



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2011

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Title	Agenda Item Type
Appellate Procedure: When to Use Initials to Identify Individuals in Juvenile Proceedings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.401	January 1, 2012
Recommended by	Date of Report
Appellate Advisory Committee	August 1, 2011
Hon. Kathryn Doi Todd, Chair	Contact
Family and Juvenile Law Advisory Committee	Heather Anderson, 415-865-7691
Hon. Kimberly J. Nystrom-Geist, Cochair	<a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>
Hon. Dean Stout, Cochair	Audrey Fancy, 415-865-7706
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### Executive Summary

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend amending the rule relating to the confidentiality of juvenile proceedings in the appellate courts to require the use of a juvenile's first name and last initial in published opinions unless the use of only initials is needed to protect anonymity of the juvenile and to require the use of the first name and last initial or only the initials of any relative of the juvenile if needed to protect anonymity of the juvenile. This amendment will conform the rule to an interim policy adopted by the Supreme Court of California on the use of initials in juvenile proceedings.

### Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2012, amend rule 8.401 to:

1. Require the use of a juvenile's first name and last initial in all documents filed by parties and in all opinions certified for publication unless this would defeat anonymity;
2. Permit the use of use either the juvenile's first name and last initial or just the juvenile's initials in opinions not certified for publication and in court orders;
3. Provide that if the use of the full name of a juveniles' relative would defeat anonymity for the juvenile, the relative's first name and last initial must be used unless use of only initials is required to protect the juvenile's anonymity; and
4. Move the requirements concerning references to a juvenile into a separate subdivision of the rule.

The text of the proposed rule is attached at pages 5–6.

### **Previous Council Action**

The Judicial Council adopted a general rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. That rule was amended effective July 1, 1981 to provide for confidentiality of the record and briefs these proceedings. Rule 39 was further amended effective January 1, 1997 to provide that all information in the appellate file in such cases is confidential. On January 1, 2005, all rules relating to juvenile appeals were repealed and replaced with new rules. Rule 37, adopted at that time, specified the general procedures in juvenile appeals and included a provision regarding confidentiality that addressed the use of initials to refer to parties in appellate proceedings in juvenile cases. Effective January 1, 2007, this rule was renumbered as rule 8.400. Effective January 1, 2010, the provisions relating to confidentiality of juvenile appellate proceedings were moved into a separate rule, rule 8.401.

### **Rationale for Recommendation**

Rule 8.401 addresses confidentiality in juvenile appeals and writ proceedings. 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 both about court cases and individuals is accessible and searchable in electronic form. Those who oppose this approach suggest that the use of initials makes it more difficult to read appellate documents and will result

in the long run 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 unless the use of only initials is needed to protect anonymity and permitting the use of only 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 juvenile'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, appellate courts would be permitted to use either the juvenile's first name and last initial or just the juvenile's initials. In addition, if the objective of anonymity for the juvenile would be defeated if the full name of a juvenile's relative is used, this proposal would specifically provide that juveniles' relative be referred to by their first name and last initial unless the use of initials only is needed to protect the anonymity of the juvenile.

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

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

This proposal was circulated between April 21 and June 20, 2011, as part of the regular spring 2011 comment cycle. Fourteen individuals or organizations submitted comments on this proposal. Twelve commentators agreed with the proposal, one agreed with the proposal if modified, and one did not indicate a position on the proposal. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 7–10.

As circulated for public comment, the proposal provided for using initials in place of the names of parties and of their family members. The commentator who agreed with the proposal if modified suggested that the word "party" throughout rule 8.401 should be replaced with the word "juvenile" in order to protect the confidentiality of all juveniles involved in juvenile court proceedings, not just juveniles who are parties. The committees agreed with this suggestion, concluding that this approach would be more consistent with the editorial policy for appellate opinions delimited in the California Style Manual, which is to protect the identity of all

“minors involved in juvenile court proceedings, or innocently involved in appellate court proceedings.” (Cal. Style Manual § 5:10.)

The committees also decided to replace the term “family member” in the proposal with the term “relative” because rule 5.502(28) provides a definition of relative in juvenile proceedings. In addition, to clarify when initials should be used to refer to juvenile’s relatives, the committees modified the proposal to specify that initials only need to be used if use of the relative’s full name would defeat anonymity for the juvenile. Finally, to make the subdivisions of the rule shorter and easier to understand, the committee moved the provisions relating to juvenile’s relatives into a separate subdivision.

### **Alternatives Considered**

In addition to the alternatives suggested in the public comments, the committees also considered not recommending any change to rules 8.401. However, the committees concluded that the rule should be consistent with the Supreme Court policy on the use of initials. As reflected below, the committee concluded that implementing this change would not impose appreciable costs on the courts or parties and would address the concerns about potential future citation difficulties if initials were used to refer to juveniles in all cases.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal should not result in appreciable implementation requirements, costs, or operational impacts.

### **Attachments**

1. Cal. Rules of Court, rule 8.401 at pages 5–6
2. Comment Chart at pages 7–10

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

**Title 8. Appellate Rules**

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

**Chapter 5. Juvenile Appeals and Writs**

**Article 1. General provisions**

**Rule 8.401. Confidentiality**

**(a) References to juveniles or relatives in documents**

To protect the anonymity of juveniles involved in juvenile court proceedings:

- (1) In all documents filed by the parties in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.
- (2) In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.
- (3) In all documents filed by the parties and in all court orders and opinions in proceedings under this chapter, if use of the full name of a juvenile's relative would defeat the objective of anonymity for the juvenile, the relative must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity for the juvenile, the initials of the relative may be used.

**(a)(b) Access to filed documents**

- (1) Except as provided in ~~(3)~~(2), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.
- ~~(2) To protect anonymity, a party must be referred to by first name and last initial in all filed documents and court orders and opinions; but if the first name is unusual or~~

1 other circumstances would defeat the objective of anonymity, the party's initials may  
2 be used.

3  
4 ~~(3)~~(2) Filed documents that protect anonymity as required by ~~(2)~~(a) may be inspected by  
5 any person or entity that is considering filing an amicus curiae brief.

6  
7 ~~(b)~~(c) \* \* \*

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**SPR11-11****Appellate Procedure: When to Use Initials to Identify Parties in Juvenile Proceedings** (amend Cal. Rules of Court, rule 8.401)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Appellate Court Committee San Diego County Bar Association By Cecilia O. Miller, Chair	A	Our committee supports the revisions to rule 8.401 without comment.	No response required.
2.	Appellate Defenders, Inc., California Appellate Project - San Francisco, and the First District Appellate Project By Mat Zwerling, Executive Director	A	We concur with the proposal.	No response required.
3.	Center for Juvenile Law and Policy Maureen Pacheco - Clinical Director	A	This rule is a good compromise protecting confidentiality but avoiding the confusion which has already been apparent with the use of initials only in published opinions.	No response required.
4.	Committee on Appellate Courts State Bar of California Benjamin Shatz, Chair	AM	<p>The Committee supports the proposed amendment to rule 8.401, but believes the proposal should be modified by replacing the word “party” with the word “juvenile” throughout the rule in order to protect the confidentiality of all juveniles involved in juvenile court proceedings.</p> <p>The current and proposed rules regarding the disclosure of a juvenile’s name are inconsistent with the editorial policy regarding the disclosure of a juvenile’s name in appellate opinions. The California Style Manual states that the editorial policy for appellate opinions is to protect the identity of all “minors involved in juvenile court proceedings, or innocently involved in appellate court proceedings.” (Cal. Style Manual § 5:10;</p>	The committee agrees with this suggestion and has revised the proposal to incorporate this change.

## SPR11-11

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

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>see also § 5:9.) Proposed rule 8.401(a) requires the parties and the courts to protect the identity only of the juvenile party, but not any other juveniles who might be involved in the proceedings as victims, witnesses, or unaccused conspirators.</p> <p>Amending the proposed rule by replacing the reference to a “party” with reference to a “juvenile” would help remind appellate brief and opinion authors that they should protect the anonymity of all juveniles, not just those who are parties to the case.</p> <p>As amended, the proposed rule would read as follows:</p> <p>“(a) References to <del>parties</del> <u>juveniles</u> or family members in documents</p> <p>To protect anonymity:</p> <p>(1) In all documents filed by the parties in proceedings under this chapter, a <del>party</del> <u>juvenile</u> or a member of the <del>party’s</del> <u>juvenile’s</u> family must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the <del>party</del> <u>juvenile</u> or family member may be used.</p> <p>(2) In opinions that are not certified for</p>	

**SPR11-11****Appellate Procedure: When to Use Initials to Identify Parties in Juvenile Proceedings** (amend Cal. Rules of Court, rule 8.401)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			publication and in court orders, a <u>party juvenile</u> or a member of the <u>party's juvenile's</u> family may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a <u>party juvenile</u> or a member of the <u>party's juvenile's</u> family must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the <u>party juvenile</u> or family member may be used.”	
5.	County Counsel, County of Los Angeles By James M. Owens, Assistant County Counsel	A	Amendments to Rule 8.401(a) implements the recent Supreme Court interim policy that addresses the interests of anonymity of the parties without unnecessarily complicating computer-based research or making appellate documents less readable. The use of initials makes research more difficult ( e.g., there have been four cases entitled In re S.B. since 2005). Further, the use of initials makes it more difficult to read appellate documents, especially where parties and family members have the same initials.	No response required.
6.	Laura Hertlein - Court Clerk II Superior Court of Amador County	A	No specific comment.	No response required.
7.	Joseph Lane Clerk Court of Appeal, Second Appellate District	A	No specific comment.	No response required.

**SPR11-11****Appellate Procedure: When to Use Initials to Identify Parties in Juvenile Proceedings** (amend Cal. Rules of Court, rule 8.401)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
8.	Judith McConnell, Presiding Justice Court of Appeal, Fourth Appellate District, Division One	A	I support the proposed changes to rule 8.401 regarding the use of initials in juvenile appeals.	No response required.
9.	Orange County Bar Association By John Hueston, President	A	No specific comment.	No response required.
10.	Orange County Public Defender's Office By Deborah Kwast	A	No specific comment.	No response required.
11.	Superior Court of Monterey County By Rosalindo Chavez – ACEO	A	No specific comment.	No response required.
12.	Superior Court of Riverside Staff	A	Agree with proposed changes as long as the trial courts are not affected and have to use first initial and last name	No response required.
13.	Superior Court of Sacramento County By Robert Turner – ASO II Research & Evaluation Division	NI	No specific comment.	No response required.
14.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comment.	No response required.