



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

Title	Agenda Item Type
Juvenile Dependency: Attorney Training	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.660	January 1, 2015
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 15, 2014
Hon. Jerilyn L. Borack, Cochair Hon. Kimberly J. Nystrom-Geist, Cochair	Contact Corby Sturges, 415-865-4507 corby.sturges@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.660 to conform to a recent statutory change to the education and training requirements for attorneys appointed to represent children in juvenile dependency proceedings. Assembly Bill 868 amended section 317(c) of the Welfare and Institutions Code, effective January 1, 2014, to require that this training include instruction on sensitivity to the needs of lesbian, gay, bisexual, and transgender youth. The proposed amendment would add this topic to those required by the rule and make other minor, nonsubstantive modifications to clarify the text.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015, amend rule 5.660(d)(3) to clarify that training for an attorney appointed to represent a child in dependency proceedings must include instruction on “cultural competency and sensitivity relating to, and best practices for, providing care to lesbian, gay, bisexual, and transgender youth in out-of-home care.”

The text of the amended rule is attached at pages 6–7.

Previous Council Action

The Judicial Council adopted rule 5.660 as rule 1438, effective January 1, 1996. The rule has since been amended six times, most significantly in July 2001 in response to Senate Bill 2160 (Stats. 2000, ch. 450). SB 2160 directed the council to “promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel” in dependency proceedings. The rule was renumbered as 5.660, effective January 1, 2007, as part of a global reorganization of the rules of court.

Rationale for Recommendation

Assembly Bill 868 (Stats. 2013, ch. 300) amended section 68553 of the Government Code and sections 102(d), 304.7(a), and 317(c) of the Welfare and Institutions Code¹ to incorporate additional required elements into training and education programs for family and juvenile court judicial officers, Court Appointed Special Advocate (CASA) volunteers, and court-appointed attorneys representing children in juvenile dependency proceedings. All of the amended code sections implicate topics addressed by certain rules of court or standards of judicial administration. Sections 102(d) and 317(c) expressly require the Judicial Council to implement their respective mandates by adopting rules of court.² However, because of the manner in which the council has exercised its authority with respect to education standards and requirements for judicial officers and CASA volunteers, only rule 5.660, covering training for court-appointed attorneys, requires amendment.

Rule 5.660. Section 4 of AB 868 amends section 317(c) to require that the mandatory training for court-appointed dependency attorneys for children, established by rule of court, “include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender [LGBT] youth in out-of-home care.” (Welf. & Inst. Code, § 317(c).) Rule 5.660(d), which establishes experience and education requirements for attorneys appointed in juvenile dependency proceedings as required by sections 317, 317.5, and 317.6, lists, by topic, the information that must be included in training for these attorneys. It does not currently include the requirement added by section 4 of AB 868. Failing to include the new requirement in rule 5.660(d) would be inconsistent with the statutory change. The committee therefore recommends amending the rule to include the new requirement.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2014 invitation-to-comment cycle from April 18 to June 18. The committee received 8 comments on this proposal.³ All

¹ All further statutory citations refer to the Welfare and Institutions Code unless otherwise specified.

² Government Code section 68553, which applies to Judicial Council training programs for family court bench officers and professionals, and section 304.7, which applies to Judicial Council training standards for juvenile dependency judges and subordinate judicial officers, do not expressly require implementation through rules of court.

³ A chart providing the full text of the comments and the committee responses is attached at pages 8–12.

commentators agreed with the proposal; one suggested modifications. No commentators disagreed with the proposal.

The California CASA Association (CalCASA) first suggested amending rule 5.660(d)(1) and (d)(3) to require all attorneys, regardless of their level of experience, to receive training on serving LGBT youth before they are appointed to represent children. Recognizing that rule 5.660(d)(3) permits attorneys who have sufficient recent experience to be appointed in dependency proceedings without having fulfilled the eight-hour initial training requirement, CalCASA argued that “the intent of AB 868 was to ensure that all appointed attorneys had training to competently serve LGBT youth in out-of-home care—and not [to] exempt those who ‘have sufficient recent experience.’”

The committee does not recommend the suggested amendments because they appear to impose requirements beyond those required by AB 868 and, therefore, beyond the scope of this proposal. Section 4 of AB 868 refers expressly and exclusively to the council’s “training requirements” for counsel appointed to represent a child. There is no suggestion in the text or the legislative history of AB 868 that the Legislature intended to impose training or experience requirements on dependency counsel broader than those expressed. If the Legislature had so intended, it could have also amended section 317.6, which requires the council to establish minimum standards of experience and education for competent counsel in dependency proceedings.

CalCASA also suggested amending standards 5.30, 5.40, 10.12, and 10.13 of the Standards of Judicial Administration to reflect the “new training requirements” for judicial officers in section 304.7. The committee has reviewed the rules of court addressing minimum education requirements for judges and subordinate judicial officers as well as the applicable standards of judicial administration. The committee does not recommend amending these standards at this time. The committee believes that rules 10.469(c) and 10.701(c), by directly referencing section 304.7, appropriately incorporate that section’s requirements for training each judge or subordinate judicial officer “who hears juvenile dependency matters.” Subdivision (a) of section 304.7 imposes duties on the Judicial Council rather than on judicial officers. The council’s Center for Judiciary Education and Research (CJER) has already updated its curricula for juvenile court bench officers to comply with section 304.7(a). Subdivision (b) requires subordinate judicial officers to meet the standards in (a). Rule 10.701(c) affirms the application of this requirement to subordinate judicial officers.

Alternatives considered

The committee considered whether sections 1, 2, and 3 of AB 868 required conforming amendments to the rules of court or standards of judicial administration. For the reasons discussed below, the committee concluded that they do not and therefore does not propose any further amendments to the rules or standards in response to AB 868.

CASA programs and rule 5.655. Section 2 of AB 868 amends section 102(d) to require the Judicial Council’s rules establishing an “initial and ongoing training program” for CASA

volunteers to include instruction on “[c]ultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.” (Welf. & Inst. Code, § 102(d).) Rule 5.655, which establishes guidelines for local CASA programs, incorporates the mandatory training topics in section 102(d) by referring directly to that code section, as currently in effect, rather than listing the topics. (See Cal. Rules of Court, rule 5.655(d).) Therefore, no amendment to rule 5.655 is required to conform to AB 868.

The committee noted, however, that although rule 5.655(d), which covers initial training, incorporates section 102(d)’s requirements by reference, rule 5.655(i), which covers ongoing training, does not. The committee considered proposing an amendment to fill this apparent gap, but ultimately concluded that no change was warranted. First, the rule is not directly affected by AB 868. Section 102(d) has used the language “initial and ongoing training program” since it was enacted in 1988. (Assem. Bill 4445; Stats. 1988, ch. 723, § 5.) Rule 5.655(i) has never listed topics required for ongoing training since its adoption, as rule 1424, in 1995. Second, the Judicial Council has received no indication that this omission has led to any shortcomings in the ongoing training provided to CASA volunteers. Indeed, when rule 1424 underwent extensive amendment in 2004, the continued omission of mandatory topics from the ongoing training requirements provoked no comment.

Other training rules. Several rules of court in title 5⁴ and title 10⁵ address training and education requirements for judicial officers and court-connected professionals who perform duties in family law matters. After reviewing the statutory language, legislative history, and current rules of court, the committee does not recommend amending these rules.

Section 1 of AB 868 amends section 68553 of the Government Code to require the Judicial Council to include, in its training programs for specific court officers who perform duties in family law matters, instruction on the effects of gender identity and sexual orientation on family law proceedings. This amendment does not require any specific action by family law judicial officers or court personnel. The Judicial Council can comply with these mandates by ensuring that its family law training programs include the required elements. No amendment of the rules is needed.

In a similar way, section 3 of AB 868 amends section 304.7(a) of the Welfare and Institutions Code to require the council to include, in standards for the education of juvenile dependency judges, instruction on “cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.” Although judges are not required to complete this training, section 304.7(b) does require subordinate judicial officers assigned to dependency hearings to do so. The council has already implemented this requirement

⁴ See rule 5.210 (custody mediators), rule 5.225 (custody evaluators), rule 5.242 (family law children’s counsel), rule 5.340 (child support commissioners), and rule 5.430 (family law facilitators).

⁵ See rule 10.462 (all trial judges and subordinate judicial officers), 10.463 (family court judges and subordinate judicial officers), 10.469 (training recommendations), and 10.701 (subordinate judicial officers).

through references to section 304.7(b) in rules 10.469(c) and 10.701(c).⁶ No further amendment is needed.

Implementation Requirements, Costs, and Operational Impacts

To the extent that they have not already done so in response to AB 868, providers of legal education and training for dependency attorneys will need to incorporate instruction on sensitivity to and care for lesbian, gay, bisexual, and transgender youth into their curricula. The committee does not anticipate that this requirement will lead to any significant cost or operational impact on the courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal promotes Goal I, Access, Fairness, and Diversity, by removing a barrier to access by LGBT youth; Goal III, Modernization of Management and Administration, by bringing rule 5.660 into conformance with the amended statutes; and Goal IV, Quality of Justice and Service to the Public, by enabling the juvenile courts to receive the information they need to tailor dispositions that meet the needs of LGBT youth more effectively.

Attachments and Links

1. Cal. Rules of Court, rule 5.660, at pages 6–7
2. Chart of comments, at pages 8–12
3. Assembly Bill 868 (Stats. 2013, ch. 300),
leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB868

⁶ Court-connected juvenile dependency mediators, for whom rule 5.518(e) establishes minimum training requirements, are not addressed by AB 868. In addition, rule 5.518(e)(3)(I) already includes a requirement that dependency mediators receive training on awareness of differing cultural values. For these reasons, no amendment to rule 5.518 is proposed.

Rule 5.660 of the California Rules of Court is amended, effective January 1, 2015, to read:

1 **Rule 5.660. Attorneys for parties (§§ 317, 317.5, 317.6, 353, 366.26, 16010.6)**

2
3 (a)–(c) * * *

4
5 (d) **Competent counsel**

6 * * *

7
8
9 (1)–(2) * * *

10
11 (3) *Experience and education*

12
13 (A) Only those attorneys who have completed a minimum of eight hours of
14 training or education in the area of juvenile dependency, or who have
15 sufficient recent experience in dependency proceedings in which the
16 attorney has demonstrated competency, may be appointed to represent
17 parties. Attorney training must include:

18
19 (i) ~~In addition to a summary~~ An overview of dependency law and
20 related statutes and cases;

21 (ii) ~~training and education for attorneys must include~~ Information on
22 child development, child abuse and neglect, substance abuse,
23 domestic violence, family reunification and preservation, and
24 reasonable efforts; and

25 (iii) For any attorney appointed to represent a child, instruction on
26 cultural competency and sensitivity relating to, and best practices
27 for, providing adequate care to lesbian, gay, bisexual, and
28 transgender youth in out-of-home placement.

29
30 (B) Within every three years, attorneys must complete at least eight hours
31 of continuing education related to dependency proceedings.

32
33 (4)–(6) * * *

34
35 (e)–(g) * * *

36
37 **Advisory Committee Comment**

38 * * *

39
40
41 Nothing in this rule is intended to ~~expand~~ extend the permissible scope of any judicial inquiry
42 into an attorney's reasons for declining to represent one or more siblings or requesting to
43 withdraw from representation of one or more siblings, due to an actual or reasonably likely

1 conflict of interest. (See ~~Cal. Bar Rules, Prof. Conduct R 3-310, Subd (C)~~. State Bar Rules Prof.
2 Conduct, rule 3-310(C).) While the court has the duty and authority to inquire as to the general
3 nature of an asserted conflict of interest, it cannot require an attorney to disclose any privileged
4 communication, even if such information forms the basis of the alleged conflict. (*In re James S.*
5 (1991) 227 Cal.App.3d 930, 934; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592–593.)

SPR14-14

Juvenile Dependency: Attorney Training (amend rule 5.660)

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

	Commentator	Position	Comment	Committee Response
1.	California CASA Association by Phil Ladew, Associate and Legal Director Oakland	AM	<p>1. Rule 5.660(d)(3) Pursuant to Rule 5.600(d)(3), a court may appoint an attorney who has 1) completed the 8 hours of training/education OR 2) sufficient recent experience in dependency proceedings. The proposed amendment only requires training on LGBT issues if the attorney fits into the first category – i.e. completed the 8 hours of training/education.</p> <p>However, the intent of AB 868 was to ensure that all appointed attorneys had training to competently serve LGBT youth in out-of-home care – and not exempt those who have “have sufficient recent experience.”</p> <p>Suggestion: Amend Rule 5.660(d)(1) to read: (1)Definition "Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, <i>received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care</i>, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.</p>	<p>Please refer to responses to specific comments, below.</p> <p>The committee does not recommend the suggested amendments because they appear to impose requirements beyond those required by AB 868 and, therefore, beyond the scope of this proposal. Section 4 of AB 868 refers expressly and exclusively to the council’s “training requirements” for appointed counsel for a child. There is no suggestion in the text or the legislative history of AB 868 that the Legislature intended to impose training or experience requirements on dependency counsel broader than those expressed. If the Legislature had so intended, it could have also amended section 317.6, which requires the council to establish minimum standards of experience and education for competent counsel in dependency proceedings.</p>

SPR14-14

Juvenile Dependency: Attorney Training (amend rule 5.660)

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

	Commentator	Position	Comment	Committee Response
			<p>Suggestion: Amend Rule 5.660(d)(3) to read: (3)Experience and education Only those attorneys who have <i>received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care, and either 1) completed a minimum of eight hours of training or education in the area of juvenile dependency, or 2) who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys must complete at least eight hours of continuing education related to dependency proceedings.</i></p> <p>2. Rule 5.660(d)(3) The proposed amendment language regarding the out-of-home care subject matter does not mirror the statute (i.e. 317(c)). Why is this? The language in statute is clear and easy to understand.</p> <p>Suggestion: Mirror the language of the statute. Instead of “Instruction on cultural competency and sensitivity relating to lesbian, gay, bisexual,</p>	<p>The committee does not recommend the suggested amendments because they appear to impose requirements beyond those required by AB 868 and, therefore, beyond the scope of this proposal. Section 4 of AB 868 refers expressly and exclusively to the council’s “training requirements” for appointed counsel for a child. There is no suggestion in the text or the legislative history of AB 868 that the Legislature intended to impose training or experience requirements on dependency counsel broader than those expressed. If the Legislature had so intended, it could have also amended section 317.6, which requires the council to establish minimum standards of experience and education for competent counsel in dependency proceedings.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into its recommendation.</p>

SPR14-14

Juvenile Dependency: Attorney Training (amend rule 5.660)

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

	Commentator	Position	Comment	Committee Response
			<p>and transgender youth, and on best practices for providing adequate care to these youth when they are placed out of their homes” have the rule read, “Instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.”</p> <p>3. Omission: Standards for AB 868 and Welf. & Inst. Code § 304.7 While not related to “attorney training,” AB 868 also amended Welf. & Inst. Code, § 304.7, which affects standards for training and education of judges. However, there does not seem to be any suggestion from the Judicial Council to amend the Standards of Judicial Administration.</p> <p>Here are my two thoughts. First, the Standards of Judicial Administration should be reviewed and amendments considered to reflect the new training topics in AB 868. Second, when amending the standards, care should be taken to ensure that all dependency bench officers are afforded this specific training topic. For example, Standard 10.12 discusses training for judicial officers “whose principal judicial assignment” is family or juvenile dependency. Std. 10.12, subd. (b) and (c). However, Welf. 304.7 applies to “all judges who conduct hearings pursuant to Section 300,” which is a larger group.</p>	

SPR14-14**Juvenile Dependency: Attorney Training** (amend rule 5.660)

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

	Commentator	Position	Comment	Committee Response
			Suggestion: Amend Standards of Judicial Administration 10.12, 10.13 sub. (2) and (3), and consider amending 5.30 and 5.40 to reflect the new training requirements.	The committee has reviewed the rules of court addressing minimum education requirements for judges and subordinate judicial officers as well as the applicable standards of judicial administration. The committee does not recommend amending standards 5.30, 5.40, 10.12, or 10.13 at this time. The committee believes that rules 10.469(c) and 10.701(c), by directly referencing section 304.7, appropriately incorporate that section’s requirements for training each judge or subordinate judicial officer “who hears juvenile dependency matters.” Subdivision (a) of section 304.7 imposes duties on the Judicial Council rather than on judicial officers. The council’s Center for Judiciary Education and Research (CJER) has already updated its curricula for juvenile court bench officers to comply with section 304.7(a). Subdivision (b) requires subordinate judicial officers to meet the standards in (a). Rule 10.701(c) affirms the application of this requirement to subordinate judicial officers.
2.	Child Welfare Services, San Diego County by Leesa Rosenberg, PSP Manager	A	No specific comment.	No response required.
3.	Office of the County Counsel by Dawyn Harrison, Assistant County Counsel—Chief Deputy, Dependency Los Angeles	A	No specific comment.	No response required.
4.	State Bar of California, Executive Committee of the Family Law Section (FLEXCOM) San Francisco	A	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal.	No response required.
5.	State Bar of California, Standing Committee on the Delivery of Legal	A	Amending rule 5.660 would make the training for dependency advocates conform to recently	No response required.

SPR14-14**Juvenile Dependency: Attorney Training** (amend rule 5.660)

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	Commentator	Position	Comment	Committee Response
	Services by Maria Livingston, Vice Chair San Francisco		amended rules.	
6.	Superior Court of Los Angeles County	A	<p>No direct cost savings to court.</p> <p>No CMS changes.</p> <p>Training required for attorneys. There is likely not sufficient time for implementation within two months from Judicial Council approval of this proposal until its effective date. Training will need to be developed and approved. Should be no problem staying in compliance with 3-year training requirement per Rule 5.660(d)(3) for counsel.</p>	<p>No response required.</p> <p>No response required.</p> <p>The committee has recommended amending rule 5.660(d) to conform to AB 868's amendment of section 317(c) of the Welfare & Institutions Code, effective January 1, 2014, to require that training for attorneys representing children in dependency proceedings include instruction in sensitivity to and care for LGBT youth. Although the rule takes effect only two months after the council's action, attorneys will have had a full twelve months from the requirement's effective date to acquire the necessary training. Many training providers have already incorporated the required instruction into their courses. The committee does not, therefore, recommend an extension of time to comply with the rule amendments.</p>
7.	Superior Court of Riverside County	A	Agree with proposal.	No response required.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	Agree with proposal.	No response required.