

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR11-11

Title	Action Requested
Appellate Procedure: When to Use Initials to Identify Parties in Juvenile Proceedings	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.401	January 1, 2012
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Kathryn Doi Todd, Chair	heather.anderson@jud.ca.gov
Family and Juvenile Law Advisory Committee	Leah Wilson, 415-865-7977
Hon. Kimberly J. Nystrom-Geist, Cochair	leah.wilson@jud.ca.gov
Hon. Dean Stout, Cochair	

Discussion

Rule 8.401 addresses confidentiality in juvenile appeals. In order to protect the identity of parties in these proceedings, this rule currently provides that in both filed documents and court orders and opinions, a party must be referred to by his or her first name and last initial. However, if the party's first name is unusual or the use of the party's first name would defeat the objective of anonymity because of other circumstances, this rule provides that the party's initials may be used.

There has been some debate among courts and in the legal community about whether parties' initials should be used in all circumstances. Those in favor of this approach suggest that it better protects the anonymity of parties, particularly when more information about both court cases and individuals is accessible and searchable in electronic form. Those that oppose this approach suggest that the use of initials makes it more difficult to read appellate documents and that, in the long run, it will result in multiple opinions with the same name, making it more difficult to research and differentiate among appellate opinions.

After weighing these concerns, the California Supreme Court recently adopted an interim policy of strongly encouraging the use of a party's first name and last initial in published opinions

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unless the use of just initials is needed to protect anonymity and permitting the use of just initials in all unpublished opinions. This approach permits the use of initials in the majority of juvenile opinions while generally ensuring that the titles of published opinions, which may be cited in the future, include the party's first name unless this would defeat anonymity. The court also asked the Judicial Council to initiate the process of considering amendments to rule 8.401 to conform to this policy.

This proposal would amend rule 8.401 to make it consistent with the approach adopted by the Supreme Court. It would require the use of a party's first name and last initial in all documents filed by parties and in all opinions certified for publication unless this would defeat anonymity. In opinions not certified for publication and in court orders, courts would be permitted to use either the party's first name and last initial or just the party's initials. In addition, to address the fact that the objective of anonymity can often be defeated if the full name of the member of a party's family is used, this proposal would specifically provide that the names of parties' family members be treated in the same way as the names of the parties themselves.

To highlight these requirements and keep the rule provisions from becoming too long, this proposal would also move the requirements concerning references to a party into a separate subdivision of rule 8.401.

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Rule 8.401 of the California Rules of Court would be amended, effective January 1, 2012, to read:

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 5. Juvenile Appeals and Writs

6
7 Article 1. General provisions

8
9 Rule 8.401. Confidentiality

10
11 (a) References to parties or family members in documents

12 To protect anonymity:

13
14
15 (1) In all documents filed by the parties in proceedings under this chapter, a party
16 or a member of the party's family must be referred to by first name and last
17 initial; but if the first name is unusual or other circumstances would defeat
18 the objective of anonymity, the initials of the party or family member may be
19 used.

20
21 (2) In opinions that are not certified for publication and in court orders, a party or
22 a member of the party's family may be referred to either by first name and
23 last initial or by his or her initials. In opinions that are certified for
24 publication in proceedings under this chapter, a party or a member of the
25 party's family must be referred to by first name and last initial; but if the first
26 name is unusual or other circumstances would defeat the objective of
27 anonymity, the initials of the party or family member may be used.

28
29 ~~(a)~~(b) Access to filed documents

30
31 (1) Except as provided in ~~(3)~~(2), the record on appeal and documents filed by the
32 parties in proceedings under this chapter may be inspected only by the
33 reviewing court and appellate project personnel, the parties or their attorneys,
34 and other persons the court may designate.

35
36 ~~(2) To protect anonymity, a party must be referred to by first name and last initial~~
37 ~~in all filed documents and court orders and opinions; but if the first name is~~
38 ~~unusual or other circumstances would defeat the objective of anonymity, the~~
39 ~~party's initials may be used.~~

40
41 ~~(3)~~(2) Filed documents that protect anonymity as required by ~~(2)~~(a) may be
42 inspected by any person or entity that is considering filing an amicus curiae
43 brief.
44

1 (b)(c) * * *
2

Item SPR11-11 Response Form

Title: **Appellate Procedure: When to Use Initials to Identify Parties in Juvenile Proceedings** (amend Cal. Rules of Court, rule 8.401)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.