

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR19-03

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**Title**

Appellate Procedure: Advisement of  
Appellate Rights in Juvenile Cases

**Action Requested**

Review and submit comments by June 10, 2019

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 5.590 and  
approve form JV-805-INFO

**Proposed Effective Date**

January 1, 2020

**Contact**

Christy Simons, 415-865-7694  
[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Judicial Council staff  
Christy Simons, Attorney

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### Executive Summary and Origin

To promote greater awareness of parents' and legal guardians' appellate rights in juvenile court proceedings, the Appellate Advisory Committee proposes amending the rule regarding advisement of appellate rights to remove the limitation that the court need only provide this information to parents and guardians who are present at the hearing that resulted in the judgment or order. The committee also proposes the adoption of a new optional form notice for clerks to send with court orders following a hearing to provide the advisement. This proposal originated with a suggestion from an attorney in San Diego.

### Background

Rule 5.590 of the California Rules of Court<sup>1</sup> governs advisement of the right to review in Welfare and Institutions Code section 300, 601, and 602<sup>2</sup> cases (i.e., juvenile dependency and delinquency cases). Subdivision (a) of the rule provides: "If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of

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<sup>1</sup> All further rules references are to the California Rules of Court.

<sup>2</sup> All further unspecified statutory references are to the Welfare and Institutions Code.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

sufficient age, and, if present, the parent or guardian of” the right to appeal, if there is one; the steps and timing of an appeal; and an indigent appellant’s rights to appointed counsel and a free copy of the transcript.<sup>3</sup>

This rule was adopted in 1973 as rule 251 in response to a request by the State Bar’s Board of Governors for a rule requiring juvenile court judges and referees to advise minors, and their parents or guardians, of the *minors’* appeal rights.<sup>4</sup> The initial focus of the rule was on ensuring that minors would be advised of their appellate rights in delinquency cases, although the rule that was adopted was not limited to delinquency proceedings.<sup>5</sup> In 1978, the rule was amended to apply specifically to juvenile court proceedings in which the minor is found to be a person described by section 300, 600, or 601. The “if present” limitation on providing the advisement to a minor’s parent or guardian has been part of the rule since its inception.<sup>6</sup> Over time, the language of the rule has changed little, but its application has expanded to include the appellate rights of parents and guardians, particularly in juvenile dependency proceedings.

The requirement in rule 5.590(a) that a parent must be present at the hearing to receive an advisement of appellate rights was recently challenged by a parent in a dependency case. In *In re A.A.* (2016) 243 Cal.App.4th 1220, the mother was not present for the continued jurisdictional hearing, did not appeal the dispositional orders, and, following termination of her parental rights, challenged the juvenile court’s failure to advise her of her right to appeal the disposition. The Court of Appeal rejected her contentions, concluding that a parent does not have a constitutional due process right to be advised of the right to appeal, and that, under rule 5.590(a), mother was not entitled to an advisement because she was not present at the hearing. (*Id.* at pp. 1236–1239.)

Following this decision, counsel for the mother in *In re A.A.* submitted the suggestion that rule 5.590(a) be amended to remove the requirement that a parent be present to receive an advisement of appellate rights.

The Family and Juvenile Law Advisory Committee responded by proposing a notice on certain forms to notify parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing. Effective January 1, 2018, certain JV forms (e.g., JV-415, JV-430, and JV-435) were revised by the Judicial Council to include the following language:

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions

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<sup>3</sup> Subdivision (b) addresses advisement of the requirement to seek a writ to preserve appellate rights when the court orders a hearing under section 366.26.

<sup>4</sup> Judicial Council of Cal., staff rep., *Report and Recommendation Concerning Advising Juveniles of Their Appeal and Rehearing Rights* (Oct. 11, 1972), at p. 1.

<sup>5</sup> *Id.* at pp. 3–7.

<sup>6</sup> *Id.* at pp. 7–8.

made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

## **The Proposal**

### **Rule**

The Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, proposes amending rule 5.590(a) to remove the “if present” limitation so parents and guardians will be advised of their appellate rights whether they are present for the hearing or not. Removing the limitation will promote greater awareness on the part of parents and guardians of their right to appeal juvenile court orders. This is particularly important in dependency cases where parents are parties and have appeal rights at all stages of the proceedings. (See Welf. & Inst. Code, § 395.) Other rules that provide for parental advisement of appellate rights do not limit the notice to parents who are present at the hearing.<sup>7</sup> In addition, the committee recognizes that there are any number of reasons why a parent or guardian may not be present at a hearing, including reasons related to the court’s dependency jurisdiction, medical issues, transportation issues, and so on.

### **Notice**

The committee also proposes a new, optional form notice for courts to send after a hearing to provide the advisement of appellate rights, *Information Regarding Appeal Rights* (form JV-805-INFO). The committee recognizes that the rule amendment would require courts to provide the appellate rights advisement to parents and guardians who are not present at hearings, and the new form is intended to assist with that requirement. The form advises litigants of the right to appeal, the steps and time for taking an appeal, and the rights of indigent appellants regarding appointed counsel and a free copy of the transcript.

### **Alternatives Considered**

The committee considered whether no rule amendment was necessary in light of the information added to certain JV forms advising parties to consult with their attorneys regarding the right of appeal. However, the committee decided to propose the rule amendment because it concluded that removing the limitation would better promote parties’ awareness of their appellate rights.

The committee also considered a suggestion to amend rule 5.590(a) to better track the statutory right to appeal as provided in section 395. Based on feedback from the Family and Juvenile Law Advisory Committee, the committee declined to pursue the suggestion because there is no

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<sup>7</sup> See rule 5.542(f) (judge must advise, “either orally or in writing, the child, parent or guardian” of appellate rights following denial of an application for rehearing of a proceeding heard by a referee); rule 5.590(b) (advisement of requirements for writ petition to preserve appellate rights must be sent by the clerk to any party not present at the hearing within one day of the court’s order); and rule 5.590(c) (advisement of appellate rights must be provided orally and in writing to all parties when the court grants a petition transferring a case to tribal court).

indication that juvenile courts read the rule so narrowly as to only provide an advisement of appellate rights following disposition hearings or that courts or parties are confused or unsure about which findings and orders are appealable.

The committee also looked into a suggestion to correct an error in an advisory committee comment to rule 5.590, but the proponent provided no details and the committee found no error.

Lastly, the committee considered not developing a form notice, but concluded that a form would assist courts in providing the advisement that would be required by the rule amendment.

## **Fiscal and Operational Impacts**

The proposal would require courts to send an advisement of appellate rights to parents and legal guardians who did not attend a hearing. One option for implementation would be for courts to include the new form when sending findings and orders to the parties following a hearing.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?
- Should the form include any other information regarding appellate rights?
- If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing? (See links below.)

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

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

## **Attachments and Links**

1. Cal. Rules of Court, rule 5.590, at page 6

2. Form JV-805-INFO, at page 7

Links to related forms not part of proposal:

3. Link to form [JV-415](#), Findings and Orders After Dispositional Hearing (Welf. & Inst. Code, § 361 et seq.)
4. Link to form [JV-430](#), Findings and Orders After Six-Month Status Review Hearing (Welf. & Inst. Code, § 361.21(e))
5. Link to form [JV-435](#), Findings and Orders After 12-Month Permanency Hearing (Welf. & Inst. Code, § 366.21(f))
6. Link to form [JV-440](#), Findings and Orders After 18-Month Permanency Hearing (Welf. & Inst. Code, § 366.22)
7. Link to form [JV-455](#), Findings and Orders After 24-Month Permanency Hearing (Welf. & Inst. Code, § 366.25)

Rule 5.590 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 5.590. Advisement of right to review in Welfare and Institutions Code section**  
2 **300, 601, or 602 cases**

3  
4 **(a) Advisement of right to appeal**

5  
6 If at a contested hearing on an issue of fact or law the court finds that the child is  
7 described by Welfare and Institutions Code section 300, 601, or 602 or sustains a  
8 supplemental or subsequent petition, the court after making its disposition order  
9 other than orders covered in (b) must advise, orally or in writing, the child, if of  
10 sufficient age, and, ~~if present,~~ the parent or guardian of:

11  
12 (1)-(4) \* \* \*

13  
14 **(b)-(c) \* \* \***  
15  
16

**1 Appealability**

A judgment in a proceeding under section 300, 600, or 602 of the Welfare and Institutions Code may be appealed in the same manner as any final judgment, and any later order may be appealed as an order after judgment.

A judgment or later order entered by a referee or commissioner becomes appealable whenever proceedings under section 252, 253, or 254 have completed or, if proceedings under section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

**2 Steps and Time for Taking an Appeal**

To appeal from a judgment or an appealable order of this court, you must file a written notice of appeal within 60 days after rendition of the judgment or the making of the order being appealed, or, in matters heard by a referee or commissioner, within 60 days after the order of the referee or commissioner becomes final. You may use *Notice of Appeal—Juvenile* (form JV-800) for this purpose.

The notice of appeal must be filed in this court, not the Court of Appeal. The notice must clearly state that you are appealing, identify the judgment or order by date or describe it, and indicate whether you are appealing the entire judgment or order, or just part of it. You or your attorney must sign the notice of appeal.

**3 Requesting an Attorney**

If you cannot afford to hire an attorney, you may request that the Court of Appeal appoint an attorney to represent you. After you file the notice of appeal and make the request for an attorney, the Court of Appeal will contact you to find out whether you have the right to an appointed attorney.

**4 Free Copy of the Transcript**

If you cannot afford to hire an attorney, you may also be eligible for a free copy of the transcript.

**Important!**

You must keep the Court of Appeal advised of your current mailing address.