



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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 26, 2012

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Title	Agenda Item Type
Appellate Procedure: Appointment of Appellate Counsel in Juvenile Delinquency Appeals	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.403	January 1, 2013
Recommended by	Date of Report
Appellate Advisory Committee	August 14, 2012
Hon. Kathryn Doi Todd, Chair	Contact
Family and Juvenile Law Advisory Committee	Heather Anderson, 415-865-7691 <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>
Hon. Kimberly J. Nystrom-Geist, Cochair	Audrey Fancy, 415-865-7706 <a href="mailto:audrey.fancy@jud.ca.gov">audrey.fancy@jud.ca.gov</a>
Hon. Dean T. Stout, Cochair	

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### **Executive Summary**

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend amending rule 8.403(a) to more accurately reflect the scope of Welfare and Institutions Code section 634 by deleting the sentence regarding appointment of appellate counsel for juveniles at the parents' or guardians' expense in delinquency appeals.

### **Recommendation**

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council amend rule 8.403 of the California Rules of Court, effective January 1, 2013, to delete the sentence providing that 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 at the expense of the parent or guardian.

The text of the proposed rule is attached at page 4.

### **Previous Council Action**

The Judicial Council adopted the predecessor to rule 8.403, regarding appeals in juvenile proceedings, effective July 1, 1989. In 1999, this rule was amended to add the sentence regarding appointment of counsel at the expense of the parent or guardian.

### **Rationale for Recommendation**

This proposal originated from a suggestion made by the Appellate Court Committee of the San Diego County Bar Association.

Rule 8.403(a) addresses the right to appointment of counsel in appeals of proceedings under Welfare and Institutions Code section 601 or 602 (juvenile delinquency proceedings). This rule currently includes a sentence providing that 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 at the expense of the parent or guardian.

This sentence was originally added to a rule for the trial courts, rule 1435, in 1999.<sup>1</sup> The intent of this change, as described in the report to the Judicial Council, was to “reflect procedures for a child, as stated in Welfare and Institutions Code section 634.”

Welfare and Institutions Code section 634, which is in a portion of the code addressing temporary custody and detention proceedings in juvenile delinquency cases, provides, in relevant part:

In a case in which the minor is alleged to be a person described in Section 601 or 602, the court shall appoint counsel for the minor if he appears at the hearing without counsel, whether he is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor; and, in the absence of such waiver, if the parent or guardian does not furnish counsel and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian.

There are several factors that support the conclusion that section 634 is intended to apply only to appointment of counsel in temporary custody and detention proceedings in juvenile delinquency cases and not to appeals. First, section 634 is located in the portion of the Welfare and Institutions Code addressing temporary custody and detention proceedings in juvenile

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<sup>1</sup> Effective January 1, 2007, all of the California Rules of Court were renumbered. At that time, former rule 1435 was renumbered as rule 5.585. Effective July 1, 2010, the rules on juvenile appeals and writs were revised. Several provisions relating to juvenile appeals that were previously located in title 5 of the rules (relating to family and juvenile proceedings) were incorporated into title 8 (relating to appellate proceedings). As part of this revision, former rule 5.585(a) became current rule 8.403(a).

delinquency cases, rather than in either the article containing general provisions or the article addressing appeals in juvenile proceedings. Second, several other sections in the Juvenile Law chapter of the code address appointment and compensation of appointed counsel in other juvenile court proceedings. The presence of these other provisions indicates that section 634 does not address appointment and compensation of appointed counsel at all stages of juvenile proceedings. Third, the Supreme Court has interpreted a similar section on appointed counsel in the portion of the code addressing temporary custody and detention proceedings in juvenile dependency cases as not applying to appeals (see *In re Zeth S.* (2003) 31 Cal.4th 396, 414–415). Based on this information, the committees concluded that section 634 was not intended to apply to appeals in juvenile delinquency proceedings and therefore that provisions from section 634 should not be included in a rule relating to such appeals.

To more accurately reflect the scope of Welfare and Institutions Code section 634 and avoid potential confusion, the recommended amendment to rule 8.403(a) would delete the sentence regarding appointment of appellate counsel for juveniles at the parents' or guardians' expense.

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

### **Comments**

This proposal was circulated for public comment between April 17 and June 20, 2012, as part of the regular spring 2012 comment cycle. Eight individuals or organizations submitted comments on this proposal. Seven commentators agreed with the proposal and one indicated he agreed with the proposal if modified, but the comments submitted did not relate to the proposal. Based on these comments, the committees recommend that the proposal be adopted as circulated for public comment. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 5–6.

### **Alternatives**

The committees considered not recommending any change to this rule but concluded that it would be best if rule 8.403(a) did not include a requirement that is not applicable in appeals in juvenile delinquency cases.

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

This proposal should have no appreciable implementation requirements or costs. It is the committees' understanding that none of the Court of Appeal districts have implemented a procedure for appointing counsel in juvenile delinquency appeals at the parents' or guardians' expense and therefore that the proposed amendment to rule 8.403(a) would make the rule reflective of current practice.

### **Attachments**

1. Cal. Rules of Court, rule 8.403, at page 4
2. Comment chart, at pages 5–6

Rule 8.403 of the California Rules of Court is amended, effective January 1, 2013, 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 2. Appeals**

**Rule 8.403. Right to appointment of appellate counsel and prerequisites for appeal**

**(a) Welfare and Institutions Code section 601 or 602 proceedings**

In appeals of proceedings under Welfare and Institutions Code section 601 or 602, the child is entitled to court-appointed 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 at the expense of the parent or guardian.~~

**(b) \* \* \***

**SPR12-02**

**Appellate Procedure: Appointment of Appellate Counsel in Juvenile Delinquency Appeals** (amend Cal. Rules of Court, rule 8.403)

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: Kate Mayer Mangan, Chair	A	Our committee supports the revision to rule 8.403 without comment.	The committees appreciate this input.
2.	Committee on Appellate Courts State Bar of California By: Paul R. Johnson, Chair	A	The Committee on Appellate Courts supports this proposal.	The committees appreciate this input.
3.	Court of Appeal, Fourth Appellate District, Division One By: Judith D. McConnell, Presiding Justice	A	We agree with the amendment of Rule 8.403(c) to delete the sentence regarding the appointment of appellate counsel for juveniles, at their parents' or guardians' expense, in juvenile delinquency appeals.	The committees appreciate this input.
4.	First District Appellate Project, Appellate Defenders, Inc., and California Appellate Project - San Francisco By: Mat Zwerling, Executive Director, First District Appellate Project	A	<p>We strongly agree with the proposed changes. This proposal amends rule 8.403(a)1 to delete the sentence requiring appointment of appellate counsel for juveniles at the parents' or guardians' expense in delinquency appeals, if the court determines that the parent or guardian can afford counsel but has not retained counsel for the child.</p> <p>The current rule, which requires appointment of counsel at parents' or guardians' expense, is based on Welfare and Institutions Code section 634, which applies only to temporary custody or detention proceedings in Juvenile Court but is not intended to apply to appeals in juvenile delinquency proceedings. The proposed amendment is necessary to be consistent with the statute. A similar analysis was applied in <i>In re Zeth S.</i> (2003) 31 Cal.4th 396, 414-415, which held that section 317—a dependency</p>	The committees appreciate this input.

**SPR12-02**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			statute closely related to section 634—is applicable only to juvenile court proceedings and <i>not</i> appeals. (The counsel provisions of section 317 were in section 634 before the dependency and delinquency provisions were separated in the 1970s.) <i>Zeth S.</i> relied on the placement of the statute, section 317, to hold that it did not apply to appeals. Because section 317 is the dependency reincarnation of section 634, <i>Zeth S.</i> 's analysis would apply to delinquency cases as well, and thus supports the proposal to delete from rule 8.403(a) the provision applying section 634 to appeals.	
5.	Long Beach Police Department By: Ed Ivora Acting Administrator	A	No specific comment.	The committees appreciate this input.
6.	Orange County Bar Association By: Dimetria Jackson, President	A	No specific comment	The committees appreciate this input.
7.	Gary Rosenthal, Sr. Los Angeles	AM	*Comments not related to proposal	
8.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	Currently, the Superior Court does not appoint counsel for the minor for appeals. The Court of Appeal appoints the Appellate Defenders to assist the minor. As to costs implications, since there is no tracking required for us, there is no cost savings or increase for our court.	The committees appreciate this input.