group together;

(5) The detriment to the child if sibling ties are not maintained;

(6) The likelihood of finding a permanent home for the group;

(7) Whether the group is placed together in a preadoptive home, if there is a concurrent plan for permanency for all siblings in the same home;

(8) The wishes of each child; and

(9) The best interest of each member of the sibling group.

(Subd (d) amended and relettered effective January 1, 2010; adopted as subd (g) effective July 1, 2002.)

Rule 5.710 amended effective January 1, 2011; 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, and January 1, 2010.

Rule 5.715. Twelve-month permanency hearing

(a) Requirement for 12-month review; setting of hearing; notice (§§ 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. Notice of the hearing must be provided as described in section 293 and rule 5.708.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2001, January 1, 2004, January 1, 2006, and January 1, 2007.)

(b) Determinations and conduct of hearing (§§ 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 as follows:

(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment.

(2) The requirements in rule 5.708(e) must be followed in entering a reasonable services finding.

(3) 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(k) and section 361.2.

(4) If the court does not order return of the child to the parent or legal guardian and the time period for providing court-ordered services has been met or exceeded, as provided in section 361.5(a)(1), the court must specify the factual basis for its finding of risk of detriment to the child and proceed as follows in selecting a permanent plan:

(A) If the court finds that there is a substantial probability that the child will be returned within 18 months or that reasonable services have not been offered or provided, the court must continue the case for a permanency review hearing to a date not later than 18 months from the date of the initial removal. If the court continues the case for an 18-month permanency review hearing, the court must inform the parent or legal guardian that if the child cannot be returned home by the next hearing, a proceeding under section 366.26 may be instituted.

(i) In order to find a substantial probability that the child will be returned within the 18-month period, the court must find all of the following:

a. The parent or legal guardian has consistently and regularly contacted and visited the child;

b. The parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and

c. The parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.

(ii) In determining whether court-ordered services may be extended to the 18-month point, the court must consider the special circumstances of a parent or legal guardian who is incarcerated or institutionalized or court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or legal guardian's access to services and ability to maintain contact with his or her child. The court must also consider, among other factors, good faith efforts that the parent or legal guardian has made to maintain contact with the child.

(B) If (1), (4)(A), or (4)(C) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. 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.

(C) If the court finds by clear and convincing evidence, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship:

(i) The court must terminate reunification services and order that the child remain in a planned permanent living arrangement.

(ii) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.

(iii) The court may order that the name and address of the foster home remain confidential.

(iv) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child.

(v) If the child is 10 years of age or older and is placed in out-of-home placement for six months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:

a. Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;

b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and

c. May make any appropriate order to ensure that those relationships are maintained.

(5) If the child is not returned to his or her parent or legal guardian, the court must consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child, 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.

(Subd (b) amended effective July 1, 2010; repealed and adopted as subd (c)(2); 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, and January 1, 2007; 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.)

Rule 5.715 amended effective July 1, 2010; 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, and January 1, 2010.

Rule 5.720. Eighteen-month permanency review hearing

(a) Requirement for 18-month permanency review hearing; setting of hearing; notice (§§ 293, 366.22)

For any dependent child whom the court has removed from the custody of the parent or legal guardian, and who was not returned at the 6- or 12-month review hearing, a permanency review hearing must be held no later than 18 months from the date of the initial removal. Notice of the hearing must be given as provided in section 293 and rule 5.708(b).

(Subd (a) amended effective January 1, 2010; adopted as subd (b)(1); repealed and adopted as subd (a) effective July 1, 1999; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 2001, January 1, 2005, January 1, 2006, and January 1, 2007.)

(b) Determinations and conduct of hearing (§§ 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 as follows:

(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) 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(k) and section 361.2.

(3) If the court does not order 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 and do one of the following:

(A) Continue the case for a subsequent permanency review hearing not later than 24 months from the date of the initial removal if the court finds that there is a substantial probability that the child will be returned within that time or that reasonable services have not been offered or provided. To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making significant and consistent progress in a substance abuse treatment program, or a parent is recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child's return. The court must also inform the parent or legal guardian that, if the child cannot be returned home by the subsequent permanency review hearing, a hearing under section 366.26 may be instituted.

In order to find a substantial probability that the child will be returned within the 24-month period, the court must find all of the following:

(i) The parent or legal guardian has consistently and regularly contacted and visited the child;

(ii) The parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving the problems that led to the removal of the child; and

(iii) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable or to complete a treatment plan postdischarge from incarceration or institutionalization and to provide for the child's safety, protection, physical and emotional health, and special needs.

(B) Terminate reunification services and order that the child remain in a planned permanent living arrangement, if it finds by clear and convincing evidence already presented, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship.

(i) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.

(ii) The court may order that the name and address of the foster home remain confidential.

(iii) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child;

(iv) If the child is 10 years of age or older and is placed in out-of-home placement for six months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:

a. Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;

b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and

c. May make any appropriate order to ensure that those relationships are maintained.

(C) If (1), (3)(A), or (3)(B) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. The court and all parties must comply with all relevant requirements, procedures, and findings and orders related to section 366.26 hearings in rule 5.708.

(4) If the child is not returned to his or her parent or legal guardian, the court must consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child, 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.

(Subd (b) amended effective July 1, 2010; repealed and adopted as subd (b); 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, and July 1, 2007; previously amended and relettered as subd (c) effective January 1, 2005, and as subd (b) effective January 1, 2010.)

Rule 5.720 amended effective July 1, 2010; 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, and January 1, 2010.

Rule 5.722. Twenty-four-month subsequent permanency review hearing

(a) Requirement for 24-month subsequent permanency review hearing; setting of hearing; notice (§ 366.25)

For any dependent child whom the court has removed from the custody of the parent or legal guardian, and whose case has been continued under section 366.22(b), the subsequent permanency review hearing must be held no later than 24 months from the date of initial removal. Notice must be provided as described in rule 5.708.

(b) Determinations and conduct of hearing (§ 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 as follows:

(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds that petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) 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 and do one of the following:

(A) If the court finds by clear and convincing evidence, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court must terminate reunification services and order that the child remain in a planned permanent living arrangement.

(i) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.

(ii) The court may order that the name and address of the foster home remain confidential.

(iii) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child.

(iv) If the child is 10 years of age or older and is placed in out-of-home placement for six months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:

a. Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;

b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and

c. May make any appropriate order to ensure that those relationships are maintained.

(B) If (1) or (2)(A) do not apply, the court must terminate reunification services and order that a hearing be held under section 366.26 within 120 days. 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(*l*)–(o).

(3) If the child is not returned to his or her parent or legal guardian, the court must consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child, 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.

(Subd (b) amended effective July 1, 2010.)

Rule 5.722 amended effective July 1, 2010; adopted effective January 1, 2010.

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

(a) Application of rule

This rule applies to children who have been declared dependents or wards of the juvenile court.

(1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with section 7660) of the Family Code or Family Code sections 8604, 8605, 8606, and 8700 apply for the termination of parental rights. Part 4 (commencing with section 7800) of division 12 of the Family Code does not apply.

(2) The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent; or unless the rights of the other parent have been terminated under division 12, part 3, chapter 5 (commencing with section 7660), or division 12, part 4 (commencing with section 7800) of the Family Code, or Family Code sections 8604, 8605, or 8606; or unless the other parent has relinquished custody of the child to the welfare department.

(3) Only section 366.26 applies for establishing legal guardianship.

(4) 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, 2009; previously amended effective January 1, 1994, July 1, 2002, and January 1, 2007.)

(b) Notice of hearing (§ 294)

In addition to the requirements stated in section 294, notice must be given to any CASA volunteer, the child's present caregiver, and any de facto parent on *Notice of Hearing on Selection of a Permanent Plan* (form JV-300).

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1992, July 1, 1995, July 1, 2002, January 1, 2005, and January 1, 2006.)

(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 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; or

(2) Order parental rights terminated and the child placed for adoption if the court determines, by clear and convincing evidence, that it is likely the child will be adopted, unless:

(A) At each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided; or

(B) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and removal from the home of the relative would be detrimental to the emotional well-being of the child. For an Indian child, "relative" includes an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. §1903(2)); or

(C) The court finds a compelling reason to determine that termination would be detrimental to the child because of the existence of one of the following circumstances:

(i) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship;

(ii) A child 12 years of age or older objects to termination of parental rights;

(iii) The child is placed in a residential treatment facility and adoption is unlikely or undesirable while the child remains in that placement, and continuation of parental rights will not prevent the finding of an adoptive home if the parents cannot resume custody when residential care is no longer needed;

(iv) The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances, but who is willing and capable of providing the child with a stable and permanent home, and removal from the home of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This exception does not apply to (1) a child under 6 or (2) a child who

has a sibling under 6 who is also a dependent and with whom the child should be placed permanently; or

(v) There would be a substantial interference with the child's relationship with a sibling, taking into consideration the nature and extent of the relationship. To make this determination, the court may consider whether the child was raised in the same home as the sibling, whether the child and the sibling shared common experiences or have close and strong bonds, and whether ongoing contact with the sibling is in the child's best interest. For purposes of this subdivision, determination of the child's best interest may include a comparison of the child's long-term emotional interest with the benefit of legal permanence in an adoptive home.

(vi) The child is an Indian child and 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 the child's tribe has identified guardianship, long-term foster care with a fit and willing relative, tribal customary adoption, or another planned permanent living arrangement as the appropriate permanent plan for the child.

(3) The court must not fail to find that the child is likely to be adopted based on the fact that the child is not yet placed in a preadoptive home or with a relative or foster family willing to adopt the child.

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

(5) If the court finds termination of parental rights to be detrimental to the child for reasons stated in (2)(B), the court must state the reasons in writing or on the record.

(6) If termination of parental rights would not be detrimental to the child, but the child is difficult to place for adoption because the child (1) is a member of a sibling group that should stay together; (2) has a diagnosed medical, physical, or mental handicap; or (3) is 7 years of age or older and no prospective adoptive parent is identified or available, the court may, without terminating parental rights, identify adoption as a permanent placement goal and order the public agency responsible for seeking adoptive parents to make efforts to locate an appropriate adoptive family for a period not to exceed 180 days. During the 180-day period, in order to identify potential adoptive parents, the agency responsible for seeking adoptive parents for each child must, to the extent possible, ask each child who is 10 years of age or older and who is placed in out-of-home placement for six months or longer to identify any

individuals who are important to the child. The agency may ask any other child to provide that information, as appropriate. After that period the court must hold another hearing and proceed according to (1), (2), or (7).

(7) If the court finds that (2)(A) or (2)(B) 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 must identify the foster care setting by name and identify a specific permanency goal for the child. The court may order that the name and address of the foster home remain confidential.

(B) Legal guardianship must be given preference over foster care when it is in the interest of the child and a suitable guardian can be found.

(C) A child who is 10 years of age or older who is placed in a out-of-home placement for six months or longer must be asked to identify any adults who are important to him or her in order for the agency to investigate and the court to determine whether any of those adults would be appropriate to serve as legal guardians. Other children may be asked for this information, as age and developmentally appropriate.

(D) 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.

(E) The court must make an order for visitation with each parent or guardian unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the child.

(8) The court must consider the case plan submitted for this hearing and must find as follows:

(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate, including being asked for a statement regarding his or her permanent placement plan, and the case plan contains the social worker's assessment of those stated wishes; or

(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement, including being

asked for a statement regarding his or her permanent placement plan and the case plan does not contain the social worker's assessment of those stated wishes. 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 and plan for permanent placement, including asking the child for a statement regarding his or her permanent plan, unless the court finds that the child is unable, unavailable, or unwilling to participate. If the court finds that the case plan does not contain the social worker's assessment of the child's stated wishes, the court must order the agency to submit the assessment to the court; and

(C) In the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or

(D) In the case of an Indian child, the agency did not consult with the child's tribe. If the court makes such a finding, the court must order the agency to consult with the tribe, unless the court finds that the tribe is unable, unavailable, or unwilling to participate.

(9) 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.

(10) If no adult is available to become legal guardian, and no suitable foster home is available, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, subject to further orders of the court.

(Subd (d) amended effective July 1, 2010; 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 amended effective July 1, 1994, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2006, January 1, 2007, and January 1, 2009; previously relettered effective January 1, 2010.)

(e) Procedures—adoption

(1) The court may not terminate parental rights or order adoption if a review of the prior findings and orders reveals that at each and every prior hearing at which the court was required to consider reasonable efforts or services the court found that reasonable efforts had not been made or that reasonable services had not been offered or provided. If at any prior hearing the court found that reasonable efforts had been made or that reasonable services had been offered or provided, the court may terminate parental rights.

(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 rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

(3) If the court declares the child free from custody and control of the parents, the court must at the same time order the child referred to a licensed county adoption agency for adoptive placement. A petition for adoption of the child may be filed and heard in the juvenile court but may not be granted until the appellate rights of the natural parents have been exhausted.

(4) In the case of an Indian child for whom tribal customary adoption has been ordered in accordance with section 366.24, the court may continue the hearing for up to 120 days to permit the tribe to complete the process for tribal customary adoption. In its discretion, the court may grant a further continuance not exceeding 60 days.

(A) No less than 20 days before the date set for the continued hearing, the tribe must file the completed tribal customary adoption order with the court.

(B) The social worker must file an addendum report with the court at least 7 days before the hearing.

(C) If the tribe does not file the tribal customary adoption order within the designated time period, the court must make new findings and orders under section 366.26(b) and select a new permanent plan for the child.

(Subd (e) amended effective July 1, 2010; adopted as subd (d); previously amended effective July 1, 1992, January 1, 1995, July 1, 2002, January 1, 2006, and January 1, 2007; previously relettered as subd (e) effective January 1, 1992, as subd (f) effective January 1, 2005, and as subd (e) effective January 1, 2010.)

(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 dependent child for adoption. Therefore, the court must not terminate the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department. The rights of the mother, any presumed father, any alleged father, and any unknown father or fathers must be terminated in order to free the child for adoption.

(Subd (g) relettered effective January 1, 2010; adopted as subd (g) effective July 1, 1997; previously amended effective July 1, 2002; previously amended and relettered as subd (h) effective January 1, 2005.)

(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 July 1, 2010; 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, and January 1, 2010.

Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))

(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) Criteria for designation as prospective adoptive parent

A caregiver must meet the following criteria to be designated as a prospective adoptive parent:

(1) The child has lived with the caregiver for at least six months;

(2) The caregiver currently expresses a commitment to adopt the child; and

(3) The caregiver has taken at least one step to facilitate the adoption process. Steps to facilitate the adoption process include:

(A) Applying for an adoption home study;

(B) Cooperating with an adoption home study;

(C) Being designated by the court or the licensed adoption agency as the adoptive family;

(D) 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;

(E) Requesting de facto parent status;

(F) Signing an adoptive placement agreement;

(G) Discussing a postadoption contact agreement with the social worker, child's attorney, child's CASA volunteer, adoption agency, or court;

(H) Working to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency; and

(I) Attending any of the classes required of prospective adoptive parents.

(Subd (b) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(c) Hearing on request for prospective adoptive parent designation

The court must evaluate whether the caregiver meets the criteria in (b).

(1) The petitioner must show on the request that the caregiver meets the criteria in (b).

(2) If the court finds that the petitioner does not show that the caregiver meets the criteria in (b), the court may deny the request without a hearing.

(3) If the court finds that the petitioner has shown that the current caregiver meets the criteria in (b), 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 as an objection to removal, 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 objection is filed with the court.

(ii) 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.

(iii) 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.

(B) If the request for designation is made before a request for removal is filed or before an emergency removal has occurred, the court must order that the hearing be set at a time within 30 calendar days after the filing of the request for designation.

(5) If all parties stipulate to the request for designation of the caregiver as a prospective adoptive parent, the court may order the designation without a hearing.

(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 was 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 proposed removal hearing, as stated in rule 5.727.

(3) If the request for designation was made before a request for removal was filed 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, 2008; previously amended effective January 1, 2007.)

(e) Termination of designation

If the prospective adoptive parent no longer meets the criteria in rule 5.726(b), 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, 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 July 1, 2010; adopted as rule 1463.1 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

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 under rule 5.726(b) or from a caregiver who may meet the criteria for designation as a prospective adoptive parent under rule 5.726(b). This rule does not apply if the caregiver requests the child's removal.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Participants to be served with notice

Before removing a child from the home of a prospective adoptive parent under rule 5.726(b) or from the home of a caregiver who may meet the criteria of a prospective adoptive parent under rule 5.726(b), 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 rule 5.726(b);

(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, 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.

(Subd (c) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(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 be given under rule 5.481.

(4) Proof of service of the notice on *Proof of Notice* (form JV-326) must be filed with the court.

(Subd (d) amended effective January 1, 2011; previously amended effective January 1, 2007, and January 1, 2008.)

(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 date of notification, whichever is longer. If service is by mail, time to respond is extended by five calendar days.

(3) The court must order 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, 2008; previously amended effective January 1, 2007.)

(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 either by personal service or by telephone. Notice by personal service must include a copy of the 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 on *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, 2008; previously amended effective January 1, 2007.)

(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 made under rules 8.454 and 8.456.

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

Rule 5.727 amended effective January 1, 2011; adopted as rule 1463.3 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, and July 1, 2010.

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 a prospective adoptive parent under rule 5.726(b) or from a caregiver who may meet the criteria for designation as a prospective adoptive parent under rule 5.726(b) 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's removal is carried out at the request of the caregiver.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Participants to be noticed

After removing a child from the home of a prospective adoptive parent under rule 5.726(b), or from the home of a caregiver who may meet the criteria of a prospective adoptive parent under rule 5.726(b), because of immediate risk of physical or emotional harm, the agency must notify the following participants of the emergency 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 rule 5.726(b);

(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, 2007.)

(c) Form 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 the form to the caregiver and, if the child is 10 years of age or older, the child.

(5) Notice to the court must be by filing of the form with the court. The proof of notice included on the form must be completed when the form is filed with the court.

(Subd (c) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(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 order 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 within 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 (d) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(e) Notice of emergency removal hearing

After the court has ordered a hearing on an emergency removal, notice of the hearing must be as follows:

(1) Notice must be either by personal service or by telephone. Notice by personal service must include a copy of *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.

(2) The clerk must provide notice of the hearing to the agency and the participants listed in (b) above, if the court, the caregiver, or the child requested the hearing.

(3) 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.

(4) Proof of notice on *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, 2008; previously amended effective January 1, 2007.)

(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 July 1, 2010; adopted as rule 1463.5 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

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) Conduct of hearing

(1) Before appointing a guardian, the court must read and consider the social study report specified in section 366.26 and note its consideration in the minutes of the court.

(2) The preparer of the social study report may be called in and examined by any party to the proceedings.

(Subd (c) amended effective January 1, 2006; previously amended effective July 1, 1999.)

(d) 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 of juvenile court documents as described in section 827.

(2) The court may issue orders regarding visitation of the child by a parent or other relative.

(3) On appointment of a guardian under section 366.26, the court may terminate dependency.

(Subd (d) amended effective January 1, 2006; previously amended effective July 1, 1999.)

(e) Notification of appeal rights

The court must advise all parties of their appeal rights as provided in rule 5.585.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2006.)

Rule 5.735 amended and renumbered effective January 1, 2007; 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.

Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 391)

(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, as required by section 366.3(f), 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) When adoption is granted, the court must terminate its jurisdiction.

(3) 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.

(4) Notice of the hearing must be given as provided in section 295.

(Subd (a) amended effective July 1, 2010; 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, and January 1, 2007.)

(b) Review hearings—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 regarding each item listed in section 366.3(e).

(2) The court or administrative review panel must consider the case plan submitted for this hearing and must find as follows:

(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate; or

(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate. If the court or administrative review panel 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 and plan for permanent placement, unless the court finds that the child is 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.

(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 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.

(8) At a review held 12 months after an original or subsequent order for the child to remain in foster care, the court must consider all permanency planning options, including whether the child should be returned to a parent or

guardian, placed for adoption, or appointed a legal guardian. If the court orders that the child remain in foster care, it must identify the foster care setting by name and identify a specific permanency goal for the child. The court may order that the name and address of the foster home remain confidential.

(9) At a review held 12 months after an original or subsequent order for the child to remain in foster care, the court must order a hearing under section 366.26 unless the court finds by clear and convincing evidence that there is a compelling reason for determining that a section 366.26 hearing is not in the child's best interest because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or there is no one available to assume guardianship.

(10) If the court makes the findings in (9), the court may order that the child remain in foster care.

(Subd (b) amended effective January 1, 2007; 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, and January 1, 2006.)

(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 the guardianship must be filed in 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 petitioner must serve notice of the hearing on 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, 2007; previously amended effective January 1, 1993, July 1, 1994, and July 1, 1999.)

(d) Hearings on termination of jurisdiction—child reaching age of majority (§ 391)

Petitioner must file *Termination of Dependency Jurisdiction—Child Attaining Age of Majority (Juvenile)* (form JV-365) with the court at least 10 calendar days before the hearing to terminate dependency jurisdiction based on the child's age and must provide copies to the child, the parents or guardians, any CASA volunteer, and all counsel of record at least 10 calendar days before the hearing.

(Subd (d) amended effective January 1, 2007; adopted effective July 1, 2002; previously amended effective January 1, 2005.)

Rule 5.740 amended effective July 1, 2010; adopted as rule 1465 effective January 1, 1991; renumbered as rule 1466 effective July 1, 1995; 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, and January 1, 2006; previously amended and renumbered effective January 1, 2007.

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)

The child must be released unless the court finds that continuance in the home is contrary to the child's welfare, and one or more of the following grounds for detention exist:

(1) The child has violated an order of the court;

(2) The child has escaped from a commitment of the court;

(3) The child is likely to flee the jurisdiction of the court;

(4) It is a matter of immediate and urgent necessity for the protection of the child; or

(5) It is reasonably necessary for the protection of the person or property of another.

The court may order the child detained in juvenile hall, or in a suitable place designated by the court, or on home supervision under the conditions stated in sections 628.1 and 636.

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (a); amended and relettered as subd (b) effective January 1, 2001; previously amended effective July 1, 2002.)

(d) Required determinations before detention

Before detaining the child, the court must determine whether continuance in the home 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 home, 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 home, the court must state the facts on which the detention is based.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c) effective July 1, 2002.)

(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, signed orders. 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 and relettered effective January 1, 2007; adopted as subd (b); previously relettered as subd (c) effective January 1, 2001; previously amended and relettered as subd (d) effective July 1, 2002.)

(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 detention on 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 and relettered effective January 1, 2007; adopted as subd (i); previously relettered as subd (j) effective January 1, 2001; previously amended and relettered as subd (k) effective July 1, 2002.)

Rule 5.760 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1475 effective January 1, 1998; previously amended effective January 1, 2001, July 1, 2002, and January 1, 2006.

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
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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 (§§ 636.1, 706.6, 16501.1)

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, 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, 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, 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 January 1, 2007; adopted effective July 1, 2002.)

Rule 5.785 amended and renumbered effective January 1, 2007; adopted as rule 1492 effective January 1, 1991; previously amended effective July 1, 2002.

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)

(1) 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:

(A) Require the child to attend school;

(B) Require the parent to participate with the child in a counseling or education program; and

(C) 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.

(2) If the child is declared a ward, the court may limit the control over the child by a parent or guardian. Orders must clearly specify the limitations.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(c) Custody and visitation (§ 726.5)

At any time while the child is a ward of the juvenile court or 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) 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) 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 declared a ward.

(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 must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must follow the procedures stated in rule 5.650.

(Subd (f) amended effective January 1, 2008; 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.)

(g) 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 (g) amended and relettered effective January 1, 2007; adopted as subd (e); previously amended and relettered as subd (f) effective July 1, 2002; previously amended effective January 1, 2006.)

(h) Fifteen-day reviews (§ 737)

If the child is detained pending the implementation of a disposition order, the court must review the case at least every 15 days as long as the child is detained. The court must inquire about the action taken by the probation officer to carry out the court's order, the reasons for the delay, and the effects of the delay on the child.

(Subd (h) amended and relettered effective January 1, 2007; adopted as subd (f); previously amended and relettered as subd (g) effective July 1, 2002.)

Rule 5.790 amended effective January 1, 2008; adopted as rule 1493 effective January 1, 1991; previously amended effective January 1, 1998, July 1, 2002, January 1, 2004, and January 1, 2006; previously amended and renumbered effective January 1, 2007.

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).

(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 and renumbered effective January 1, 2007; adopted as rule 1494.5 effective January 1, 2003; previously amended effective January 1, 2006.

Article 5. Reviews and Sealing

Rule 5.810. Reviews, hearings, and permanency planning
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

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(d))*

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 right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative. Any limitation on the right of a parent or guardian to make educational decisions for the child must be specified in the court order. The court must follow the procedures stated in rule 5.650;

(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 court must determine the services needed to assist the child in making the transition from foster care to independent living; and

(G) Whether or not the child was actively involved in the development of his or her own case plan and plan for permanent placement. If the court makes such a finding, 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

(H) Each parent was actively involved in the development of the case plan and plan for permanent placement; or

(I) Each parent was not actively involved in the development of the case plan and plan for permanent placement. 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 and plan for permanent placement, unless the court finds that each parent is unable, unavailable, or unwilling to participate.

(4) 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, 2007; previously amended effective January 1, 1998, January 1, 2001, January 1, 2003, and January 1, 2004.)

(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 and periodically thereafter, but no less frequently than once every 12 months while the ward remains in placement. 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*

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 or not the child was not actively involved in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not actively involved in the development of his or her own case plan and plan for permanent placement, 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) Each parent was actively involved in the development of the case plan and plan for permanent placement; or

(G) Each parent was not actively involved in the development of the case plan and plan for permanent placement. 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 and plan for permanent placement, unless the court finds that each parent is unable, unavailable, or unwilling to participate.

(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, 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.

(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, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2003.)

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement annually, 6 months after each permanency planning hearing.

(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*

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. The court must not order the permanent plan of returning home after 6 more months of reunification services, as

described in (b)(3)(B), unless it has been 18 months or less since the date the child was removed from home;

(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; and

(D) Whether or not the child was actively involved in the development of his or her own case plan and plan for permanent placement. 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 and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2003.)

(d) Notice of hearings; service; contents (§ 727.4)

Not earlier than 30 nor later than 15 calendar days before each hearing date the probation officer must serve written notice on all persons required to receive notice under section 727.4, as well as the child's present caregiver, any CASA volunteer, and the counsel of record. A *Notice of Hearing—Juvenile Delinquency Proceeding* (form JV-625) must be used.

(Subd (d) amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2003, and January 1, 2006.)

(e) Report (§§ 706.5, 706.6, 727.2(c), 727.3(a)(1), 727.4(b))

Before each hearing described above, the probation officer must investigate and prepare a social study report, including an updated case plan, that must include all of the information required in sections 706.5, 706.6, 727.2, and 727.3.

(1) The report must contain recommendations for court orders and must document the evidentiary basis for those recommendations.

(2) At least 10 calendar days before each hearing, the petitioner 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, 2007; adopted as subd (b); previously amended effective January 1, 1998; previously amended and relettered as subd (e) effective January 1, 2001; previously amended effective January 1, 2003.)

(f) Hearing by administrative panel (§§ 727.2(h), 727.4(d)(7))

The status review hearings described in (a) and (c) may be conducted by an administrative review panel, provided:

(1) The ward, parent or guardian, and all those entitled to notice under section 727.4 may attend;

(2) Proper notice is provided;

(3) The panel has been appointed by the presiding judge of the juvenile court and includes at least one person who is not responsible for the case management of, or delivery of service to, the ward or the parent or guardian; and

(4) The panel makes findings as required by (a)(3) or (c)(2) above and submits them to the juvenile court for approval and inclusion in the court record.

(Subd (f) amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2003.)

Rule 5.810 amended and renumbered effective January 1, 2007; adopted as rule 1496 effective January 1, 1991; previously amended effective January 1, 1998, January 1, 2001, January 1, 2003, January 1, 2004, and January 1, 2006.

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 Probate Code section 1511.

(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 and renumbered effective January 1, 2007; adopted as rule 1496.2 effective January 1, 2004; previously amended effective July 1, 2006.

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

(a) Sealing records—former wards (§ 781)

A former ward of the court may apply to petition the court to order juvenile records sealed. Determinations under section 781 must be made by the court in the county in which wardship was last terminated.

(1) *Application—submission*

The application for a petition to seal records must be submitted to the probation department in the county in which wardship was last terminated.

(2) *Investigation*

If the probation officer determines that under section 781 the former ward is eligible to petition for sealing, the probation officer must do all of the following:

(A) Prepare the petition;

(B) Conduct an investigation under section 781;

(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.

(3) The court must review the petition and the report of the probation officer, and the court must grant or deny the petition.

(4) If the petition is granted, the court must order the sealing of all records described in section 781. 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.

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

(b) Sealing—nonwards

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.

(Subd (b) 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 and renumbered effective January 1, 2007; adopted as rule 1499 effective January 1, 1991; previously renumbered as rule 1497 effective January 1, 1999.