



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Juvenile Law: Psychotropic Medications	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222	January 1, 2014
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 1, 2013
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Kimberly J. Nystrom-Geist, Cochair	Melissa Ardaiz, 916-643-8002 melissa.ardaiz@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.640 of the California Rules of Court and revising three related forms to (1) clarify the time frame for filing an opposition to an application for the juvenile court to authorize the administration of psychotropic medication for a child, (2) clarify appropriate methods of service and notice protocols, and (3) add notice requirements for an Indian child's tribe if psychotropic medication is being sought for an Indian child. The rule and form revisions are based on a 2012 Court of Appeal opinion that called on the council to consider tying the due date for filing an opposition to the date of service rather than receipt of notice, as well as a request by the California Tribal Court/State Court Forum to include tribal notice requirements in these cases.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2014:

1. Amend rule 5.640 (Psychotropic medications) to clarify the time frame for filing an opposition to an application for the juvenile court to authorize the administration of psychotropic medication in subdivision (c)(8) and to add tribal notice requirements in subdivisions (c)(7)(D), (c)(8), and (c)(9);
2. Revise form JV-219-INFO, *Information About Psychotropic Medication Forms*, to clarify the time frame for filing an opposition, to add information on electronic service, and to include tribal notice requirements;
3. Revise form JV-221, *Proof of Notice: Application Regarding Psychotropic Medication*, to add a new item 9 for tribal notice, to add an “electronic service” check box option, and to add check boxes before items 6–9 to indicate that the person(s) was served; and
4. Revise form JV-222, *Opposition to Application Regarding Psychotropic Medication*, to clarify the time frame for filing an opposition, to add space to include an e-mail address, and to add a check box to include additional information about the child.

The text of rule 5.640 is attached at pages 13–14; copies of the revised forms are attached at pages 15–20.

Previous Council Action

The Judicial Council adopted rule 5.640 as rule 1432.5, effective January 1, 2001; it was amended and renumbered effective January 1, 2007, and amended in 2003, 2008, and 2009.

The Judicial Council adopted forms JV-219-INFO, JV-221, and JV-222, effective January 1, 2008. Form JV-219-INFO was revised effective January 1, 2009.

Rationale for Recommendation

Clarifying the filing time frame and methods of service

Rule 5.640 and forms JV-219-INFO, JV-221, and JV-222 must be revised (1) to clarify the time frame for filing an opposition to an application for the juvenile court to authorize the administration of psychotropic medication for a child, based on current case law; and (2) to update the check box options for methods of service.

Within seven court days from receipt by the court of a completed request, the juvenile court judicial officer must approve or deny the request for authorization for the administration of psychotropic medication or set the matter for hearing. (Welf. & Inst. Code, §§ 369.5(c),¹ 739.5(c);² see also Cal. Rules of Court, rule 5.640(c)(4).) The current time frame for filing a

¹ Welf. & Inst. Code, § 369.5, is accessible at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=369.5.

² Welf. & Inst. Code, § 739.5, is accessible at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=739.5.

completed *Opposition to Application Regarding Psychotropic Medication* (form JV-222) is “within two court days of receiving notice of the pending application for psychotropic medication.” (Cal. Rules of Court, rule 5.640(c)(8).) The person(s) responsible for providing notice as required by local court rules or local practice protocols must complete and sign *Proof of Notice: Application Regarding Psychotropic Medication* (form JV-221) to provide verification of the notice required by rule 5.640. (Cal. Rules of Court, rule 5.640(c)(7)(D); see also, item 7 on form JV-219-INFO.)

The *In re A.S. case.* In 2012, the Fourth Appellate District of the Court of Appeal published *In re A.S.* (2012) 205 Cal.App.4th 1332, a case in which a mother appealed an order approving the application to administer psychotropic medication, arguing that she was denied due process because of the short time frame for filing an opposition in rule 5.640(c)(8).³ The appellate court disagreed, concluding that rule 5.640(c)(8) comports with due process and affirmed the juvenile court’s order. However, it called into question tying the opposition filing due date to receipt of notice. It stated that “we would call on the Judicial Council to consider an amendment to this rule of court that will support the purposes of facilitating (1) prompt action on applications for psychotropic medication, and (2) timely input from all interested parties. Such an amended rule of court would tie the opposition due date to the date of service of the application, not to receipt of the application.” (*Id.* at p. 1344.)

Method of service. Current form JV-221 includes check box options to indicate the manner in which a parent or guardian, his or her attorney of record, a child’s attorney of record, a child’s Child Abuse Prevention and Treatment (CAPTA) guardian ad litem, a child’s current caregiver, and a child’s Court Appointed Special Advocate (CASA) volunteer, if any, were notified. Current check box options include “In person,” “By phone,” “By fax,” and by first-class mail to the last known address. The committee requested specific comment on whether local courts were using the service “By phone” option; whether to keep service “By phone” as a check box option; and whether to add “By electronic service” as a check box option on the form. These issues will be discussed in the “Comments” section.

Adding notice requirements for the Indian child’s tribe

The California Tribal Court/State Court Forum requested that the committee consider inclusion of tribal notice requirements in rule 5.640 and related forms to ensure that the Indian child’s tribe receives notice and an opportunity to respond if psychotropic medication is being sought for an Indian child. This request was echoed by the Los Angeles City/County Native American Indian Commission, the California Department of Social Services, and the Statewide Indian Child Welfare Act (ICWA) Workgroup.

The committee believes that notifying the Indian child’s tribe if an application to administer psychotropic medication is pending is an appropriate best practice and treatment policy. Notification may prevent a situation in which tribal intervention occurs after medication has been

³ *In re A.S.* (2012) 205 Cal.App.4th 1332 is accessible at www.courts.ca.gov/opinions/archive/G045896.PDF.

administered. The tribe may have important information about the child's and his or her family's medical history—as well as resources such as culturally appropriate services—relevant to the diagnoses and treatment.

Current state and federal law support providing the Indian child's tribe with notice of a pending application to authorize the administration of psychotropic medication to an Indian child.

- Welfare and Institutions Code section 224.2(b) requires that “[n]otice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted, unless it is determined that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the case in accordance with Section 224.3.”⁴
- Federal law states that “[e]ach party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.” (25 U.S.C. § 1912(c).)
- Federal law allows the Indian child's tribe to intervene at any point in “any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child.” (25 U.S.C. § 1911(c). See also Welf. & Inst. Code, § 224.4: “The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.”)
- Rule 5.534(i)(2) of the California Rules of Court states that, even “[i]f 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: . . . [¶] (C) Receive notice of hearings; [¶] (D) Examine all court documents relating to the dependency case; [and] [¶] (E) Submit written reports and recommendations to the court”⁵

In addition, the Legislature has found and declared that “[t]here is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.” (Welf. & Inst. Code, § 224(a)(1).)

As submitted for public comment, the committee included notice requirements for an *Indian child's tribe*—a term that was intended to include both a tribe that has intervened in the

⁴ Welf. & Inst. Code, § 224.2, is accessible at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=224.2.

⁵ Cal. Rules of Court, rule 5.534, is accessible at www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_534.

proceeding and one that has not intervened but has acknowledged the Indian child as a member of, or eligible for membership in, the tribe. The committee requested specific comment on the proposed addition of tribal notice requirements and whether to include both an intervening and a non-intervening tribe in the tribal notice requirements. These issues will be discussed in the “Comments” section.

Comments, Alternatives Considered, and Policy Implications

Comments

The invitation to comment was circulated from April 19, 2013, through June 19, 2013, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, mental health professionals, tribes and tribal affiliates, and other juvenile law professionals.⁶ Fourteen comments were received. Ten commentators agreed with the proposal, with four suggesting modifications. Four commentators did not indicate a position. No commentators disagreed with the proposal.

The following issues received the most significant comments:

- How to define the time frame for filing an opposition;
- Which methods of service are appropriate; and
- Whether to include tribal notice requirements and how to define them, including the term *Indian child’s tribe*.

Time frame. As submitted for public comment, the committee proposed revising the time frame for filing an opposition to a request to administer psychotropic medication to “within four court days of service of notice” instead of “within two court days of receiving notice.” The committee requested specific comment on (1) whether the proposed time frame would allow parties a sufficient opportunity to timely respond; (2) whether to add a requirement that the person responsible for providing notice use the most expeditious manner possible; and (3) whether a distinction should be made between the time frame for service by mail and faster methods of service (in-person, fax, phone).

Proposed time frame. The majority of commentators agreed with the proposed time frame of “within four court days of service of notice of the pending application” or did not offer specific comment, suggesting neutrality on the issue. Commentators generally agreed that the filing deadline should be measured from the time of service rather than the date of receipt, noting that it would be easier to calculate and would conform to other areas of practice. With respect to the proposed time frame of “four court days”:

⁶ A chart providing the full text of the comments and the committee responses is attached at pages 21–53.

- Six of the 14 commentators agreed with the proposal overall, with 2 of those commentators—California Indian Legal Services and the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC)—providing specific comment in support of the proposed time frame of “within four court days.” One commentator—Los Angeles County Counsel’s Office—agreed with the proposal overall, but in response to the “Request for Specific Comment” question of whether the proposed time frame of “four court days” would allow parties a sufficient opportunity to timely respond, stated that, realistically speaking, this time frame would make it difficult for a person objecting to file a response by mail, particularly for a person living out of state. However, Los Angeles County Counsel’s Office further stated that a time frame of “four court days” would be sufficient if the person objecting was filing a response electronically or by facsimile and that there should not be a distinction made between the time frame for service by mail and other manners of service.
- Six commentators were neutral and did not offer specific commentary on the issue of time frame for notice. Four of these commentators agreed with the proposal if modified, and two did not indicate an overall position on the proposal.
- One commentator—Los Angeles County Public Defender Office—did not indicate a position on the proposal but specifically commented that the proposed time frame would seem to allow parties a sufficient opportunity to respond, unless service is by mail, in which case the response may need to be sent through a method that will guarantee next-day delivery. This commentator did not think that there should be a distinction made between the time frame for service by mail and other manners of service.
- One commentator—Disability Rights California—did not indicate a position on the proposal but specifically recommended a filing deadline of five court days from service of notice rather than four court days, noting that, “[w]hile first-class mail has the advantage of being reliable and confidential, it is often slow” and may take two or more days to arrive and then another two days to make its way back to court. This commentator stated that a parent or guardian who is incarcerated or in a residential treatment program may have even more difficulty filing a timely response.

After considering public comment, the committee revised rule 5.640(c)(8), form JV-219-INFO, and form JV-222 to change the time frame for filing an opposition to “within four court days of service of notice of the pending application” for psychotropic medication. A time frame of “four court days” best addresses balancing prompt action by the court with timely input from all interested parties. In addition, this time frame is consistent with the appellate court’s recommendation in *In re A.S.* to tie the due date for filing an opposition to the date of service rather than the date of receipt.

Request for Specific Comment. Three of the 14 commentators responded to the “Request for Specific Comment” on the issue of adding language to require that the person or persons

responsible for providing notice of the pending application to administer psychotropic medication use the most expeditious manner possible for giving notice.

- Two commentators—Los Angeles County Counsel’s Office and Los Angeles County Public Defender Office—thought that adding this requirement would be helpful.
- One commentator—Child Welfare Services—questioned what would be achieved by adding this requirement.

Five of the 14 commentators responded to the “Request for Specific Comment” on the issue of whether a distinction should be made between the time frame for service by mail and other methods of service (in-person, fax, phone), in which service can be completed in a shorter time frame.

- Four commentators—Child Welfare Services, East Bay Children’s Law Offices, Los Angeles County Counsel’s Office, and Los Angeles County Public Defender Office—stated that no distinction should be made between mail and other methods of service, noting that it would promote confusion.
- One commentator—California Indian Legal Services—stated that a distinction should be made “[d]ue to the delay in receiving mail in rural communities.”

One commentator—Disability Rights California—suggested that parents and guardians be served both by mail and by a more immediate form of service, such as in person or by telephone, or where feasible, by e-mail, to increase the chances that parents and guardians receive timely notice.

The committee acknowledged that service by mail is slower than other forms of service and that time is of the essence given the court’s time frame. However, the committee did not recommend making a distinction in rule 5.640 and related forms between service by mail and other forms of service, given commentator responses that such a change would promote confusion. The committee also did not recommend requiring two forms of notice. Rule 5.640 and related forms are designed to be as flexible for local courts as is practicable, and these issues may be addressed through local county practice and local rules of court. Rule 5.640(c)(3) states that “[l]ocal 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.”

The committee did, however, add language in rule 5.640(c)(3) and form JV-219-INFO to encourage the person(s) responsible for providing notice to use the most expeditious manner of service possible to ensure timely notice. The committee will monitor implementation of the rule’s notice provisions to determine whether further rule amendments or form revisions are needed in a future cycle.

Methods of service. The committee requested specific comment on several issues related to appropriate methods of service of notice. Current *Proof of Notice: Application Regarding Psychotropic Medication* (form JV-221) has check boxes to indicate the manner in which the person(s) subject to notice requirements were notified. Current check box options include “In person,” “By phone,” “By fax,” and by first-class mail to the last known address. The options differ depending on the person being notified. The committee requested specific comment on (1) whether service “By phone” was being used at a local level as a method of service and whether it should continue to be a check box option; (2) whether courts are establishing local rules and protocols with respect to electronic service in juvenile proceedings and using this manner of service; and (3) whether a “By electronic service” check box option should be added to the form.

Service by phone. Six of the 14 commentators provided specific comment on the issue of service “By phone,” which is currently a check box option to notify parents, legal guardians, their attorneys, the child’s current caregiver, and the child’s CASA volunteer.

- Three commentators—California Indian Legal Services, Dependency Legal Group of San Diego, and East Bay Children’s Law Offices—stated that phone service should not be allowed and/or requested removal of this check box from the form. The reasons cited were that it does not allow the party receiving notice to review any supporting documentation attached to the application and that too much information needs to be conveyed for adequate service using this method.
- Three commentators—Child Welfare Services, Legal Advocates for Children & Youth (LACY), and Los Angeles County Public Defender Office—stated that phone service should continue to be an option for service of notice in these cases. The reasons cited included that telephone is a primary choice for notice to parties and that not all parents, guardians, or current caretakers have access to a fax machine or computer. One commentator—LACY—added that it should be allowed only in circumstances where service through another method cannot be effected within a short time frame. One commentator—Los Angeles County Public Defender Office—recommended additional service by mail if phone service was going to be used.

The committee recommends keeping the service “By phone” check box option on form JV-221 because several commentators indicated that it is being used at a local level. As stated in rule 5.640(c)(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.” Therefore, local courts can identify specific protocols related to this type of service. Counties that are using the service “By phone” option may already require dual forms of service.

Electronic service. Six of the 14 commentators responded to the “Request for Specific Comment” on the issue of electronic service. With the exception of the commentator from the Los Angeles County Public Defender Office, who said that the office receives electronic service

in some matters, there was no indication that electronic service is currently being used. However, there was general agreement that it should be an option.

- Five commentators—Los Angeles County Counsel’s Office, Los Angeles County Public Defender Office, Orange County Bar Association, California Indian Legal Services, and LACY—stated that “By electronic service” should be a check box option for service of notice on form JV-221. LACY’s comment referred to serving the request electronically to the attorney and, if necessary, the party. California Indian Legal Services’ comment referred to tribal notice.
- One commentator—Child Welfare Services—stated that “By electronic service” should not be an option because confidential information should not be shared via e-mail.

The committee recommends including a “By electronic service” check box option for providing notice on form JV-221. With respect to a pending application for the administration of psychotropic medication, the Welfare and Institutions Code does not identify or define appropriate methods of service or notice protocols. However, section 1010.6 of the Code of Civil Procedure and California Rules of Court, rules 2.250–2.261, address electronic filing and service of documents and provide support for adding an electronic service option. The Code of Civil Procedure, section 1010.6(a)(2), states that “[i]f a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is authorized when a party has agreed to accept service electronically in that action.” (See also Cal. Rules of Court, rule 2.251(a).)

Code of Civil Procedure, section 1010.6(a)(1)(A) defines “Electronic service” as “service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party, including the party’s attorney, or through an electronic filing service provider.” Section 1010.6(a)(1)(C) defines “Electronic notification” as “the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.”

Based on this authority, the committee recommends adding a “By electronic service” check box option that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of notice, as provided in rule 5.640(c)(3).

Tribal notice requirements. As submitted for public comment, the committee proposed language that would require that the Indian child’s tribe be given notice and an opportunity to respond if psychotropic medication is being sought for an Indian child. The committee requested specific comment on (1) defining the “Indian child’s tribe” to include both an intervening tribe and a tribe

that has not intervened but that has acknowledged the Indian child as a member of, or eligible for membership in, the tribe; and (2) how the tribal notice requirements would affect courts on a local level.

With respect to tribal notice requirements and the definition of “Indian child’s tribe,” 6 of the 14 commentators—California Department of Social Services, California Indian Legal Services, Dependency Legal Group of San Diego, Los Angeles County Counsel’s Office, Orange County Bar Association, and Superior Court of Tulare County—provided specific comment that agreed with requiring notice to both an intervening tribe and a tribe that has not intervened but has acknowledged the Indian child as a member of, or eligible for membership in, the tribe.

Three other commentators—the Superior Court of Los Angeles County, the Superior Court of San Diego County, and the TCPJAC/CEAC Joint Rules Working Group—agreed with the proposal overall without providing specific comment on the tribal notice issue.

Two commentators, both of whom agreed with the proposal if modified, stated that only an intervening tribe should be subject to tribal notice requirements.

- One commentator—Child Welfare Services—further commented that intervening tribes are involved with and supportive of the Indian child and that confidential information should not be sent to an entity that is not involved in the child’s case.
- One commentator—LACY—further commented that an intervening tribe has taken the step of being actively involved in the case planning and placement of the child and recommended the inclusion of language to limit notice to intervening tribes.

Three commentators were neutral and did not provide specific commentary on the issue of tribal notice requirements or defining the “Indian child’s tribe.”

With respect to court impact, 3 of the 14 commentators stated that the tribal notice requirements would result in a workload increase. One commentator—LACY—stated that requiring notice to be sent to tribes in all cases involving Indian children would create a burden on the limited resources of the court and child welfare agencies. One commentator—the TCPJAC/CEAC Joint Rules Committee—stated that courts would incur a very slight increase in mailing costs and a slight increase in clerk or court staff workload to notify tribes and additional parties. It also noted that courts may have a minimal cost to train staff, including time to write revised internal procedures and retrain current clerks to comply with all notice requirements, and that those courts without a dedicated juvenile department or that are operating at reduced staffing because of budget reductions may see this requirement as another task and training issue—and possible burden.

The committee considered commentator responses and believes that, if psychotropic medication is being sought for an Indian child, then requiring notification to the Indian child’s tribe is

appropriate, regardless of whether the tribe has formally intervened in the proceeding. Although requiring additional notice requirements for tribes will affect court resources, this impact is likely to be minimal and must be considered against the benefit of giving the Indian child's tribe the opportunity to respond if psychotropic medication is being sought for an Indian child.

A few commentators suggested defining the term *Indian child's tribe* in rule 5.640 and related forms and clarifying that it would encompass notice to both an intervening and a non-intervening tribe. The committee considered, but does not recommend, incorporating these suggestions.

Instead, to provide clarification, the committee recommends revising rule 5.640(c)(7) to:

- Add language that notice is required to the Indian child's tribe in cases where a child has been determined to be an Indian child; and
- Include federal and state statutory references where a definition of the terms *Indian child* and *Indian child's tribe*, and an explanation of the process for determining Indian status and tribal membership, can be found. These references include Title 25 United States Code section 1903(4)–(5) and Welfare and Institutions Code sections 224.1(a) and (e) and 224.3.

The tribal notice provisions are included in rule 5.640(c)(7)–(9); form JV-219-INFO (the “JV-222” section); and form JV-221 (new item 9).

Alternatives considered and policy implications

Notice time frame for filing an opposition. No alternatives were considered to basing the opposition due date on the date of service rather than the date of receipt of notice. Rule 5.640(c)(8) and related forms need to be revised to reflect current case law. In *In re A.S.*, the appellate court specifically called into question that rule 5.640(c)(8) ties the due date for filing an opposition to the date of receipt of notice rather than the date of service of notice.

The committee requested specific comment on the time frame for filing an opposition. Most commentators agreed that “four court days” from the date of service was enough time to file an opposition, except possibly when service was by mail. An alternative of “five court days” from the date of service was considered but may compromise the court's need to promptly act on the received application. The committee believes that “within four court days of service” is the best time frame to balance the need for both prompt action by the court and timely input from parties, and hence, added such language to the rule and forms. The committee also added language to rule 5.640 and form JV-219-INFO to encourage the person(s) providing notice to use the most expeditious manner of service as possible.

Tribal notice requirements. One alternative to adding tribal notice requirements is to keep the rule and related forms as is. The committee sought specific comment on how to define *Indian child's tribe* in this context and how tribal notice requirements would affect courts on a local level. Other alternatives are to (1) limit the tribal notice requirements to the Indian child's tribe

that has intervened in the case and not include a non-intervening tribe; or (2) distinguish between notice requirements for an intervening and a non-intervening tribe.

Tribal notice requirements are supported by the California Tribal Court/State Court Forum, the Los Angeles City/County Native American Indian Commission, the Statewide Indian Child Welfare Act (ICWA) Workgroup, and the majority of those organizations that commented on this proposal. Only two commentators recommended limiting the tribal notice requirements to intervening tribes.

The committee determined that the Indian child's tribe should receive notice of a pending application to administer psychotropic medication regardless of whether the tribe has formally intervened. The committee did not agree with making a distinction between notice requirements for an intervening and a non-intervening tribe. The committee recommends clarifying the tribal notice requirement by adding language in rule 5.640(c)(7) to require notice to the Indian child's tribe in cases "where a child has been determined to be an Indian child." The committee also recommends including federal and state statutory references that provide further definition and context for the term *Indian child's tribe*.

Implementation Requirements, Costs, and Operational Impacts

The proposed notice requirements will affect courts and the person or persons responsible for providing notice under local court rules or local practice protocols. The proposal includes a revised time frame for notice as well as an added requirement to notify tribes and will likely result in minimal implementation costs and a slight increase in workload for the person or persons providing notice to the parties and attorneys. It may also necessitate the training of staff to comply with the revised requirements. AOC staff can provide training and technical assistance to courts to address concerns regarding the potential fiscal cost of training staff.

In implementing the revised forms, courts will incur standard reproduction costs.

Attachments

1. Cal. Rules of Court, rule 5.640, at pages 13–14
2. Forms JV-219-INFO, JV-221, and JV-222, at pages 15–20
3. Chart of comments, at pages 21–53

Rule 5.640 of the California Rules of Court is amended, effective January 1, 2014, to read:

1 **Rule 5.640. Psychotropic medications**

2
3 (a)–(b) ***

4
5 (c) Procedure to obtain authorization

6
7 (1)–(2) ***

8
9 (3) Local county practice and local rules of court determine the procedures for
10 completing and filing the forms and for the provision of notice, except as
11 otherwise provided in this rule. The person or persons responsible for
12 providing notice as required by local court rules or local practice protocols is
13 encouraged to use the most expeditious manner of service possible to ensure
14 timely notice.

15
16 (4)–(6) ***

17
18 (7) Notice must be provided to the parents or legal guardians, their attorneys of
19 record, the child’s attorney of record, the child’s Child Abuse Prevention and
20 Treatment Act guardian ad litem, the child’s current caregiver, the child’s
21 Court Appointed Special Advocate, if any, and where a child has been
22 determined to be an Indian child, the Indian child’s tribe (see also 25 U.S.C.
23 § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3).

24
25 Notice must be provided as follows:

26
27 (A)–(C) ***

28
29 (D) Notice to the Indian child’s tribe must include:

30
31 (i) A statement that a physician is asking to treat the child’s
32 emotional or behavioral problems by beginning or continuing the
33 administration of psychotropic medication to the child, and the
34 name of the psychotropic medication;

35
36 (ii) A statement that an *Application Regarding Psychotropic*
37 *Medication* (form JV-220) and a *Prescribing Physician’s*
38 *Statement—Attachment* (form JV-220(A)) are pending before the
39 court;
40

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

4
5 (iv) A blank copy of *Opposition to Application Regarding*
6 *Psychotropic Medication* (form JV-222) or information on how
7 to obtain a copy of the form.

8
9 ~~(D)~~(E) ***

10
11 (8) A parent or guardian, his or her attorney of record, a child's attorney of
12 record, ~~or~~ a child's Child Abuse Prevention and Treatment Act guardian ad
13 litem appointed under rule 5.662 of the California Rules of Court, or the
14 Indian child's tribe ~~who~~ that is opposed to the administration of the proposed
15 psychotropic medication must file a completed *Opposition to Application*
16 *Regarding Psychotropic Medication* (form JV-222) within ~~two~~ four court
17 days of ~~receiving service of~~ notice of the pending application for
18 psychotropic medication.

19
20 (9) The court may grant the application without a hearing or may set the matter
21 for hearing at the court's discretion. If the court sets the matter for a hearing,
22 the clerk of the court must provide notice of the date, time, and location of
23 the hearing to the parents or legal guardians, their attorneys of record, the
24 dependent child if 12 years of age or older, a ward of the juvenile court of
25 any age, the child's attorney of record, the child's current caregiver, the
26 child's social worker, the social worker's attorney of record, the child's Child
27 Abuse Prevention and Treatment Act guardian ad litem, ~~and~~ the child's Court
28 Appointed Special Advocate, if any, and the Indian child's tribe at least two
29 court days before the hearing. Notice must be provided to the child's
30 probation officer and the district attorney, if the child is a ward of the juvenile
31 court.

32
33 (d)-(h) ***

JV-219-INFO Information About Psychotropic Medication Forms

Use the Judicial Council forms listed below when requesting an order regarding psychotropic medication. Local forms may be used to provide additional information to the court.

JV-220, *Application Regarding Psychotropic Medication*

JV-220(A), *Prescribing Physician's Statement—Attachment*

JV-221, *Proof of Notice: Application Regarding Psychotropic Medication*

JV-222, *Opposition to Application Regarding Psychotropic Medication*

JV-223, *Order Regarding Application for Psychotropic Medication*

General Instructions

- ① Use psychotropic medication forms when a child is under the jurisdiction of the juvenile court and living in an out-of-home placement and the child's physician is asking for an order:
 - a. giving permission for the child to receive a psychotropic medication that is not currently authorized *or*
 - b. renewing an order for a psychotropic medication that was previously authorized for the child because the order is due to expire.
- ② Use of the forms is mandatory for a child who is a dependent of the juvenile court and living in an out-of-home placement.
- ③ Use of the forms is mandatory for a child who is a ward of the juvenile court and living in a foster care placement, as defined in Welfare and Institutions Code section 727.4.
- ④ Use of the forms is optional for a child who is a ward of the juvenile court and living in an out-of-home facility that is not considered a foster care placement as defined in Welfare and Institutions Code section 727.4, unless use of the forms is required by a local rule of court.
- ⑤ Use of the forms is not required if the court has previously entered an order giving the child's parent the authority to approve or deny the administration of psychotropic medication to the child.
- ⑥ Form JV-220(A), *Prescribing Physician's Statement—Attachment*, must be completed and signed by the prescribing physician and forwarded to the person responsible for completing Form JV-220, *Application Regarding Psychotropic Medication*, as provided for in local court rules or local practice protocols. The completed JV-220(A), with all its attachments, must be attached to JV-220 when it is filed with the court.
- ⑦ The person or persons responsible for providing notice under local court rules or local practice protocols must complete, sign, and file with the court Form JV-221, *Proof of Notice: Application Regarding Psychotropic Medication*.

JV-220, *Application Regarding Psychotropic Medication*

- ① This form gives the court basic information about where the child lives and whether the current situation has caused the child to be moved to a temporary location such as a psychiatric hospital, a juvenile hall, a shelter home, or respite care. It also provides the name and contact information for the child's social worker or probation officer.
- ② This form may be completed by the prescribing physician, the medical office staff, the child welfare services staff, the probation department staff, or the child's caregiver. If completed by a staff person from the medical office, the child welfare services agency, the probation department, or the child's caregiver, he or she must check the appropriate box, type or print his or her name, and sign the form. If completed by the prescribing physician, he or she must check the appropriate box and complete and sign Form JV-220(A).



JV-220(A), Prescribing Physician's Statement—Attachment

- ① This form must be completed and signed by the prescribing physician, who must provide information related to the administration of the psychotropic medication, including the child's diagnosis, relevant medical history, other therapeutic services, the psychotropic medication to be administered, and the basis for the psychotropic medication recommendation.
- ② Prior court authorization must be obtained before a psychotropic medication not currently authorized is given to a child except in an emergency situation. An emergency situation occurs when a physician finds that the child requires psychotropic medication because of a mental condition and the purpose of the medication is to protect the life of the child or others, prevent serious harm to the child or others, or treat current or imminent substantial suffering and it is impractical to obtain prior authorization from the court. Court authorization must be sought as soon as practical but never more than two court days after the emergency administration of the psychotropic medication.

JV-221, Proof of Notice: Application Regarding Psychotropic Medication

- ① This form provides verification of the notice required by rule 5.640 of the California Rules of Court.
- ② This form must be completed and signed by the person or persons responsible for providing notice as required by local court rules or local practice protocols. A separate signature line is provided on each page of the form to accommodate those courts in which the provision of notice is shared between agencies—for example, when local court rule or local practice protocol requires the child welfare services agency to provide notice to the parent or legal guardian and the caregiver and the juvenile court clerk's office to provide notice to the attorneys and CASA volunteer. If one agency does all the required noticing, only one signature is required on page 3 of the form.
- ③ The person or persons responsible for providing notice as required by local court rules or local practice protocols is encouraged to use the most expeditious manner of service possible to ensure timely notice.
- ④ Notice may be given by electronic service only with the prior authorization of the person to be served and in compliance with the requirements of section 1010.6 of the Code of Civil Procedure.

JV-222, Opposition to Application Regarding Psychotropic Medication

- ① This form must be used when the parent or guardian, the attorney of record for a parent or guardian, the child, the child's attorney, the child's CAPTA guardian ad litem, or the Indian child's tribe does not agree that the child should take the recommended psychotropic medication.
- ② Within four court days of service of notice of the pending application regarding psychotropic medication, the parent or guardian, his or her attorney, the child, the child's attorney, the child's CAPTA guardian ad litem, or the Indian child's tribe that disagrees must complete, sign, and file Form JV-222 with the clerk of the juvenile court.
- ③ The court will make a decision about the child's psychotropic medication after reading the application and its attachments and any opposition filed on time. The court is not required to set a hearing when an opposition is filed. If the court does set the matter for a hearing, the juvenile court clerk must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys, the child if 12 years of age or older, the child's attorney, the child's current caregiver, the child's social worker, the social worker's attorney, the child's CAPTA guardian ad litem, the child's CASA, if any, and the Indian child's tribe at least two court days before the date set for the hearing. In delinquency matters, the clerk also must provide notice to the child regardless of his or her age, the child's probation officer, and the district attorney.

JV-223, Order Regarding Application for Psychotropic Medication

This form contains the court's findings and orders about psychotropic medications.

**Proof of Notice: Application
Regarding Psychotropic Medication**

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

Read JV-219-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

1 The following parents/legal guardians of the child were notified of the physician's request to begin and/or to continue administering psychotropic medication, of the name of each medication, and that a JV-220, *Application Regarding Psychotropic Medication*, and a JV-220(A), *Prescribing Physician's Statement—Attachment*, are pending before the court. They were also provided with JV-219-INFO, *Information About Psychotropic Medication Forms*, and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, or with information on how to obtain a copy of each form.

a. Name: _____ Date notified: _____
Relationship to child: _____
Manner: In person By phone at (*specify*): _____
 By electronic service at (*e-mail address*): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (*specify*): _____

b. Name: _____ Date notified: _____
Relationship to child: _____
Manner: In person By phone at (*specify*): _____
 By electronic service at (*e-mail address*): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (*specify*): _____

c. Name: _____ Date notified: _____ Relationship to child: _____
Manner: In person By phone at (*specify*): _____
 By electronic service at (*e-mail address*): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (*specify*): _____

2 Parental rights were terminated, and the child has no legal parents who must be informed.

3 Parent/legal guardian (*name*): _____
was not informed because (*state reason*): _____

4 Parent/legal guardian (*name*): _____
was not informed because (*state reason*): _____

5 The child's current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that a JV-220 and a JV-220(A) are pending before the court as follows:

Caregiver (*name*): _____
Manner: In person By phone at (*specify*): _____ By electronic service at (*e-mail address*): _____
_____ (time sent): _____ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the following address (*specify*): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Type or print name



Sign your name

Signature follows on page 3.



Child's Name: _____

6 The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed JV-220, *Application Regarding Psychotropic Medication*, and JV-220 (A), *Prescribing Physician's Statement—Attachment*; a copy of JV-219-INFO, *Information About Psychotropic Medication Forms*; and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, as follows:

- a. Attorney's name: _____ Date notified: _____
 Manner: In person By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____
- b. CAPTA guardian ad litem's name: _____ Date notified: _____
 Manner: In person By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

7 The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that a JV-220, *Application Regarding Psychotropic Medication*, and a JV-220(A), *Prescribing Physician's Statement—Attachment*, are pending before the court. They were also provided with a copy of JV-219-INFO, *Information About Psychotropic Medication Forms*, and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, or with information on how to obtain a copy of each form as follows:

- a. Attorney's name: _____ Date notified: _____
 Attorney for (name): _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____
- b. Attorney's name: _____ Date notified: _____
 Attorney for (name): _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____
- c. Attorney's name: _____ Date notified: _____
 Attorney for (name): _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
Type or print name

 Sign your name Signature follows on page 3.



Child's Name: _____

Case Number: _____

- 8 The child's CASA volunteer was notified that a JV-220 and a JV-220(A) are pending before the court as follows:
 CASA volunteer (name): _____ Date notified: _____
 Manner: In person By phone at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

- 9 The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that a JV-220, *Application Regarding Psychotropic Medication*, and a JV-220(A), *Prescribing Physician's Statement—Attachment*, are pending before the court. They were also provided a copy of JV-219-INFO, *Information About Psychotropic Medication Forms*, and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, or with information on how to obtain a copy of each form, as follows:
 Indian Tribe (name): _____ Date notified: _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Type or print name

▲

Sign your name

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

If you do not agree that the child should take the recommended psychotropic medication and/or continue the psychotropic medication that the child is currently taking, you must complete this form and file it with the court within four court days of service of notice of the pending application for psychotropic medication. Read JV-219-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application.

- 1 Your information:
 - a. Name: _____
 - b. Address: _____

 - c. Phone: _____ Fax: _____
E-mail: _____
 - d. If you are not an attorney filling out this form for a client, your relationship to the child is: _____
 - e. If you are an attorney filling out this form for a client, provide the following information about your client:
Your client's name: _____
Your client's relationship to the child: _____

Fill in court name and street address:
Superior Court of California, County of

Fill in child's name and date of birth:
Child's Name
Date of Birth:

Court fills in case number when form is filed.
Case Number:

2 The application is opposed because: _____

3 Additional information about the child for the court to consider is included on Attachment 3.

Date: _____

Type or print name

Signature

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Social Services, Child and Youth Permanency Branch Sharon DeRego Bureau Chief	N/I	CDSS supports the committee’s recommendation to amend CA Rules of Court, rule 5.640, <i>Information About Psychotropic Medications Forms</i> (form JV-219-INFO) and <i>Proof of Notice: Application Regarding Psychotropic Medication</i> (form JV-221) that would require notice to an Indian Child’s tribe (intervening or non-intervening) if psychotropic medication is being sought for an Indian child and allow the tribe (intervening or non-intervening) an opportunity to file an opposition to any pending application. The proposed amendments ensure compliance with federal and state laws which allow an Indian child’s tribe to intervene at any stage of a dependency proceeding and to examine all reports or other documents filed with the court upon which any decision with respect to such action be based. [25 U.S.C. 1911(c), CA rules of Court 5.534(i), 25 U.S.C. 1912 (c)]	The committee agrees and further recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child’s tribe is required in cases “where a child has been determined to be an Indian child”; and including federal and state statutory references which provide further definition and context for the term <i>Indian child’s tribe</i> .
2.	California Indian Legal Services Delia Parr Directing Attorney	A	I am writing today on behalf of California Indian Legal Services (CILS) in support of the Judicial Council’s proposed amendments to California Rules of Court, rule 5.640 and proposed revisions to forms JV-219-INFO, JV-221, and JV-222. CILS was founded in 1967 by California Indian leaders and public interest attorneys and is the oldest Indian rights law firm in the country. CILS is the first Indian-controlled law firm organized to provide specialized legal representation to Indians and Indian tribes. CILS operates four offices in California,	No response required.

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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	Commentator	Position	Comment	Committee Response
			<p>providing services throughout the entire state. CILS has represented virtually all of California’s 110 federally-recognized Indian tribes in one form or another, many of them in juvenile dependency cases where the Indian Child Welfare Act (ICWA) applies.</p> <p>In the course of representation of Tribes in ICWA cases, our program has encountered repeated issues with the procedures involved in obtaining an order for psychotropic medication. There have been occasions where we were not aware that an application had been submitted until receiving a copy of the application and filed order concurrently. There have also been instances where we received the application, and the next day received a copy of the filed order.</p> <p>Based on our experiences, we support amendment of the Rules of Court and Judicial Council forms to include the requirement to notice Tribes in the most expeditious manner possible, ideally in-person, by fax, or electronically. However, it is not our opinion that service by phone should continue to be an option as it does not allow the party receiving notice to review the supporting documentation attached to the application – often a vital component to determining whether to agree with or to oppose an application.</p>	<p>The committee agrees and recommends adding language in proposed revised rule 5.640(c)(3) and form JV-219-INFO to encourage the person(s) responsible for providing notice as required by local court rules or local practice protocols to use the most expeditious manner of service possible to ensure timely notice and an opportunity to respond to the pending application to administer psychotropic medication.</p> <p>The committee believes that service “by phone” should continue to be a check box option on the form because commentators have responded that this option is being utilized at a local level. The proposed revised rule and forms are designed to</p>

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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	Commentator	Position	Comment	Committee Response
			<p>Due to the delay in receiving mail in rural communities, we believe there should be a distinction made between the time frame for service by mail and other manners of service.</p> <p>We are in support of changing the time frame for filing an opposition from “within two court days of receiving notice” to “within four court days of service of notice.”</p> <p>We also support notice to intervening Tribes, as well as Tribes that have not intervened but are subject to the notice requirements for an “Indian Child’s Tribe.” However, in appreciation of the often time-sensitive nature of an application, we do not believe it is in an Indian child’s best interest to grant a 20-day continuance of a hearing opposing an application if notice of the application is provided to a Tribe concurrently with notice of the proceedings as called for in 25 U.S.C. 1912(a).</p>	<p>be as flexible for local courts as is practicable. As stated in rule 5.640(c)(3), local county practice and local rules of court can determine the provision of notice (except as otherwise provided in rule 5.640), and therefore can identify specific protocols related to this type of service.</p> <p>The committee acknowledges that service by mail is slower than other forms of service. However, based on overall commentator responses, the committee recommends using the same time frame regardless of the manner of service to avoid confusion. This is consistent with the majority of commentator responses on this issue.</p> <p>The committee agrees that a time frame of “within four court days of service of notice” is most appropriate and best addresses balancing prompt action by the court with timely input from all interested parties.</p> <p>The committee agrees and further recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child’s tribe is required in cases “where a child has been determined to be an Indian child”; and including federal and state statutory references which provide further definition and context for the term <i>Indian child’s tribe</i>.</p> <p>With respect to a court granting a 20-day continuance, it is beyond the authority of the committee to address this issue, and it is outside the scope of the current proposal.</p>

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

	Commentator	Position	Comment	Committee Response
3.	Child Welfare Services Corey Kissel CWS Policy Analyst	AM	<p>The due date should be the DATE OF SERVICE rather than the date of receipt. Date of receipt is too broad and open to interpretation.</p> <p>Only notify the tribes if they have already intervened and have been supportive of the Indian child and case. However:</p> <ul style="list-style-type: none"> • It is unknown how various tribes view psychotropic medications as a form of intervention/treatment so it is unforeseeable if they would be in support of the psychotropic meds or would oppose psychotropic medications. If the meds are opposed, more time may be spent in the Court to resolve the dispute. • It will impact social work workload as they will need to notify the tribes. <p>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <p>The proposal reasonably achieves the stated purpose by involving the tribes. However the impact of adding expeditious notice is undeterminable.</p> <p>It is undeterminable whether this proposal would have an impact, either positive or negative, on public’s access to the courts.</p>	<p>The committee agrees and recommends tying the time frame for notice to the date of service rather than the date of receipt.</p> <p>After considering overall commentator responses, the committee recommends including notice requirements for the <i>Indian child’s tribe</i>, without making a distinction as to whether or not the tribe has intervened. The committee recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child’s tribe is required in cases “where a child has been determined to be an Indian child”; and including federal and state statutory references which provide further definition and context for the term <i>Indian child’s tribe</i>.</p> <p>While there will be an impact on court resources and agency workload to require notice for tribes in these cases, the impact is likely to be minimal and must be considered against the benefit of giving the Indian child’s tribe the opportunity to respond if psychotropic medication is being sought for an Indian child.</p> <p>No response required.</p> <p>No response required.</p>

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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

	Commentator	Position	Comment	Committee Response
			<p>It would seem that we would want the noticed parties to respond sooner than later. It’s possible that the Court would have already decided on the application, psychotropic meds would have already been administered by the time the opposition is received at court.</p> <p>It is unclear what would be achieved by adding a requirement that the person or persons responsible for providing notice of the pending application to administer psychotropic medication use the most expeditious manner as possible for giving notice.</p> <p>Having different time frames would be confusing. It may make sense to rid service by mail, if we want to use the most expeditious manner when providing notice. Mail may delay the noticing requirement as there are many possible errors, such as a mail being delivered to a wrong address/location (Postal error), invalid address, returned to the sender for no forwarding address, etc.</p> <p>Notice by telephone should be kept as an option because this is the primary choice for notice to parties.</p>	<p>The committee agrees and recommends including a time frame of “within four court days of service of notice”. This time frame best addresses balancing prompt action by the court with timely input from all interested parties.</p> <p>The committee believes that adding language to encourage the person(s) responsible for providing notice, as required by local court rules or local practice protocols, to use the most expeditious manner of service possible will assist in providing timely notice and an opportunity to respond to a request to administer psychotropic medication. The committee recommends adding this language to rule 5.640(c)(3) and form JV-219-INFO.</p> <p>The committee agrees that different time frames would promote confusion and recommends that the same time frame be used regardless of the manner of service. Service by mail is slower than other forms of service; however, it is still an appropriate form of service that is used on a local level.</p> <p>The committee agrees that service “by phone” should continue to be a check box option on the form because commentators have responded that this option is being used at a local level. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable. As</p>

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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	Commentator	Position	Comment	Committee Response
			<p>There should not be an “electronic service” check box option because confidential information should not be shared via email.</p> <p>It is not know if the courts in San Diego are establishing local rules and protocols with respect to electronic service in juvenile proceedings and whether they will utilize this service.</p> <p>Only the intervening tribe should be subject to the notice as they’re involved and supportive of the Indian Child. We should not send confidential information to an entity who is not involved in the child’s case.</p>	<p>stated in rule 5.640(c)(3), local county practice and local rules of court can determine the provision of notice (except as otherwise provided in rule 5.640), and therefore can identify specific protocols related to this type of service.</p> <p>The committee considered commentator responses and believes that it is appropriate, based on section 1010.6 of the Code of Civil Procedure, to add an electronic service option to form JV-221. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable.</p> <p>To be consistent with current law, the committee recommends adding an “electronic service” check box that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of notice, as provided in rule 5.640(c)(3).</p> <p>No response required.</p> <p>See response above about tribal notice requirements and adding clarifying language and legal references to rule 5.640(c)(7).</p>

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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

	Commentator	Position	Comment	Committee Response
			<p>If a tribe’s view of psychotropic medications is negative, we would see more opposition to the application. Therefore, more time may be spent in Court to resolve the dispute.</p>	<p>The tribal position will vary from tribe to tribe and case to case. There may be more time spent in court to address a party’s opposition to a request to administer psychotropic medication, but that must be balanced against a tribe’s interest in being notified of the pending application and having an opportunity to respond.</p>
4.	<p>Dependency Legal Group of San Diego Candi Mayes CEO & Executive Officer</p>	N/I	<p>A four-day response time, calculated from the time notice is sent, is reasonable if the method of notice is by e-mail/electronic service. E-mail has clear date/time stamps and can be tracked easily if there is any question about notice being given or the adequacy of the notice. All attorneys in California are required to have an email on file with the State Bar so access to this information is readily available.</p> <p>Notice by physical mail should add one day to the response time for the recipient.</p>	<p>The committee recommends defining the time frame for calculating the filing opposition due date as “within four court days of service of notice”. Based on commentator responses, it appears that this best addresses balancing prompt action by the court with timely input from all interested parties. The committee also recommends using the same timeframe regardless of the manner of service to avoid confusion.</p> <p>The committee further recommends adding an “electronic service” check box to form JV-221 that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of notice, as provided in rule 5.640(c)(3). The proposed revised rule and forms are designed to be as flexible for local courts as is practicable.</p> <p>The committee acknowledges that service by mail is slower than other forms of service. However, based on overall commentator responses, the committee recommends using the same time frame regardless of the manner of service to avoid confusion. This is consistent with the majority of</p>

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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

	Commentator	Position	Comment	Committee Response
			<p>Fax should be the least preferred method of notice and only allowable when service by e-mail is not possible.</p> <p>Telephone should not be allowed as a means of notice at all and that box/option should be removed from the form.</p> <p>Both intervening and tribes eligible to intervene should be provided notice and an opportunity to respond.</p>	<p>commentator responses on this issue.</p> <p>The committee believes that fax should still be an option of notice if it is being used on a local level. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable. Local county practice and local rules of court can identify specific protocols for the provision of notice with respect to this manner of service, in accordance with rule 5.640(c)(3).</p> <p>The committee believes that service “by phone” should continue to be a check box option on the form because commentators have responded that this option is being used at a local level. As stated in the committee response above, the rule and forms are designed to provide flexibility and local discretion in terms of the provision of notice and any specific protocols related to the manner of service.</p> <p>The committee agrees and further recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child’s tribe is required in cases “where a child has been determined to be an Indian child”; and including federal and state statutory references which provide further definition and context for the term <i>Indian child’s tribe</i>.</p>
5.	Disability Rights California Maggie Roberts Associate Managing Attorney	N/I	Disability Rights California (“Disability Rights CA”) appreciates the opportunity to comment on the Family and Juvenile Law Advisory Committee’s (“Advisory Committee’s) proposed changes to Rule 5.640(c)(8) of the	No response required.

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Juvenile Law: Psychotropic Medications (Amend Cal. Rules of Court, rule 5.640; revise forms JV-219-INFO, JV-221, and JV-222)

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

	Commentator	Position	Comment	Committee Response
			<p>California Rules of Court and forms JV-221 and JV-222. Disability Rights CA is a private, nonprofit corporation established to advocate for the rights of Californians with disabilities. Disability Rights CA has been designated as the protection and advocacy system for the state of California pursuant to federal law. Disability Rights CA has provided advocacy services to a number of dependent children and wards of the court with mental illness and other disabilities.</p> <p><u>Introduction</u> The Advisory Committee has proposed revising rule 5.640(c)(8), <i>Information About Psychotropic Medication</i> (form JV-219-INFO), <i>Proof of Notice</i> (JV 221) and <i>Opposition to Application Regarding Psychotropic Medication</i> (form JV-222) to require that any opposition to the application for the court to authorize administration of psychotropic medication be filed “within four court days of service of notice” rather than “within two court days of receiving notice.”</p> <p>We agree with the Advisory Committee that the JV-222 filing deadline should be measured from the time of service. We recommend, however, that the deadline for filing a JV-222 form be five court days of service of notice, and that parents and guardians be served both by mail and by a more immediate form of service, such as in person or by telephone.</p>	<p>No response required.</p> <p>The committee agrees and recommends tying the time frame for notice to the date of service rather than the date of receipt. Based on the overall comments received, the committee recommends including a time frame of “within four court days of service of notice”. This time frame best addresses balancing prompt action by the court with timely input from all interested parties. The committee recommends using the same timeframe regardless of the manner of service to avoid</p>

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			<p>We also recommend that parents and guardians be provided with copies of the completed JV-220(A) forms, so that they have more information on which to determine if they oppose the application regarding psychotropic medication.</p>	<p>confusion.</p> <p>With respect to requiring two forms of service for parents and guardians (mail and a more immediate form of service), the proposed revised rule and forms are designed to provide flexibility and local discretion in terms of the provision of notice and any specific protocols related to the manner of service. Rule 5.640(c)(3) states that local county practice and local rules of court can further determine the provision of notice (except as otherwise provided in rule 5.640). The committee does not recommend adding language to require using two forms of service. This issue is left to local discretion.</p> <p>This suggestion requires a substantive change that would impact workload, and it would require re-circulation of the proposal. The committee does not recommend making this change. Current rule 5.640(c)(7)(C) requires that only a child's attorney or record and any Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem receive a completed copy of <i>Application Regarding Psychotropic Medication</i> (form JV-220) and <i>Prescribing Physician's Statement-Attachment</i> (form JV-220(A)). Notice to a parent or legal guardian and his or her attorney includes a statement that a physician is asking to treat the child, the name of the psychotropic medication, and a copy of <i>Information About Psychotropic Medication Forms</i> (form JV-219-INFO) and <i>Opposition to Application Regarding Psychotropic Medication</i> (form JV-222) (blank),</p>

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			<p>Finally, we propose some additional changes to the JV-222 form to facilitate collecting an accurate medical history of the child.</p> <p><u>Comments of Disability Rights California on the Advisory Committee’s Proposal</u></p> <p>Extending the Timeframe for Filing a JV-222 Form to Five Days from Service of Notice by Post</p> <p>While first-class mail has the advantage of being reliable and confidential, it is also often slow. A JV-222 form mailed to a child’s parent or legal guardian may take two or more days to arrive (in <i>In re A.S.</i>, it took three days), and then another two days to make its way back to the court. This means that a parent could complete and return their JV-222 form the same day that they receive it and still not meet the proposed four-day filing window. A parent or guardian who is incarcerated, in a residential treatment program, or who has their mail delivered to a location that they don’t check every day would have even more difficulty filing a timely response. In such cases, the parent or guardian would likely lose the opportunity to express their opposition, and the presiding judge would not have access to whatever information or objections they might provide. Thus, while notice by mail would eventually “appraise</p>	<p>or information on how to obtain copies of these forms.</p> <p>See response below with respect to revising form JV-222 to collect information on the medical history of the child.</p> <p>The committee acknowledges that service by mail is slower than other forms of service, and that time is of the essence given the legal constraints on the court time frame. However, in determining the most appropriate time frame, there must be a balance between prompt action by the court and timely input from all interested parties. Based on overall commentator responses, the committee recommends a time frame of “within four court days of service of notice” as most appropriate.</p> <p>The committee further recommends adding language in rule 5.640(c)(3) and form JV-219-INFO to encourage the person(s) responsible for providing notice to use the most expeditious manner of service possible.</p>

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			<p>[these] interested parties of the pendency of the action,” it might not “afford them a [meaningful] opportunity to present their objections.” See <u>Mullane v. Cent. Hanover Bank & Trust Co.</u>, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950).</p> <p>In order to increase the chances that parents and guardians have an opportunity to respond, we suggest extending the timeframe for filing JV-220 forms to five court days from service of notice. This would help ensure that all interested parties have an opportunity to file their opposition, while still permitting the court to approve, deny, or schedule a hearing on a pending JV-220 application within the mandated seven court days.</p> <p>Providing Parents and Guardians with Two Forms of Notice</p> <p>In addition, we recommend that in addition to being served by mail, parents and guardians be also served notice by phone, in person, or, where feasible, by email. This additional notice would increase the chances that parents and guardians receive timely notice since service by phone or email may provide faster notification but may not be as reliable as service by mail.</p> <p>Disability Rights CA’s Proposed Language for Amended Rules 5.640(c)(3) and 5.640(c)(8)</p> <p>Disability’s Rights CA’s proposed additions are</p>	<p>As explained above, this is a potential issue for local county practice and local rules of court; the committee does not recommend requiring two forms of notice in rule 5.640 or related forms. Rule 5.640(c)(3) states that “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.”</p>

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			<p>bolded and underlined:</p> <p>(c)(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. <u>(A) Parents and legal guardians must be provided with notice by First-Class mail, and by either phone, email or in person. Phone or email notice is not required if the parent or guardian’s phone number or email address is unknown.</u></p> <p>(4)-(7) ***</p> <p>(c)(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, <u>or an Indian child’s tribe</u> who that is opposed to the administration of the proposed psychotropic medication must file a completed <i>Opposition to Application Regarding Psychotropic Medication</i> (form JV-222) within two five court days of receiving <u>service of</u> notice of the pending application for psychotropic medication..</p> <p><u>Additional Proposals of Disability Rights California</u></p> <p>Disability Rights California would like to</p>	

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			<p>suggest some additional related changes, which we believe would help parents provide informed opposition, and ensure that the Court has access to as much of the child’s relevant medical history as possible.</p> <p>Providing Parents and Guardians with a Copy of JV-220(A)</p> <p>Currently, rule 5.640(c)(7)(A) does not require that the child’s parents, guardians, or their respective attorneys actually receive a copy of the JV-220 and/or JV-220(A) forms which have been filed with the court. Although the JV 220 contains information about the child’s location which may put the child at risk if the parent were aware of it, the JV-220(A) does not contain information about the child’s whereabouts or the names of the child’s caregiver’s and thus, disclosing this form does not put the child at risk of harm. Providing parents/guardians with a copy of the JV-220(A) would give them the opportunity to oppose the administration of a medication if the parent felt that the medical history or list of past medications taken by the child was inaccurate or incomplete. In order to ensure that parents have sufficient information to determine whether or not they agree with the administration of a specific psychotropic medication, we strongly recommend that rule 5.640(c)(7)(A) and JV-221 be amended to include a copy of JV-220(A) in the notice served on parents and guardians and their attorneys.</p>	<p>As explained above, this suggestion requires a substantive change that would impact workload, and it would require re-circulation of the proposal. The committee does not recommend making this change in this Rules and Projects (RUPRO) cycle.</p>

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			<p>Disability Rights California’s Proposed Language for an Amended Rule 5.640(c)(7)(A)</p> <p>Disability’s Rights CA’s proposed additions are bolded and underlined.</p> <p>Rule 5.640(c)(7)(A) Notice to the parents or legal guardians and their attorneys of record must include:</p> <ul style="list-style-type: none">(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 <i>Application Regarding Psychotropic Medication</i> (form JV-220) and a <i>Prescribing Physician's Statement-Attachment</i> (form JV-220(A)) are pending before the court<u>(iii) A completed copy of the Prescribing Physician’s Statement-Attachment (form JV-220(A));</u>(iv) A copy of <i>Information About Psychotropic Medication Forms</i> (form JV-219-INFO) or information on how to obtain a copy of the form; and(v) A blank copy of <i>Opposition to Application Regarding Psychotropic Medication</i> (form JV-222) or information on how to obtain a copy of	

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			<p>the form.</p> <p>Modifying the JV-222 Form to Collect Relevant Medical History</p> <p>A dependent or ward’s parents or guardians may have information about a child’s medical history which would not otherwise come before the Court. Since the JV-222 form is generally the parent or guardian’s main means of contact with the court regarding the administration of psychotropic medication to their child, we suggest that this form be modified to explicitly solicit relevant medical history, including:</p> <ul style="list-style-type: none"> • The child’s past use of psychotropic medications, if any. • The dosage and duration of those medications, if known. • Any positive changes observed. • Any negative side effects of the medication (suicidal thoughts, seizures, weight gain, etc.). • Other relevant medical information, such as a history of seizures, head injuries, respiratory problems, or allergies. <p>We are enclosing a draft JV-222 form with all these proposed changes.</p> <p>Conclusion Thank you for considering the above comments.</p>	<p>This comment is beyond the scope of the current proposal. Such changes would require circulation for further public comment and cannot be accomplished in this Rules and Projects (RUPRO) cycle. The committee will consider the suggestion to modify this form to explicitly solicit relevant medical history in a future RUPRO cycle.</p> <p>However, to address the issue of providing additional information, the committee recommends adding a new item 3 on form JV-222 which contains a check box option if the person completing the form wants to convey additional relevant information about the child on an attachment. Information may also be included in item 2, which is a “narrative” section for the person to describe the reasons that the application is opposed.</p> <p>In addition, rule 5.640(c)(2) states that “Additional information may be provided to the court through the use of local forms that are consistent with this rule.”</p>
6.	East Bay Children's Law Offices	AM	Services should not be by phone. There is too	The committee believes that service “by phone”

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	Roger Chan Executive Director		<p>much information to be conveyed, e.g. the alternative treatments, dosages, side-effects, for adequate phone service. The full request should be sent by fax or mail or in-person.</p> <p>For the sake of clear case processing, there should be one time frame for service.</p> <p>Would you consider re-titling the JV-222 to be "Response to Application Regarding Psychotropic Medication"? Often we want to convey additional information or input from the child that is not necessarily an opposition.</p>	<p>should continue to be a check box option on the form because commentators have responded that it is being used at a local level. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable. Local county practice and local rules of court can identify specific protocols for the provision of notice (and this type of service), in accordance with rule 5.640(c)(3).</p> <p>The committee agrees that the same time frame should be used regardless of the manner of service to avoid confusion.</p> <p>The committee will consider this suggestion for a future Rules and Projects (RUPRO) cycle. In changing a form title, is it necessary to change the title in every rule and form where this title is referenced.</p> <p>However, to address the issue of providing additional information, the committee recommends adding a new item 3 on form JV-222 which contains a check box option if the person completing the form wants to convey additional relevant information or input about the child on an attachment.</p> <p>In addition, rule 5.640(c)(2) states that "Additional information may be provided to the court through the use of local forms that are consistent with this rule."</p>
7.	Legal Advocates for Children & Youth Andrew Cain, Supervising Attorney	AM	LACY supports the two principles advanced by this rule proposal. Specifically, LACY believes	No response required.

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			<p>that the current two-day response period for reviewing applications for administering psychotropic medication is too short.</p> <p>In addition, LACY believes Indian tribes should receive notice of these applications, provided they have already intervened in the case. To further this second principle, LACY recommends changing the language of proposed 5.640(c)(7)(D) to read “Notice to an Indian child’s tribe, if such tribe has intervened in the dependency proceeding, must include:”</p> <p>Lengthening the timeframe for receiving responses to an application is appropriate in order for attorneys and parties to have more time to complete an investigation of the request. For minor’s counsel, this investigation can include, among other things, talking with the client, consulting with the prescribing physician, and speaking with the social worker and other professionals working with the child. In some instances, it is not possible to reach the treating physician within the time window outlined by the current rule.</p> <p>LACY believes, due to the various time</p>	<p>After considering overall commentator responses, the committee recommends including notice requirements for the <i>Indian child’s tribe</i>, without making a distinction as to whether or not the tribe has intervened. Therefore, the committee does not agree with including language that limits notice to an intervening tribe.</p> <p>The committee recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child’s tribe is required in cases “where a child has been determined to be an Indian child”; and including federal and state statutory references which provide further definition and context for the term <i>Indian child’s tribe</i>.</p> <p>No response required.</p> <p>The committee agrees that it is appropriate, based</p>

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			<p>restrictions placed at various points of this process, that the easiest possible services should be allowed. Whereas requests are typically routed through the child welfare worker, allowing that worker to serve the request electronically to the attorney and, if necessary, the party, would be acceptable.</p> <p>Phone service should be allowed, but only in circumstances where service through another method cannot be effected within a short time frame.</p> <p>LACY supports limiting the application of these notice provisions to intervening tribes for two reasons. First, an intervening tribe has taken the step of being actively involved in the case planning and placement of the child. It would be important for that tribe, in pursuit of these goals, to have a voice in something as critical as</p>	<p>on section 1010.6 of the Code of Civil Procedure, to add an electronic service option to form JV-221. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable.</p> <p>To be consistent with current law, the committee recommends adding an “electronic service” check box that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of notice, as provided in rule 5.640(c)(3).</p> <p>The committee agrees that service “by phone” should continue to be a check box option on the form because commentators have responded that this option is being used at a local level. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable. As stated in rule 5.640(c)(3), local county practice and local rules of court can determine the provision of notice (except as otherwise provided in rule 5.640), and therefore can identify specific protocols related to this type of service.</p> <p>See response above regarding inclusion of tribal notice requirements. While there will be an impact on court agency resources to require additional notice requirements for tribes, this impact is likely to be minimal and must be considered against the benefit of giving the Indian child’s tribe the opportunity to respond if psychotropic medication</p>

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			<p>administering psychotropic medication. Second, requiring notice to be sent to tribes in all cases involving Indian children would create a burden on the limited resources of the court and child welfare agencies.</p>	<p>is being sought for an Indian child. Administrative Office of the Courts' (AOC) staff may be able to provide training and technical assistance to assist courts in addressing training issues.</p>
8.	<p>Los Angeles County Counsel's Office Jim Owens Assistant County Counsel</p>	A	<p>1. Does the proposal reasonably achieve the stated purpose?</p> <p>Currently, Rule 5.640(c)(8) requires that an opposition be filed "within two court days of receiving notice" of the application. The difficulty with this is that there is no way to know whether the opposition is filed timely because the two court days starts from the time the person objecting received the notice of the PMA. As a result of In re A.S. (2012) 205 Cal.App.4th 1332, which strongly suggested that the Judicial Council reconsider the need for determining when notice is received, the proposed change would make the opposition due date be four court days from the date the notice was sent out, i.e. service date.</p> <p>Comment: The proposal does achieve the stated purpose of determining when notice is received by requiring the opposition to a PMA to be filed within four days of service of notice.</p> <p>2. Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?</p> <p>Comment: I do not see a negative or positive</p>	<p>No response required.</p> <p>No response required.</p>

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			<p>impact to the public's access to the courts.</p> <p>3. Does changing the time frame for filing an opposition in rule 5.640(c)(8) from "within two court days of receiving notice" to "within four court days of service of notice" allow parties a sufficient opportunity to timely respond, considering that the court is operating under a seven-court-day time frame to approve or deny the application or set the matter for hearing?</p> <p>Comment: Realistically speaking, the "four court days" requirement would make it difficult for anyone objecting to file his or her response by mail. It is even more difficult for anyone living outside of the State, given how long it takes to mail out notices. However, if there is a way to electronically file, or transmit by facsimile, the opposition, then it would provide a sufficient opportunity to timely respond to a PMA request.</p>	<p>After considering public comment, the committee believes that a time frame of “within four court days of service of notice” is the most appropriate time frame to balance the interests of both the parties and the court. The parties need a sufficient amount of time to respond and, if desired, file an opposition; while the court needs to have enough time to consider any response from the parties and approve, deny, or set the matter for hearing within the seven-court-day time frame.</p> <p>The committee acknowledges that service by mail is slower than other forms of service. However, based on overall commentator responses, the committee recommends using the same time frame regardless of the manner of service to avoid confusion. This is consistent with the majority of commentator responses on this issue.</p> <p>There are multiple options for providing service. The proposed revised rule and forms are designed to provide flexibility and local discretion in terms of the provision of notice and any specific</p>

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			<p>4. Should there be an added requirement that the person or persons responsible for providing notice of the pending application to administer psychotropic medication use the most expeditious manner as possible for giving notice?</p> <p>Comment: It would be helpful to have this requirement but in Los Angeles County, this is already being done. The Department of Children and Family Services ("DCFS") D-Rate Unit sends notice by mail to the parents, and the Clerk's Office provides notice to the attorneys and CASA by putting the notice in the respective agency's mail bin.</p> <p>5. Should there be a distinction made between the time frame for service by mail and other manners of service (in-person, fax, phone), in which service is completed in a shorter time frame?</p> <p>Comment: There should not be a distinction made between the time frame for service by mail and other manners of service. This would only create confusion for the individuals being served and there does not appear to be any benefit to doing so.</p> <p>6. Should service "by phone" continue to be a check box option in Proof of Notice:</p>	<p>protocols related to the manner of service.</p> <p>The committee agrees and recommends adding language in proposed revised rule 5.640(c)(3) and form JV-219-INFO to encourage the person(s) responsible for providing notice as required by local court rules or local practice protocols to use the most expeditious manner of service possible to ensure timely notice and an opportunity to respond to the pending application to administer psychotropic medication.</p> <p>The committee agrees that the same time frame should be used regardless of the manner of service to avoid confusion.</p>

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			<p>Application Regarding Psychotropic Medication (form JV-221) for notifying the child's parents/legal guardians, child's current caregiver, attorneys, and child's Court Appointed Special Advocate of a pending application to administer psychotropic medication—or should this option be deleted? Is service "by phone" being utilized at a local level?</p> <p>Comment: This issue does not apply to Los Angeles County. There is no notice by phone, only mail and placement of notices in mail bins.</p> <p>7. Should there be an "electronic service" check box option? Are courts establishing local rules and protocols with respect to electronic service in juvenile proceedings and utilizing this manner of service?</p> <p>Comment: There should be such an option for service regarding the PMAs, especially if the push is to have these requests be made electronically in the future. Currently, Los Angeles County does not have electronic service or filing of documents in place in the Juvenile Court, but it should be considered.</p>	<p>No response required.</p> <p>The committee considered commentator responses and believes that it is appropriate, based on section 1010.6 of the Code of Civil Procedure, to add an electronic service option to form JV-221. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable.</p> <p>To be consistent with current law, the committee recommends adding an "electronic service" check box that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of</p>

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			<p>8. Should both an intervening tribe and one that has not intervened but has acknowledged the child as a member of, or eligible for membership in, the tribe be subject to the notice requirements for an "Indian child's tribe"?</p> <p>Comment: Yes, the tribe should be given notice. However, it would be helpful to have the term "Indian child's tribe" be clearly defined to reflect what is in the Invitation to Comment, i.e. to include a tribe that have intervened or a tribe that have not intervened but has acknowledged the Indian child as a member of, or eligible for membership in, the tribe.</p> <p>9. How will the tribal notice requirements impact courts on a local level?</p> <p>Comment: The notice to an Indian child's tribe will result in a work load increase, and most likely, it will be incumbent on the Los Angeles County DCFS to provide such notice to the tribe. DCFS is aware of the possible change and has begun discussing how best to achieve notice to the tribes.</p>	<p>notice, as provided in rule 5.640(c)(3).</p> <p>After considering overall commentator responses, the committee recommends including notice requirements for the <i>Indian child's tribe</i>, without referencing whether or not the tribe has intervened. The committee recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child's tribe is required in cases "where a child has been determined to be an Indian child"; and including federal and state statutory references which provide further definition and context for the term <i>Indian child's tribe</i>.</p> <p>There will be a workload impact on courts and related agencies with respect to the additional noticing requirements for tribes, but the committee believes that it must be balanced with the need to notify tribes of a pending application to administer psychotropic medication to an Indian child.</p>
9.	Los Angeles County Public Defender Office Megan N. Gallow Deputy Public Defender	N/I	<p>Q: Does the proposal reasonably achieve the stated purpose?</p> <p>A: Yes.</p> <p>Q: Would the proposal have an impact on</p>	No response required.

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			<p>public’s access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?</p> <p>A: There is nothing about the proposal that suggests there would be an impact on the public’s access to the courts.</p> <p>Q: Does changing the time frame for filing an opposition in rule 5.640(c)(8) from “within two court days of receiving notice” to “within four court days of service of notice” allow parties a sufficient opportunity to timely respond, considering that the court is operating under a seven-court-day time frame to approve or deny the application or set the matter for hearing?</p> <p>A: It depends on the method of service. For in-person, fax, phone, or electronic service, the time frame seems to allow parties a sufficient opportunity to respond. However, if service is through mail, there may not be adequate time unless notice is required to be sent through a method that will guarantee next day delivery.</p>	<p>No response required.</p> <p>After considering public comment, the committee believes that a time frame of “within four court days of service of notice”—without making a distinction between the different methods of service—is the most appropriate time frame to balance the interests of both the parties and the court. The parties need a sufficient amount of time to respond and, if desired, file an opposition; while the court needs to have enough time to consider any response from the parties and approve, deny, or set the matter for hearing within the seven-court-day time frame.</p> <p>The committee also recommends adding language in rule 5.640(c)(3) and form JV-219-INFO to encourage the person(s) responsible for providing notice to use the most expeditious manner of</p>

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	Commentator	Position	Comment	Committee Response
			<p>Q: Should there be an added requirement that the person or persons responsible for providing notice of the pending application to administer psychotropic medication use the most expeditious manner as possible for giving notice?</p> <p>A: Yes.</p> <p>Q: Should there be a distinction made between the time frame for service by mail and other manners of service (in-person, fax, phone), in which service is completed in a shorter time frame?</p> <p>A: No.</p> <p>Q: Should service “by phone” continue to be a check box option in Proof of Notice: Application Regarding Psychotropic Medication (form JV-221) for notifying the child’s parents/legal guardians, child’s current caregiver, attorneys, and child’s Court Appointed Special Advocate of a pending</p>	<p>service possible to ensure timely notification and an opportunity to respond to a pending application to administer psychotropic medication.</p> <p>See the response immediately above. The committee agrees and recommends adding such language in rule 5.640(c)(3) and form JV-219-INFO.</p> <p>The committee agrees and recommends that the same time frame be used regardless of the manner of service to avoid confusion.</p>

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			<p>application to administer psychotropic medication - or should this option be deleted? Is service “by phone” being utilized at a local level?</p> <p>A: This should continue to be a method of service due to the fact that not all parents/legal guardians and/or current caretakers have access to a fax machine or a computer. However, if notice is given by phone it should be required that notice be given by mail as well.</p> <p>Q: Should there be an “electronic service” check box option? Are courts establishing local rules and protocols with respect to electronic service in juvenile proceedings and utilizing this manner of service?</p> <p>A: Yes, electronic service should be an option. The Public Defender currently receives electronic service in some matters.</p>	<p>The committee agrees that service “by phone” should continue to be a check box option on the form. Overall, commentators have responded that this option is being used at a local level, and this commentator raises a good point regarding access. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable. As stated in rule 5.640(c)(3), local county practice and local rules of court can determine the provision of notice (except as otherwise provided in rule 5.640), and therefore can identify specific protocols related to this type of service. It is up to local discretion and local protocol to determine if two forms of service are necessary if phone is used as a manner of service.</p> <p>The committee agrees that it is appropriate to add an electronic service option to form JV-221. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable.</p> <p>To be consistent with current law, the committee recommends adding an “electronic service” check</p>

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			<p>Q: Should both an intervening tribe and one that has not intervened but has acknowledged the child as a member of, or eligible for membership in, the tribe be subject to the notice requirement for an “Indian child’s tribe”?</p> <p>A: The Public Defender does not take a position either way.</p> <p>Q: How will the tribal notice requirements impact courts on a local level?</p> <p>A: The Public Defender does not have the information required to make an educated guess on the impact this notice will have on the courts in Los Angeles County. The Public Defender of Los Angeles County would like to comment on the notice that is required to be given to the District Attorney if an Opposition to Application Regarding Psychotropic Medication (form JV-222) is filed. It is the position of the Public Defender that such notice is a violation of the provisions set forth in Welfare and Institutions Code section 5328 and the minor’s physician-patient privilege as set forth in Evidence Code sections 992 and 994. The treatment a minor receives while a ward of</p>	<p>box that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of notice, as provided in rule 5.640(c)(3).</p> <p>No response required.</p> <p>In rule 5.640(c)(9) and <i>Information About Psychotropic Medication Forms</i> (form JV-219-INFO), it states that the court clerk must give notice to the district attorney, if the child is a ward of the court, when the court sets a hearing regarding the psychotropic medication application. This notice is supposed to include “notice of the date, time, and location of the hearing.” It does not state anything further. The district attorney is not included in the notice provisions in rule 5.640(c)(7).</p>

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			<p>the juvenile court is confidential. (Welf. & Inst. Code, §5328.) Civil Code section 56.103, subdivision (a), and Welfare and Institutions Code section 5328.04, subdivision (a), permit a provider to disclose to a probation officer or a social worker privileged information “for the purpose of coordinating health care services and medical treatment.” However, each of these sections also states that the information “cannot be admitted into evidence in any criminal or delinquency proceeding.” (Civ. Code, § 56.103, subd. (d); Welf. & Inst. Code, § 5328.04, subd. (c).) The District Attorney does not play a role in determining whether a minor should receive psychotropic medication; nor does the District Attorney coordinate health care services and medical treatment for the minor. As such, the District Attorney is not entitled to notice if one of the interested parties objects to the minor receiving psychotropic medication. The Public Defender respectfully requests the Judicial Council to review the notice requirements when an Opposition to Application Regarding Psychotropic Medication (form JV-222) is filed and to delete the portion requiring notice to be given to the District Attorney.</p>	
10.	Orange County Bar Association Wayne R. Gross President	AM	Recommend adding box providing for electronic service.	The committee agrees that it is appropriate, based on section 1010.6 of the Code of Civil Procedure, to add an electronic service option to form JV-221. The proposed revised rule and forms are designed to be as flexible for local courts as is practicable.

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			Recommend that term “Indian Child” be defined as one whose tribe has intervened or acknowledged that the child is a member.	<p>To be consistent with current law, the committee recommends adding an “electronic service” check box that may be used if there is a court order or agreement by a party to accept electronic service. Local county practice and local rules of court can further determine the procedures for completing and filing the forms and for the provision of notice, as provided in rule 5.640(c)(3).</p> <p>After considering overall commentator responses, the committee recommends including notice requirements for the <i>Indian child’s tribe</i>, without referencing whether or not the tribe has intervened. The committee recommends adding language to rule 5.640(c)(7) to clarify that notice to the Indian child’s tribe is required in cases “where a child has been determined to be an Indian child”; and including federal and state statutory references which provide further definition and context for the term <i>Indian child’s tribe</i>.</p>
11.	Superior Court of Los Angeles County Los Angeles County Superior Court	A	No specific comments received.	No response required.
12.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment received.	No response required.
13.	Superior Court of Tulare County	A	In favor of the changes proposed. The revisions would allow for a shorter time frame for filing an opposition for psychotropic medications. It would also notify federally recognized tribes if psychotropic medications are being sought for an Indian child.	No response required.
14.	Trial Court Presiding Judges Advisory Committee/CEAC Joint Rules Working	A	Operational impacts identified by the working group:	The committee agrees that the proposed notice requirements will impact courts and the person or

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	Group		<p>1. Potential Fiscal Impact Courts would incur a very slight increase in mailing costs and slight increase in clerk workload to notify tribes and additional parties. For those courts providing forms and packets to the public, there would be an initial and minimal charge to replace current forms with revised forms. Courts may have a minimal cost to train staff including time to write revised internal procedures and retraining current clerks to comply with all notice requirements.</p> <p>Even though courts support this requirement and see the need for the rule change, courts that do not have a dedicated juvenile department or operating at reduced staffing due to budget reductions see this as another task and training issue for which causes operational concerns. The new requirements would burden these courts due to lack of staffing and resources.</p> <p>For courts where County Counsel would be doing the noticing, courts may need to contact their County Counsel to apprise them with the new requirement and revised forms. Some training may also be required and should be included in the annual trainings for dependency counsel.</p> <p>For counties where courts refer psychotropic medication requests to a panel of psychiatrists for review of the propriety of the recommended medication, there is a challenge to meeting</p>	<p>persons responsible for providing notice under local court rules or local practice protocols. The proposal includes a revised time frame for notice as well as an added requirement to notify tribes. This will likely result in minimal implementation costs and a slight increase in workload for the person or persons providing notice to the parties and attorneys. It may also necessitate training of staff to comply with the revised requirements. Administrative Office of the Courts' (AOC) staff can provide training and technical assistance to courts to address concerns regarding the potential fiscal cost of training staff.</p>

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			<p>existing deadlines that would be affected by this change in some cases.</p> <p>Overall, this is a good rule change.</p> <p>2. Impact on Existing Automated Systems Courts using Sustain would not be impacted since this is an existing form. There are no coding changes required unless a court prints the form(s) being updated from the CMS. The new forms would need to be added but the time required would be minimal.</p> <p>Other CMS: Since this proposal does not include the merging or division of forms, there would only be minimal recoding required.</p> <p>3. Create the Need for Additional Training, Which Requires the Commitment of Staff Time and Court Resources Training is anticipated to be very minimal. Court staff may need to be oriented on new procedures and revised forms. However, this is a training issue for courts facing severe staff reductions that do not have the ability to take staff out of court to attend trainings.</p> <p>4. Increase Court Staff Workload The proposed rule change and revised forms may have a very minimal impact to those courts responsible for providing the notices to additional parties. However, for smaller courts that do not have a dedicated juvenile department, this is another new requirement that</p>	

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			<p>courts will have to struggle to keep up due to lack of staffing and resources.</p> <p>5. Create An Impact on Local or Statewide Justice Partners The proposed rule change may have a minimal impact on the local justice partners that are responsible for completing the Proof of Notices. It may be possible that the Court Protective Service Agency or Probation Department may see an increase in workload due to the additional notice requirements for Indian tribes.</p> <p>6. Implementation Two months is a sufficient amount of time to implement the proposed change.</p> <p>7. Any Other Major Fiscal or Operational Impacts Positive Impact: The concept of using the service date rather than the receipt date as the starting point for counting the time for response is much easier to calculate and conforms to other areas of practice.</p> <p>The proposal to change the service of process time to “within four court days of service of notice” is much more definitive.</p> <p>The firm timeline should be an improvement. ICWA notification adds a small burden in delinquency and a far greater burden in dependency.</p>	