

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR18-22

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| Title | Action Requested |
| Family Law: Transfer of Jurisdiction | Review and submit comments by June 8, 2018 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Adopt Cal. Rules of Court, rule 5.97 | January 1, 2019 |
| Proposed by | Contact |
| Family and Juvenile Law Advisory Committee | Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov |
| Hon. Jerilyn Borack, Cochair | |
| Hon. Mark Juhas, Cochair | |

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes the adoption of a new rule of court to implement the requirements of Assembly Bill 712 (Bloom; Stats. 2017, ch. 316). The legislation requires the council to adopt a rule of court to establish time frames for the transfer and receipt of jurisdiction over family law actions.

Background

In 2017 the Legislature enacted AB 712, which amended Code of Civil Procedure section 399 to enact specific change of venue provisions for family law actions and proceedings. In addition to granting a court that has ordered the transfer of an action jurisdiction to make specific orders to prevent immediate harm while a transfer is pending, the legislation also required the council to adopt a rule of court by January 1, 2019, to establish time frames for the transfer and assumption of jurisdiction in family law actions.

The Proposal

To implement the express requirement in AB 712 for the establishment of time frames for the transfer of jurisdiction in family law matters, the committee proposes the addition of rule 5.97 to the California Rules of Court. The time limits in rule 5.97 become effective once the statutorily required costs and fees for the transfer have been paid, or the party required to pay the fees has obtained a fee waiver. It would provide the clerk of the court in which the transfer is ordered with five court days from the date the time period for writ review has expired to transfer the

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

pleadings and papers and send notice of the transfer, and another 20 court days from that date for the clerk in the receiving court to accept the filing and send notice of the filing date and case number. In addition, the rule includes the authority for the transferring court to exercise the specific jurisdiction to make orders to prevent immediate harm in the time period before the case has been received and filed.

Alternatives Considered

The advisory committee considered alternative time frames but determined that, given current court workload and resource constraints, it was necessary to ensure the finality of the order and establish a reasonable time frame to accommodate the range of circumstances facing different courts.

Implementation Requirements, Costs, and Operational Impacts

While courts are currently required by statute to effectuate transfers promptly, there is not a set time frame in current law. Because this proposal would implement a time frame, courts may face some costs to institute procedures to track these transfers to ensure compliance with the rule of court.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the time frames proposed in the rule appropriate?
- Is the treatment of fee waivers in the rule a workable solution?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.97, at pages 3–4
2. AB 712 (Bloom; Stats. 2017, ch. 316),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB712

1 **Rule 5.97. Time frames for transferring jurisdiction**

2
3 **(a) Application**

4 This rule applies to family law actions or proceedings for which a transfer of
5 jurisdiction has been ordered under title 4 of the Code of Civil Procedure.

6
7 **(b) Payment of fees; fee waivers**

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9 Responsibility for the payment of court costs and fees for the transfer of
10 jurisdiction as provided in Government Code section 70618 is subject to the
11 following provisions:

12
13 (1) If a transfer of jurisdiction is ordered in response to a motion made under title
14 4 of the Code of Civil Procedure by a party, the responsibility for costs and
15 fees is subject to Code of Civil Procedure section 399(a). If the fees are not
16 paid within the time specified in section 399(a), the court may, on a duly
17 noticed motion by any party or on its own motion, dismiss the action without
18 prejudice to the cause. No other action on the cause may be commenced in
19 another court before satisfaction of the court's order for fees and costs or a
20 court-ordered waiver of such fees and costs.

21
22 (2) If a transfer of jurisdiction is ordered by the court on its own motion, the
23 court must specify in its order which party is responsible for the Government
24 Code section 70618 fees. If that party has not paid the fees within 5 days of
25 service of notice of the transfer order, any other party interested in the action
26 or proceeding may pay the costs and fees and the clerk must transmit the case
27 file. If the fees are not paid within the time period set forth in Code of Civil
28 Procedure section 399, the court may, on a duly noticed motion by any party
29 or on its own motion, dismiss the action without prejudice to the cause or
30 enter such other orders as the court deems appropriate. No other action on the
31 cause may be commenced in the original court or another court before
32 satisfaction of the court's order for fees and costs or a court-ordered waiver
33 of such fees and costs.

34
35 (3) If the party responsible for the fees has been granted a fee waiver by the
36 sending court, the case file must be transmitted as if the fees and costs were
37 paid and the fee waiver order must be transmitted with the case file in lieu of
38 the fees and costs. If a partial fee waiver has been granted, the party
39 responsible for the fees and costs must pay the required portion of the fees
40 and costs before the case will be transmitted. In any case involving a fee
41 waiver, the court receiving the case file has the authority under Government
42 Code section 68636 to review the party's eligibility for a fee waiver based on

1 additional information available to the court or pursuant to a hearing at final
2 disposition of the case.

3
4 **(c) Time frame for transfer of jurisdiction**

5 After a court orders the transfer of jurisdiction over the action or proceeding, the
6 clerk must transmit the case file to the clerk of the court to which the action or
7 proceeding is transferred within 5 court days of the date of expiration of the 20-day
8 time period to petition for a writ of mandate. If a writ is filed, the clerk must
9 transmit the case file within 5 court days of the notice that the order is final. The
10 clerk must send notice to all parties who have appeared in the action or proceeding
11 stating the date of the transmittal.

12
13 **(d) Time frame to assume jurisdiction over transferred matter**

14 Within 20 court days of the date of the transmittal, the clerk of the court receiving
15 the transferred action or proceeding must send notice to all parties who have
16 appeared in the action or proceeding stating the date of the filing of the case and the
17 number assigned to the case in the court.

18
19 **(e) Emergency orders while transfer is pending**

20 Until the clerk of the receiving court sends notice of the date of filing, the
21 transferring court retains jurisdiction over the matter to make orders designed to
22 prevent immediate danger or irreparable harm to a party or the children involved in
23 the matter, or immediate loss or damage to property subject to disposition in the
24 matter.