

<p>Title</p>	<p>Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 5.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)</p>
<p>Summary</p>	<p>This proposal would make several changes to the California Rules of Court relating to appeals and writ proceedings in juvenile dependency and delinquency cases. These changes include: (1) deleting provisions related to appellate procedures from title 5 of the California Rules of Court, which contains the family and juvenile rules, and moving them to title 8, which contains the appellate rules; (2) deleting duplicative provisions and consolidating provisions addressing the same issue; (3) eliminating provisions addressing the right to appeal from the rules and adding an advisory committee comment directing readers to statute and case law addressing this right; (4) allowing trial and appellate courts to agree to follow the expedited procedures for appeals in juvenile dependency cases that are now followed in the superior courts of Orange, Imperial, and San Diego County; (5) adding a rule on abandoning an appeal; (6) allowing the attorney of record to sign the notice of intent to file a writ petition; and (7) eliminating current caregivers from the list of individuals who must be served with the notice of intent. In addition, this proposal includes revisions to several Judicial Council forms consistent with these rule changes.</p>
<p>Source</p>	<p>Appellate Advisory Committee  Hon. Kathryn Doi Todd</p> <p>Family and Juvenile Law Advisory Committee  Hon. Jerilyn L. Borack, and Hon. Susan D. Huguenor, Cochairs</p>
<p>Staff</p>	<p>Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov</p> <p>Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov</p>

Discussion      *Consolidation of rules relating to appeals and writs in juvenile cases*  
Currently, there are rules governing appeals and writs in juvenile cases located in both title 5, Family and Juvenile Law Rules, and title 8, Appellate Rules, of the California Rules of Court. Many of the rules in both titles address the same proceedings, and sometimes the provisions of the rules in each title differ. This proposal would delete all of the provisions addressing appellate procedure from title 5 and move them into title 8; only those provisions relating to the trial court's responsibility to advise participants of their appellate rights and responsibilities and trial counsel's responsibility to make a recommendation about appointment of counsel for a child would remain in title 5.<sup>1</sup> Additionally, this proposal would delete duplicative provisions and consolidate provisions addressing the same issue, such as rules 5.585(d) and (e) and 5.590, which relate to advisement of the right to appeal and procedural steps to file such an appeal, and rules 5.600 and 8.450, which both address notice of intent to file a writ petition regarding an order setting hearing under Welfare and Institutions Code section 366.26.<sup>2</sup>

*Right to appeal*

Currently, rule 5.585(a) addresses the right to appeal and the right to appointed counsel in section 601 and 602 (juvenile delinquency) cases and rule 5.585(b) addresses the right to appeal and right to appointed counsel in section 300 (juvenile dependency) cases. Because the right to appeal is a matter of statute, the Rules of Court relating to appeals in other types of cases, including civil and criminal cases, do not address this right. In addition, current rule 5.585(a) only refers to the child's right to appeal. Under Welfare and Institutions Code section 800 and case law, however, it is clear that others may also appeal in certain circumstances, including the People and parents who have been held liable or had monetary

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<sup>1</sup> The committees are not currently proposing any amendments to rule 5.661, relating to recommendations for appointment of counsel to represent a child on appeal. Under Welfare and Institutions Code section 395, the Judicial Council is to prepare a report that, among other things, examines the results of implementing the requirement concerning recommendations for the appointment of counsel. The committees plan to consider suggestions for modifying rule 5.661 after this report is completed.

<sup>2</sup> All Code references in this Invitation to Comment are to the Welfare and Institutions Code.

judgments against them.<sup>3</sup> Similarly, current rule 5.585(b) only refers to the petitioner's, child's, and parent's or guardian's right to appeal. Under Welfare and Institutions Code section 395 and case law, however, it is clear that others may also appeal in certain circumstances, including de facto parents,<sup>4</sup> grandparents,<sup>5</sup> and the public defender's office.<sup>6</sup> Several cases have specifically held that if the predecessor to rule 5.585 were to be construed to define a right of appeal more restrictive than the right of appeal afforded by statute, it would have been void.<sup>7</sup> To eliminate the possibility that rule 5.585 might be read as inappropriately limiting the right to appeal and to make the rules concerning juvenile appeals more consistent with the rules relating to other appeals, this proposal would delete the reference to the right to appeal from rule 5.585. The remaining provisions relating to the right to appointed counsel would be moved to proposed new rule 8.403. An advisory committee comment to this new rule would direct readers to the statutes and case law concerning the right to appeal.

#### *Breaking up rule 8.400*

Currently, rule 8.400 is titled "Appeals in juvenile cases generally." The content of this rule, however, includes provisions relating to writ proceedings in juvenile cases as well. Rule 8.400 is also very long and covers topics that are covered in separate rules in the rules relating to civil appeals. This proposal would place the provisions that relate to both appeals and writ proceedings in a new article within the rules. It would break the remaining provisions of rule 8.400 up into a series of shorter rules that should be easier for readers to understand.

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<sup>3</sup> See, e.g., *In re Michael S.* (2007) 147 Cal.App.4th 1443, and *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 [upholding parent's standing to appeal money judgment against parent for delinquent acts of child].

<sup>4</sup> See, e.g., *In re Aaron R.* (2005) 130 Cal.App.4th 697; *In re Joel H.* (1993) 214 Cal.App.3d 662; and *In re Rachael C.* (1991) 235 Cal.App.3d 1445.

<sup>5</sup> See, e.g., *In re Merrick V.* (2004) 122 Cal.App.4th 235.

<sup>6</sup> See, e.g. *In re Sean R.* (1989) 214 Cal.App.3d 662.

<sup>7</sup> See, *In re Aaron R.* and *In re Rachael C.*, supra at footnote 3.

*Time to file notice of appeal*

Subdivisions (d)–(f) of rule 8.400 currently address the time for filing a notice of appeal in juvenile cases. This proposal would place these provisions in a new, separate rule: 8.406. Currently, rule 8.400(d)(1) indicates that the time for filing an appeal cannot be extended, and rule 8.400(g) addresses late notices of appeal. This proposal would consolidate those provisions into a single new subdivision, 8.406(e), modeled on rule 8.104 relating to notices of appeal in civil cases.

*Notice of the filing of a notice of appeal*

Currently, rule 8.400(h) requires the superior court clerk to send notice of filing of a notice of appeal in all juvenile cases to each party other than the appellant (including the minor); all attorneys of record; the reviewing court; any de facto parent;<sup>8</sup> any Court Appointed Special Advocate (CASA) volunteer; and any Indian tribe that has appeared in the proceeding. This proposal would renumber this provision as 8.405(b) and make several clarifying changes to the current rule language. To reflect that all persons found by the juvenile court to be de facto parents have the right to participate in the proceedings and that a person who was once a de facto parent may lose that status, the reference to “any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings” would be changed to “any person currently awarded by the juvenile court the status of the child’s de facto parent.” To give additional guidance about statutory notice requirements in cases involving Indian children, the current reference to “any Indian tribe that has appeared in the proceeding” would be modified. As amended, this provision would indicate that if the court knows or has reason to know that an Indian child is involved, notice must be sent to the Indian custodian, if any, and the child’s tribe. It would also add a cross-reference to Welfare and Institutions Code section 224.2, which sets forth the requirements for notice to Indian tribes in juvenile cases. The current requirement

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<sup>8</sup> Rule 5.502(10) defines de facto parent as a person who has been found by the juvenile court to have assumed, on a day-to-day basis, the role of a parent to a child, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period of time. De facto parents have the right to be present at dependency proceedings, to be represented by counsel, and to present evidence. *In re Keisha E.* (1993) 6 Cal.4th 68, 77; *In re Jody R.* (1990) 218 Cal.App.3d 1615, 1628.

in this rule that both a party and that party's attorneys be served with a copy of this notice would not be changed. However, the committee would particularly appreciate comments concerning whether it would be sufficient to serve a copy only on the attorney when a party is represented.

*Record on appeal*

Currently, rule 8.404(c) permits any party or any Indian tribe to apply to the superior court to include in the clerk's transcript any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court. This proposal would place these and other provisions relating to the record on appeal in a new rule—8.407—and clarify that only Indian tribes that have intervened in the proceeding may apply for additions to the record on appeal. The committee would appreciate comments on whether written motions and associated materials should automatically be included in the record on appeal in every juvenile case, rather than requiring parties and Indian tribes to apply for inclusion of these materials in the record.

Currently, rule 8.408(e) addresses augmenting and correcting the record by cross-referencing to rule 8.340, which governs automatic augmentation and correction of the record in felony appeals, and rule 8.155, which addresses motions to augment. This proposal would place the provisions concerning augmentation and correction in a new, separate rule: 8.410. In recognition of the fact that there may be many subsequent orders in juvenile cases that are not relevant to the judgment or order being appealed, this proposal would eliminate the cross-reference to rule 8.340(a), which calls for automatic augmentation of the record whenever the trial court amends or recalls the judgment or makes any other order in the case. Instead, a new provision would be added to subdivision (b) providing for notice to the parties of such action by the trial court. The parties can use this information to determine whether to request that the record be augmented. To make it easier for rule users, this proposal would also replace the current cross-reference to rule 8.340(b), which addresses correction of the record, with the text of that provision.

Rule 8.412 addresses briefs in juvenile appeals. Currently, the requirements for the form and content of these briefs are established through a cross-reference to rule 8.360(a), relating to briefs in felony cases. However, rule 8.360(a) simply cross-references to rule 8.200 and 8.204, relating to briefs in civil appeals. This double cross-reference makes this rule difficult to follow. This proposal would replace the cross-reference to rule 8.360 with a direct reference to rules 8.200 and 8.204. In addition, to fill a gap in current rule 8.412, this proposal would add a reference to the rule concerning briefing when there is a cross-appeal (see rule 8.412(a)(1)).

*Abandoning appeal*

The current rules relating to appeals in juvenile cases do not address how to abandon an appeal. Proposed new rule 8.411 addresses abandonment of an appeal. It is modeled on rule 8.316 regarding abandonment of felony appeals.

*Optional expedited appeals*

Current rule 8.416 provides that in the Superior Courts of Orange, Imperial, and San Diego County, all appeals in juvenile dependency cases are expedited.<sup>9</sup> In those counties, the time for many steps in the appellate process is shortened, and extensions of time are granted only on an exceptional showing of good cause. The intended result is that appeals can be determined within 250 days. This proposal would amend rule 8.416 to allow other superior courts and their District Courts of Appeal to agree to use this expedited procedure and to adopt local rules providing that rule 8.416 govern appeals from that superior court.

*Attorney signature on notice of intent to file writ petition*

Under current rules 8.450(e) and 8.454(e), a notice of intent to file a writ petition challenging an order setting a hearing regarding termination of parental rights under Welfare and Institutions Code section 366.26 or challenging an order designating a specific placement of a dependent child after termination of parental rights under section 366.28 must be signed by the party intending to file the petition unless it is filed on behalf of a child or the reviewing

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<sup>9</sup> Rule 8.416 also applies to all appeals from judgments or orders terminating parental rights under section 366.26.

court waives this requirement for good cause. This is a very unusual requirement. In general, attorneys may sign on their client's behalf documents that are to be filed with a court when the client has authorized the filing of the document. For example, in felony cases, a notice of appeal on behalf of a defendant may be signed by either the defendant or the defendant's attorney (see rule 8.304(a)(3)). Because the time to file a notice of intent is very short, it may be difficult for attorneys to contact their client and get the client's signature in time to file the notice of intent. Because the notice of intent and the filing of a petition are prerequisites to any appeal in these matters, unless the court waives the signature requirement, a client's unavailability to sign a notice of intent can result in the client being precluded from seeking any review of these decisions, regardless of how meritorious the issues are that would have been raised on review.

This proposal would amend rules 8.450(e) and 8.454(e) to provide that the notice of intent must be authorized by the party intending to file the petition, but that it can be signed by either that party or that party's attorney. This is intended to eliminate the concern that difficulties in obtaining the potential petitioners' signatures could threaten their right to seek review, and also to make this rule more consistent with the general rule that attorneys may sign documents on their client's behalf. One of the consequences of making this change could be that more notices of intent and petitions are filed. This, in turn, could increase the workload for both the superior courts and Courts of Appeal. Under rules 8.450(g) and 8.454(h), the filing of the notice of intent is the trigger for beginning the preparation of the clerk's and reporter's transcripts, so if more notices of intent are filed, additional transcripts may need to be prepared. It is also possible that giving the potential petitioners' attorneys the authority to sign a notice of intent could create a ground for a future claim of ineffective assistance of counsel if those attorneys do not file a notice of intent. If there are additional petitions or additional appeals based on claims of ineffective assistance of counsel, this could result in delaying final placement of the child. The committees would particularly appreciate comments on whether these proposed amendments strike an appropriate balance in terms of providing access to review in these matters.

*Notice of the filing of a notice of intent to file a writ petition*

Currently, rules 5.600(e) and 8.450(f) contain different requirements regarding who must be notified of the filing of a notice of intent to file a writ petition challenging an order setting a hearing regarding termination of parental rights under Welfare and Institutions Code section 366.26.<sup>10</sup> While both of these current rules require that a copy of the notice of intent be served on many of the same individuals, rule 5.600(e), through a cross-reference to Welfare and Institutions Code section 294, requires service on the following individuals who are not listed in rule 8.450: siblings and their caregivers and attorneys and unknown parents. Similarly, rule 8.450 requires service on the following individuals who are not listed in rule 5.600: any legal guardian and the probation officer or social worker.

This proposal would repeal current rule 5.600 and use current rule 8.450(f) as the template for who must be served with the notice of intent. Repealing rule 5.600 would eliminate the requirement for service of the notice of intent on siblings and their caregivers and attorneys and on unknown parents. In addition, this proposal would eliminate the requirement, now in both rules 5.600(e) and 8.450(f), that the notice of intent be served on the child's caregiver. The committees point out that caregivers, while entitled to notice of and

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<sup>10</sup> Current rule 5.600(e) requires that the clerk serve a copy of this notice of intent on "each person listed in [Welfare and Institutions Code] section 294, the child's CASA volunteer, the child's present caregiver, any de facto parent," and the clerk of the reviewing court. Welfare and Institutions Code section 294(a), in turn lists the following individuals who are entitled to notice of the "selection and implementation hearing held pursuant to Section 366.26": the mother; the fathers, presumed and alleged; the child, if the child is 10 years of age or older; any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court; if the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney; if the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney; the grandparents of the child, if their address is known and if the parent's whereabouts are unknown; all counsel of record; any unknown parent by publication, if ordered by the court; and the current caregiver of the child, including foster parents, relative caregivers, preadoptive parents, and nonrelative extended family members. Welfare and Institutions Code section 294(i) also provides that if the court knows or has reason to know that an Indian child is involved, "notice shall be given in accordance with Section 224.2." Current rule 8.450(f) requires that the clerk serve a copy of the notice of the intent on: each party, including the child if the child is 10 years of age or older; the mother; the father; the presumed and alleged parents; the current caregiver; any legal guardian; any de facto parent; the probation officer or social worker; any CASA volunteer; the grandparents of the child, if their address is known and if the parents' whereabouts are unknown; and the Indian custodian and tribe of the child or the Bureau of Indian Affairs if the identity or location of the parent or Indian custodian and the tribe can not be determined.



attendance at certain juvenile hearings,<sup>11</sup> are not parties to the case and do not have standing to participate in the writ proceeding. Caregivers' participation in the juvenile proceedings is limited. They must receive a summary of the social worker's recommendations related to certain hearings, but they do not receive copies of the social worker's report.<sup>12</sup> Additionally, they are not entitled to receive notice of a filing of a notice of appeal.<sup>13</sup> Given caregivers' limited role in these proceedings, the committees believe it is not necessary to provide caregivers with notice that a party has filed a notice of intent to file a writ petition.

In addition, this proposal would make several clarifying changes to the current language of rule 8.450(f). As is proposed in rule 8.405(b), discussed above, the references to de facto parents would be changed to "any person currently awarded by the juvenile court the status of the child's de facto parent." Similarly, to give additional guidance about statutory notice requirements in cases involving Indian children, the current language of 8.450(f)(1)(F) would be modified to indicate that if the court knows or has reason to know that an Indian child is involved, notice must be sent to the Indian custodian, if any, and the child's tribe, and a cross-reference to Welfare and Institutions Code section 224.2 would be added.

Similar changes would be made to rule 8.454, relating to notices of intent to file a writ petition under Welfare and Institutions Code section 366.28 to review orders designating specific placement of a dependent child after termination of parental rights.

#### *Service of writ petitions*

Currently, rules 8.452(d) and 8.456(d) require that writ petitions in proceedings under both Welfare and Institutions Code sections 366.26 and 366.28 must be sent to "all parties entitled to receive notice under Welfare and Institutions Code section 294, the child's Court Appointed Special Advocate (CASA) volunteer, the child's

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<sup>11</sup> Under sections 293, 294, and 295, caregivers must be notified of review, permanency, and section 366.26 hearings.

<sup>12</sup> Welfare and Institutions Code section 366.21.

<sup>13</sup> Rule 8.400(h).

present caregiver, and any de facto parent given standing to participate in the juvenile court proceedings.” This proposal would narrow the list of those who must be served with a copy of the petition to each attorney of record; any unrepresented party; the child’s Court Appointed Special Advocate (CASA) volunteer; any person currently awarded by the juvenile court the status of the child’s de facto parent; and, if the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

This proposal would also eliminate the requirement, now in both rules 8.452(d) and 8.456(d) that writ petitions be served on the child’s caregiver. As discussed above caregivers are not parties to the case and do not have standing to participate in the writ proceeding. In addition, with respect to petitions, there is the added concern about access to confidential information about the parents that is often included in these petitions. A caregiver is not entitled to view the child’s confidential case file<sup>14</sup> and should not have access to confidential information attached to a writ petition. The child’s attorney will receive copies of the petitions and responses and can keep the caregiver updated on the status of the writ petition process, if the caregiver so desires.

*Other changes to the rule concerning writ proceedings*

Rules 8.452(f) and 8.456(f) address augmenting or correcting the record in writ proceedings under Welfare and Institutions Code sections 366.26 and 366.28. This proposal would amend these rules to include a cross-reference to proposed new rule 8.410 relating to augmentation and correction of the record in juvenile appeals and to include provisions requiring parties requesting augmentation to attach to their augmentation motion a copy of the materials to be included in the record. This latter provision is modeled on rule 8.155(a), relating to augmentation motions in civil appeals.

This proposal would also add a new subdivision to both rule 8.452 and rule 8.456 relating to filing, modification, and finality of decisions. These topics are not currently addressed in the rules on

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<sup>14</sup> Welfare and Institutions Code section 827

these writ proceedings. These new provisions would cross-reference to rule 8.490, which addresses filing, finality, and modification of decisions and remittitur in proceedings for writs of mandate, certiorari, and prohibition.

To assist those who are reviewing this proposal, the attached draft of the proposed rules includes revisers' notes following each rule. These revisers' notes are included here only to help explain the changes that are being proposed; they are not part of the proposed rules and will not appear in any rules ultimately adopted by the Judicial Council.

#### *Judicial Council Forms*

This proposal would revise five Judicial Council forms to conform to the changes made by this proposal as well as make other improvements to the forms.

This proposal would amend *Orders Under Welfare and Institutions Code Sections 366.26, 727.3, 727.31* (Form JV-320) and *Notice of Appeal-Juvenile* (form JV-800) to update references to rule numbers to conform to the changes made by this proposal.

To reflect the proposed change to rule 8.450, *Notice of Intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26* (form JV-820) would be revised to provide for the attorney of record to sign the notice of intent.

This proposal would delete the Proof of Service portion of *Petition for Extraordinary Writ* (JV-825) and amend *Proof of Service—Juvenile* (Form JV-510) to allow its use with all documents that could be filed in the juvenile court. The intent is that form JV-510 could be a universal Proof of Service form for any document filed with the juvenile court. This would reduce the number of future forms created, as a Proof of Service form would no longer be needed when new forms are created. Eventually, this form could replace the multiple proofs of service currently found in the juvenile forms.

Currently, *Notice of Action* (form JV-828) states that a response must be filed under rule 8.452(c)(2)(B) within 10 days after the filing of the writ petition. Rule 8.452(c)(2)(B), however, states that a response must be filed within 10 days after a respondent receives a

request from the reviewing court for a response. This proposal would amend this form to correctly reflect the content of Rule 8.452. Additionally, this proposal would remove the reference to subparagraph (c)(2)(B) on the form so that if it is amended in the future and the lettering changes, the form will not need to be changed.

Proposed changes to rules and forms are attached beginning on page 13.

California Rules of Court, rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, 8.411 would be adopted; rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456 would be amended; rules 5.585, 8.404, and 8.408 would be amended and renumbered as rules 5.590, 8.407, and 8.409, respectively; rule 8.406 would be renumbered as rule 8.408; rules 5.590 and 5.600 would be repealed; and forms JV-320, JV-510, JV-800, JV-820 and JV-828 would be revised, effective January 1, 2010, to read:

1 **Title 5. Family and Juvenile Rules**

2  
3 **Chapter 5. ~~Appeals and Writs~~ Appellate Review**

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5  
6 **REVISERS' NOTES<sup>15</sup>**

7  
8 This chapter in the juvenile rules will be amended to focus primarily on  
9 advisements of appellate rights by the trial court and a cross-reference to  
10 the relevant rules in title 8. The provisions addressing procedures for writs  
11 and appeals in juvenile cases will be integrated with the relevant rules in  
12 title 8.

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14  
15 **Rule 5.585. Rules governing appellate review**

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17 The rules in title 8, chapter 5 govern appellate review of judgments and orders in  
18 cases under Welfare and Institutions Code section 300, 601, or 602.

19  
20 **Advisory Committee Comment**

21  
22 Rules 8.450 and 8.452 describe how a party, including the petitioner, child, and parent or  
23 guardian, must proceed if seeking appellate court review of findings and orders of the juvenile  
24 court made at a hearing at which the court orders that a hearing under Welfare and Institutions  
25 Code section 366.26 be held.

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<sup>15</sup> Revisers' Notes are included in this Invitation to Comment following each proposed rule amendment to help explain the changes that are being proposed; they are not part of the proposal rules and will not appear in any rules ultimately adopted by the Judicial Council.

1 **REVISERS' NOTES**

- 2
- 3 1. This rule would replace current rule 5.585(g), which provides that
- 4 the procedures for appeals from juvenile court are in title 8, division
- 5 1, chapter 5.
- 6
- 7 2. Consistent with rule 8.400, which provides that the rules in title 8,
- 8 chapter 5 “govern” appellate review in juvenile cases, this rule
- 9 indicates that the rules in title 8, chapter 5 “govern” appellate review
- 10 in juvenile cases, rather than indicating that the rules contain the
- 11 procedures for such review.
- 12
- 13 3. The advisory committee comment text is taken from current rule
- 14 5.600(a).
- 15
- 16 4. This rule is placed at the beginning of this chapter to help rules
- 17 users quickly find the relevant rules on appellate review.
- 18
- 19

20 **Rule 5.585. Review by appeal 5.590. Advisement of right to review in**

21 **Welfare and Institutions Code section 300, 601, or 602 cases**

22

23 **~~(a) Right to appeal—section 601–602 proceedings~~**

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25 ~~In proceedings under section 601 or 602, the child may appeal from any~~

26 ~~judgment, order, or decree specified in section 800 and is entitled to court-~~

27 ~~appointed counsel. If the court determines that the parent or guardian can~~

28 ~~afford counsel but has not retained counsel for the child, the court must~~

29 ~~appoint counsel for the child at the expense of the parent or guardian.~~

30

31 **~~(b) Right to appeal—section 300 proceedings~~**

32

33 ~~In proceedings under section 300, the petitioner, child, and the parent or~~

34 ~~guardian each has the right to appeal from any judgment, order, or decree~~

35 ~~specified in section 395. Any judgment, order, or decree setting a hearing~~

36 ~~under section 366.26 may be reviewed on appeal following the order at the~~

37 ~~section 366.26 hearing only if the procedures in rules 8.450, 8.452, and~~

38 ~~5.600 have been followed. All appellants are entitled to representation by~~

39 ~~counsel and the reviewing court may appoint counsel to represent an indigent~~

40 ~~child, parent, or guardian.~~

41

1 ~~(e) Stay of execution of order or judgment (§§ 395, 800)~~

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3 ~~The court must not stay an order or judgment pending an appeal unless~~  
4 ~~suitable provision is made for the maintenance, care, and custody of the~~  
5 ~~child.~~

6  
7 ~~(d)(a) Advisement of appeal rights—rule 5.590 to appeal~~

8  
9 If at a contested hearing on an issue of fact or law the court finds that the  
10 child is described by Welfare and Institutions Code section 300, 601, or 602  
11 or sustains a supplemental or subsequent petition, the court after making its  
12 disposition order must advise, orally or in writing, the child, if of sufficient  
13 age, and, if present, the parent or guardian of:

- 14  
15 (1) The right of the child, parent, and guardian to appeal from the court  
16 order;  
17  
18 (2) The necessary steps and time for taking an appeal;  
19  
20 (3) The right of an indigent appellant to have counsel appointed by the  
21 reviewing court; and  
22  
23 (4) The right of an indigent appellant to be provided with a free copy of the  
24 transcript.  
25

26 ~~(e)(b) Notice of trial rights; Advisement of requirement for writ petition in~~  
27 ~~Welfare and Institutions Code section 366.26 proceedings~~

28  
29 When the court orders a hearing under Welfare and Institutions Code section  
30 366.26, the court must advise ~~orally~~ all parties ~~present and, if present, the~~  
31 ~~child's parent, guardian, or adult relative, and by first class mail for parties~~  
32 ~~not present~~, that if the party wishes to preserve any right to review on appeal  
33 of the order setting the hearing under Welfare and Institutions Code section  
34 366.26, the party is required to seek an extraordinary writ by filing a *Notice*  
35 *of Intent to File Writ Petition and Request for Record (California Rules of*  
36 *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ  
37 petition and request for record and a *Petition for Extraordinary Writ*  
38 *(California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other  
39 petition for extraordinary writ.  
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1           (1) The advisement must be given orally to those present when the court  
2           orders the hearing under Welfare and Institutions Code section 366.26.

3  
4           ~~(1)(2)~~ Within ~~24 hours of the one day~~ after the court orders the hearing  
5           under Welfare and Institutions Code section 366.26, notice the  
6           advisement must be sent by first-class mail ~~must be provided~~ by the  
7           clerk of the court to the last known address of any party who is not  
8           present when the court orders the hearing under Welfare and  
9           Institutions Code section 366.26.

10  
11           ~~(2)(3)~~ Copies of *Petition for Extraordinary Writ (California Rules of*  
12           *Court, Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File*  
13           *Writ Petition and Request for Record (California Rules of Court, Rule*  
14           *8.450)* (form JV-820) must be available in the courtroom and must  
15           accompany all mailed notices informing the parties of their rights.

16  
17           ~~(f)~~ **Time for filing notice of appeal**

18  
19           ~~Notice of appeal must be filed within 60 days after the making of an~~  
20           ~~appealable order or, if the matter was heard by a referee who was not sitting~~  
21           ~~as a temporary judge, within 60 days after the order becomes final under rule~~  
22           ~~5.540(e). Notice of appeal may be filed on *Notice of Appeal—Juvenile*~~  
23           ~~(*California Rules of Court, Rule 8.400*) (form JV 800).~~

24  
25           ~~(g)~~ **Procedure**

26  
27           ~~Procedures for appeals from juvenile court are in title 8, division 1, chapter~~  
28           ~~5.~~

29  
30           **REVISERS' NOTES**

- 31  
32           1. This rule would be amended to focus only on the advisements of  
33           appellate rights by the trial court that are in current subdivisions (d)  
34           and (e).  
35  
36           a. The content of current subdivisions (a) and (b)—regarding the  
37           right to appeal and to appointed counsel on appeal—would be  
38           moved to proposed new rule 8.403 in title 8.  
39



- 1           b. The content of current subdivision (c)—regarding stays of  
2           execution—would be moved to proposed new rule 5.595, below,  
3           to give it more emphasis.  
4
- 5           c. The content of current subdivision (f)—regarding the time for  
6           filing a notice of appeal—would be integrated into proposed new  
7           rule 8.406 in title 8.  
8
- 9           d. The content of current subdivision (g)—regarding what rules  
10          govern appeal in juvenile proceedings—is addressed in proposed  
11          new rule 5.585 above.  
12
- 13        2.     Proposed new subdivision (b) (former subdivision (e)), includes new  
14          language moved from rule 5.590 concerning advisement of the  
15          child’s parent, guardian, or adult relative if they are present at the  
16          time the court orders a hearing under section 366.26. Note that  
17          consistent with the current language in both 5.585(e) and 5.590, the  
18          proposed new rule calls for notice by mail only to “parties.”  
19
- 20        3.     Because proposed new subdivision (b) (former subdivision (e)) is  
21          very long and (b)(2) (former (e)(1)) already addresses advisement  
22          by mail, the language concerning the method of advisement (oral or  
23          by mail) was moved out of the introductory sentence in (b) and into  
24          subdivisions (b)(1) and (2).  
25  
26

27        ~~**Rule 5.590. Notification of appeal rights in juvenile cases**~~

28  
29        ~~In juvenile court proceedings in which the child is found to be a person described~~  
30        ~~by section 300, 601, or 602 after a contested issue of fact or law, the juvenile~~  
31        ~~court, after making its order at the conclusion of the dispositional hearing or an~~  
32        ~~order changing or modifying a previous disposition at the conclusion of a hearing~~  
33        ~~on a supplemental petition, will advise, either orally or in writing, the child and, if~~  
34        ~~present, the child’s parent, guardian, or adult relative of any right to appeal from~~  
35        ~~such order, of the necessary steps and time for taking an appeal, and of the right of~~  
36        ~~an indigent person to have counsel appointed by the reviewing court.~~  
37

38        **REVISERS’ NOTES**

39  
40        This rule would be deleted, as it duplicates the content of both current rule  
41        5.585 (e)/proposed rule 5.890(b) above and current rule 5.600(b).

1  
2 **Rule 5.595. Review by extraordinary writ—section 300 proceedings Stay**  
3 **pending appeal**  
4

5 If review by petition for extraordinary writ is sought regarding judgments, orders,  
6 or decrees other than those described in rules 8.450, 8.452, 8.454, 8.456, and  
7 5.600, a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*  
8 *8.456)* (form JV 825) may be used.  
9

10 The court must not stay an order or judgment pending an appeal unless suitable  
11 provision is made for the maintenance, care, and custody of the child.  
12

13 **REVISERS' NOTES**  
14

- 15 1. The content of current rule 5.595 would be integrated into title 8.  
16  
17 2. This rule would be amended to focus on stays pending appeal.  
18  
19 3. The proposed new rule language is taken from current rule 5.585(c).  
20  
21

22 ~~**Rule 5.600. Writ petition after orders setting hearing under section 366.26;**~~  
23 ~~**appeal**~~  
24

25 ~~**(a) Writ petition process**~~  
26

27 ~~Rules 8.450 and 8.452 describe how a party including the petitioner, child,~~  
28 ~~and parent or guardian must proceed if seeking appellate court review of~~  
29 ~~findings and orders of the juvenile court made at a hearing at which the court~~  
30 ~~orders that a hearing under section 366.26 be held.~~  
31

32 ~~**(b) Notice of trial rights; section 366.26**~~  
33

34 ~~When the court orders a hearing under section 366.26, the court must advise~~  
35 ~~orally all parties present, and by first class mail for parties not present, that if~~  
36 ~~the party wishes to preserve any right to review on appeal of the order setting~~  
37 ~~the hearing under section 366.26, the party is required to seek an~~  
38 ~~extraordinary writ by filing a *Notice of Intent to File Writ Petition and*~~  
39 ~~*Request for Record, (California Rules of Court, Rule 8.450)* (form JV 820) or~~  
40 ~~other notice of intent to file a writ petition and request for record and a~~

1 *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*  
2 *8.456) (form JV 825) or other petition for extraordinary writ.*

3  
4 ~~(1) Within 24 hours of the hearing, notice by first class mail must be~~  
5 ~~provided by the clerk of the court to the last known address of any~~  
6 ~~party who is not present when the court orders the hearing under~~  
7 ~~section 366.26.~~

8  
9 ~~(2) Copies of *Petition for Extraordinary Writ (California Rules of Court,*~~  
10 ~~*Rules 8.452, 8.456) (form JV 825) and *Notice of Intent to File Writ**~~  
11 ~~*Petition and Request for Record (California Rules of Court, Rule 8.450)*~~  
12 ~~(form JV 820) must be available in the courtroom and must accompany~~  
13 ~~all mailed notices informing the parties of their rights.~~

14  
15 **~~(c) Time for filing the notice of intent to file writ petition and request for~~**  
16 **~~record~~**

17  
18 ~~To permit determination of the writ petition before the scheduled date for the~~  
19 ~~hearing under section 366.26 on the selection of the permanent plan, a notice~~  
20 ~~of intent to file a writ petition and request for record must be filed with the~~  
21 ~~clerk of the juvenile court within 7 days of the date of the order setting a~~  
22 ~~hearing under section 366.26. The period for filing a notice of intent to file a~~  
23 ~~writ petition and request for record will be extended 5 days if the party~~  
24 ~~received notice of the order setting the hearing under section 366.26 only by~~  
25 ~~mail. A *Notice of Intent to File Writ Petition and Request for Record*~~  
26 ~~(*California Rules of Court, Rule 8.450*) (form JV 820) may be used.~~

27  
28 **~~(d) Contents of the notice of intent to file writ petition~~**

29  
30 ~~The notice of intent to file a writ petition must include, if known, all dates of~~  
31 ~~the hearing that resulted in the order setting the hearing under section~~  
32 ~~366.26.~~

33  
34 **~~(e) Notice and service~~**

35  
36 ~~The clerk must serve a copy of the notice of intent to file a writ petition on~~  
37 ~~each person listed in section 294, the child's CASA volunteer, the child's~~  
38 ~~present caregiver, and any de facto parent. The clerk must also serve, by~~  
39 ~~first class mail or fax, on the clerk of the reviewing court, a copy of the~~  
40 ~~notice of intent to file a writ petition and a proof of service list. On receipt of~~  
41 ~~the notice of intent to file a writ petition, the clerk of the reviewing court~~

1 must lodge the notice, which gives the reviewing court jurisdiction of the  
2 writ proceedings.

3  
4 **(f) — Record**

5  
6 Immediately on the filing of the notice of intent to file a writ petition and  
7 request for record, the clerk of the juvenile court must assemble the record:

8  
9 (1) — Notifying each court reporter by telephone and in writing to prepare a  
10 reporter’s transcript of each session of the hearing and to deliver the  
11 transcript to the clerk no more than 12 days after the notice of intent to  
12 file a writ petition and request for record is filed; and

13  
14 (2) — Preparing the clerk’s transcript under rule 8.616(a).

15  
16 The record must include all reports and minute orders contained in the  
17 juvenile court file, a reporter’s transcript of all sessions of the hearing at  
18 which the order setting a hearing under section 366.26 was made, and any  
19 additional evidence or documents considered by the court at that hearing.

20  
21 Immediately on completion of the transcript, the clerk must certify the record  
22 as correct, and deliver it by the most expeditious means to the reviewing  
23 court, and transmit copies to the petitioner and parties or counsel of record,  
24 by any method as fast as the express mail service of the United States Postal  
25 Service. On receipt of the transcript and record, the clerk of the reviewing  
26 court must notify all parties that the record has been filed and indicate the  
27 date on which the 10-day period for filing the writ petition will expire.

28  
29 **(g) — Petitioner; trial counsel**

30  
31 Trial counsel for the petitioning party or, in the absence of trial counsel, the  
32 party, is responsible for filing the petition for extraordinary writ. Trial  
33 counsel is encouraged to seek assistance from, or consult with, attorneys  
34 experienced in writ procedures.

35  
36 **(h) — Petition for extraordinary writ; form JV-825**

37  
38 The petition for extraordinary writ may be filed on a *Petition for*  
39 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-  
40 825) or other petition for extraordinary writ. Petitions for extraordinary writ  
41 submitted on a *Petition for Extraordinary Writ (California Rules of Court,*

1 ~~Rules 8.452, 8.456) (form JV 825) must be accepted for filing by the~~  
2 ~~appellate court. All petitions must be liberally construed in favor of their~~  
3 ~~sufficiency.~~

4  
5 ~~(i) — Time for filing petition~~

6  
7 ~~The petition for extraordinary writ must be served and filed within 10 days~~  
8 ~~after filing any record in the reviewing court.~~

9  
10 ~~(j) — Contents of petition for writ; service~~

11  
12 ~~The petition for extraordinary writ must summarize the factual basis for the~~  
13 ~~petition. Petitioner need not repeat facts as they appear in any attached or~~  
14 ~~submitted record, provided, however, that references to specific portions of~~  
15 ~~the record, their significance to the grounds alleged, and disputed aspects of~~  
16 ~~the record will assist the reviewing court and must be noted. Petitioner must~~  
17 ~~attach a memorandum in support of the petition.~~

18  
19 **REVISERS' NOTES**

- 20  
21 1. This rule would be deleted and most of its content integrated into the  
22 rules on writ proceedings in juvenile cases in title 8.  
23  
24 2. Subdivision (a) would be deleted because the content—what  
25 appellate rules govern review of findings and orders of the juvenile  
26 court made at a hearing at which the court orders that a hearing  
27 under section 366.26 be held—would be covered by the advisory  
28 committee comment to new rule 5.585.  
29  
30 3. Subdivision (b) would be deleted because the content—advisement  
31 of the writ procedure in section 366.26 proceedings—would be  
32 covered in proposed new rule 5.590 above.  
33  
34 4. Subdivision (g) would be deleted because the content—who is  
35 responsible for filing a notice of intent to file a writ petition and the  
36 petition—is already covered in rule 8.450(c).  
37  
38  
39

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 5. Juvenile Appeals and Writs

6  
7 Article 1. General provisions

8  
9  
10 **REVISERS' NOTES**

11  
12 A new article 1 would be created for the general provisions that apply to  
13 both appeals and writs in juvenile cases.

14  
15  
16 **Rule 8.400. Appeals in juvenile cases generally Application**

17  
18 ~~(a) Application~~

19  
20 Rules 8.400–8.474 The rules in this chapter govern:

- 21 (1) Appeals from judgments or appealable orders in:
  - 22 (A) ~~Dependency and delinquency~~ Cases under the Welfare and
  - 23 Institutions Code sections 300, 601, and 602; and
  - 24 (B) Actions to free a child from parental custody and control under
  - 25 Family Code section 7800 et seq.; and
  - 26
  - 27
  - 28
  - 29
  - 30 (2) Writ petitions under Welfare and Institutions Code sections 366.26 and
  - 31 366.28.
  - 32

33 ~~(b) Confidentiality~~

- 34
- 35 ~~(1) Except as provided in (3), the record on appeal and documents filed by~~
- 36 ~~the parties may be inspected only by reviewing court and appellate~~
- 37 ~~project personnel, the parties or their attorneys, and other persons the~~
- 38 ~~court may designate.~~
- 39
- 40 ~~(2) To protect anonymity, a party must be referred to by first name and last~~
- 41 ~~initial in all filed documents and court orders and opinions; but if the~~

1 first name is unusual or other circumstances would defeat the objective  
2 of anonymity, the party's initials may be used.

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

7  
8 ~~(4) The court may limit or prohibit public admittance to oral argument.~~

9  
10 **~~(e) Notice of appeal~~**

11  
12 ~~(1) To appeal from a judgment or appealable order under these rules, the~~  
13 ~~appellant must file a notice of appeal in the superior court. The~~  
14 ~~appellant or the appellant's attorney must sign the notice.~~

15  
16 ~~(2) The notice of appeal must be liberally construed, and is sufficient if it~~  
17 ~~identifies the particular judgment or order being appealed. The notice~~  
18 ~~need not specify the court to which the appeal is taken; the appeal will~~  
19 ~~be treated as taken to the Court of Appeal for the district in which the~~  
20 ~~superior court is located.~~

21  
22 **~~(d) Time to appeal~~**

23  
24 ~~(1) Except as provided in (2) and (3), a notice of appeal must be filed~~  
25 ~~within 60 days after the rendition of the judgment or the making of the~~  
26 ~~order being appealed. Except as provided in rule 8.66, no court may~~  
27 ~~extend the time to file a notice of appeal.~~

28  
29 ~~(2) In matters heard by a referee not acting as a temporary judge, a notice~~  
30 ~~of appeal must be filed within 60 days after the referee's order becomes~~  
31 ~~final under rule 5.540(e).~~

32  
33 ~~(3) When an application for rehearing of an order of a referee not acting as~~  
34 ~~a temporary judge is denied under rule 5.542, a notice of appeal from~~  
35 ~~the referee's order must be filed within 60 days after that order is~~  
36 ~~served under rule 5.538(b)(3) or 30 days after entry of the order~~  
37 ~~denying rehearing, whichever is later.~~

38  
39 **~~(e) Cross appeal~~**

1 If an appellant timely appeals from a judgment or appealable order, the time  
2 for any other party to appeal from the same judgment or order is either the  
3 time specified in (d) or 20 days after the superior court clerk mails  
4 notification of the first appeal, whichever is later.

5  
6 **(f) — Receipt by mail from custodial institution**

7  
8 If the superior court clerk receives a notice of appeal by mail from a  
9 custodial institution after the period specified in (d) has expired but the  
10 envelope shows that the notice was mailed or delivered to custodial officials  
11 for mailing within the period specified in (d), the notice is deemed timely.  
12 The clerk must retain in the case file the envelope in which the notice was  
13 received.

14  
15 **(g) — Premature or late notice of appeal**

16  
17 (1) — A notice of appeal is premature if filed before the judgment is rendered  
18 or the order is made, but the reviewing court may treat the notice as  
19 filed immediately after the rendition of judgment or the making of the  
20 order.

21  
22 (2) — The superior court clerk must mark a late notice of appeal “Received  
23 [date] but not filed,” notify the party that the notice was not filed  
24 because it was late, and send a copy of the marked notice of appeal to  
25 the district appellate project.

26  
27 **(h) — Superior court clerk’s duties**

28  
29 (1) — When a notice of appeal is filed, the superior court clerk must  
30 immediately:

31  
32 (A) — Mail a notification of the filing to each party — including the  
33 minor — other than the appellant, to all attorneys of record, and to  
34 the reviewing court clerk; and

35  
36 (B) — Notify the reporter by telephone and in writing to prepare a  
37 reporter’s transcript and deliver it to the clerk within 20 days after  
38 the notice of appeal is filed.  
39



- 1           ~~(2) The clerk must immediately mail a notification of the filing to any de~~  
2           ~~facto parent, any Court Appointed Special Advocate (CASA)~~  
3           ~~volunteer, and any Indian tribe that has appeared in the proceedings.~~  
4  
5           ~~(3) The notification must show the name of the appellant, the date it was~~  
6           ~~mailed, the number and title of the case, and the date the notice of~~  
7           ~~appeal was filed. If the information is available, the notification must~~  
8           ~~also include:~~  
9  
10           ~~(A) The name, address, telephone number, and California State Bar~~  
11           ~~number of each attorney of record in the case;~~  
12  
13           ~~(B) The name of the party that each attorney represented in the~~  
14           ~~superior court; and~~  
15  
16           ~~(C) The name, address, and telephone number of any unrepresented~~  
17           ~~party.~~  
18  
19           ~~(4) The notification to the reviewing court clerk must also include a copy~~  
20           ~~of the notice of appeal and any sequential list of reporters made under~~  
21           ~~rule 2.950.~~  
22  
23           ~~(5) A copy of the notice of appeal is sufficient notification if the required~~  
24           ~~information is on the copy or is added by the superior court clerk.~~  
25  
26           ~~(6) The mailing of a notification is a sufficient performance of the clerk's~~  
27           ~~duty despite the discharge, disqualification, suspension, disbarment, or~~  
28           ~~death of the attorney.~~  
29  
30           ~~(7) Failure to comply with any provision of this subdivision does not affect~~  
31           ~~the validity of the notice of appeal.~~  
32

### 33 REVISERS' NOTES

- 34  
35 1. Rule 8.400 would be broken out into several smaller rules.  
36  
37 a. The content of current subdivision 8.400(a)—regarding the  
38 application of these provisions—would remain in this rule.  
39  
40 b. The content of current subdivision 8.400(b)—regarding  
41 confidentiality—would be moved to new rule 8.401 below.

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41

- c. The content of current subdivisions 8.400(c) and (h)—concerning notices of appeal—would be moved to new rule 8.405.
  - d. To mirror the structure of the rules on appeals in civil and criminal cases, the content of subdivisions (d)–(g)—relating to the time to appeal—would be moved to a separate rule (proposed new rule 8.406).
- 2. Rules 8.400 and 8.401 would be placed in new article 1, regarding general provisions.
  - 3. In rule 8.400, the reference to rules 8.400-8.474 would be replaced with a general reference to the rules in chapter 8.
  - 4. The reference to dependency and delinquency cases would be replaced with a reference to cases under Welfare and Institutions Code sections 300, 601, and 602.

**Rule 8.401. Confidentiality**

**(a) Access to filed documents**

- (1) Except as provided in (3), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.
- (2) To protect anonymity, a party must be referred to by first name and last initial in all filed documents and court orders and opinions; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the party’s initials may be used.
- (3) Filed documents that protect anonymity as required by (2) may be inspected by any person or entity that is considering filing an amicus curiae brief.

**(b) Access to oral argument**

The court may limit or prohibit public admittance to oral argument.

1  
2 **REVISERS' NOTES**

- 3  
4 1. The language of proposed new rule 8.401 is taken from current  
5 8.400(b).  
6  
7 2. The language in (a)(1) has been broadened to encompass  
8 documents filled in all proceedings under chapter 8, which would  
9 include writ proceedings.  
10

11  
12 **Article 1. 2. Appeals**

13  
14 **Rule 8.403 Right to appointment of appellate counsel and prerequisites for**  
15 **appeal**

16  
17 **(a) Welfare and Institutions Code section 601–602 proceedings**

18  
19 In appeals of proceedings under Welfare and Institutions Code section 601 or  
20 602, the child is entitled to court-appointed counsel. If the court determines  
21 that the parent or guardian can afford counsel but has not retained counsel  
22 for the child, the court must appoint counsel for the child at the expense of  
23 the parent or guardian.  
24

25 **(b) Welfare and Institutions Code section 300 proceedings**

26  
27 (1) Any judgment, order, or decree setting a hearing under Welfare and  
28 Institutions Code section 366.26 may be reviewed on appeal following  
29 the order at the Welfare and Institutions Code section 366.26 hearing  
30 only if:  
31

32 (A) The procedures in rules 8.450, and 8.452 regarding writ  
33 petitions in these cases have been followed; and  
34

35 (B) The petition for an extraordinary writ was summarily denied or  
36 otherwise not decided on the merits.  
37

38 (2) The reviewing court may appoint counsel to represent an indigent  
39 child, parent, or guardian.  
40



1 and Institutions Code section 366.26(f), which sets out the limitations  
2 on appeals in these cases.

- 3  
4 5. A cross-reference has been added in subdivision (b)(3) to trial  
5 counsel's responsibilities with respect to appellate representation on  
6 section 300 proceedings.

7  
8  
9 **Rule 8.404. Stay pending appeal**

10  
11 The court must not stay an order or judgment pending an appeal unless suitable  
12 provision is made for the maintenance, care, and custody of the child.

13  
14 **REVISERS' NOTES**

15  
16 The language of proposed new rule 8.404 is copied (without change) from  
17 current 5.585(c). It is duplicated here because the reviewing court also  
18 generally has the authority to issue a stay pending appeal.

19  
20  
21 **Rule 8.405. Filing the appeal**

22  
23 **(a) Notice of appeal**

- 24  
25 (1) To appeal from a judgment or appealable order under these rules, the  
26 appellant must file a notice of appeal in the superior court. Any notice  
27 of appeal on behalf of the child in a Welfare and Institutions Code  
28 section 300 proceeding must be authorized by the child or the child's  
29 guardian ad litem.  
30  
31 (2) The appellant or the appellant's attorney must sign the notice of appeal.  
32  
33 (3) The notice of appeal must be liberally construed, and is sufficient if it  
34 identifies the particular judgment or order being appealed. The notice  
35 need not specify the court to which the appeal is taken; the appeal will  
36 be treated as taken to the Court of Appeal for the district in which the  
37 superior court is located.  
38  
39

1 **(b) Superior court clerk's duties**

2  
3 (1) When a notice of appeal is filed, the superior court clerk must  
4 immediately:

5  
6 (A) Mail a notification of the filing to:

7  
8 (i) Each party other than the appellant;

9  
10 (ii) The attorney of record for each party;

11  
12 (iii) Any person currently awarded by the juvenile court the  
13 status of the child's de facto parent;

14  
15 (iv) Any Court Appointed Special Advocate (CASA) volunteer;

16  
17 (v) If the court knows or has reason to know that an Indian child  
18 is involved, the Indian custodian, if any, and tribe of the  
19 child or the Bureau of Indian Affairs, as required under  
20 Welfare and Institutions Code section 224.2; and

21  
22 (vi) The reviewing court clerk; and

23  
24 (B) Notify the reporter by telephone and in writing to prepare a  
25 reporter's transcript and deliver it to the clerk within 20 days after  
26 the notice of appeal is filed.

27  
28 (2) The notification must show the name of the appellant, the date it was  
29 mailed, the number and title of the case, and the date the notice of  
30 appeal was filed. If the information is available, the notification must  
31 also include:

32  
33 (A) The name, address, telephone number, and California State Bar  
34 number of each attorney of record in the case;

35  
36 (B) The name of the party that each attorney represented in the  
37 superior court; and

38  
39 (C) The name, address, and telephone number of any unrepresented  
40 party.



1 child is involved, notice must be sent to the Indian custodian, if any,  
2 and the child's tribe. It would also include a cross-reference to  
3 Welfare and Institutions Code section 224.2, which sets out the  
4 requirements for notice to Indian tribes in juvenile cases.  
5

- 6 6. The proposed new advisory committee comment incorporates the  
7 substance of the last sentence in rule 5.585, which indicates that  
8 form JV-800 may be used to file the notice of appeal in these  
9 matters. The language of this proposed advisory committee  
10 comment is modeled on the advisory committee comment to the  
11 new appellate division rules that refer to available Judicial Council  
12 forms.  
13  
14

15 **Rule 8.406. Time to appeal**

16  
17 **(a) Normal time**

- 18  
19 (1) Except as provided in (2) and (3), a notice of appeal must be filed  
20 within 60 days after the rendition of the judgment or the making of the  
21 order being appealed.  
22  
23 (2) In matters heard by a referee not acting as a temporary judge, a notice  
24 of appeal must be filed within 60 days after the referee's order becomes  
25 final under rule 5.540(c).  
26  
27 (3) When an application for rehearing of an order of a referee not acting as  
28 a temporary judge is denied under rule 5.542, a notice of appeal from  
29 the referee's order must be filed within 60 days after that order is  
30 served under rule 5.538(b)(3) or 30 days after entry of the order  
31 denying rehearing, whichever is later.  
32

33 **(b) Cross-appeal**

34  
35 If an appellant timely appeals from a judgment or appealable order, the time  
36 for any other party to appeal from the same judgment or order is either the  
37 time specified in (a) or 20 days after the superior court clerk mails  
38 notification of the first appeal, whichever is later.  
39  
40



1 **(c) Receipt by mail from custodial institution**

2  
3 If the superior court clerk receives a notice of appeal by mail from a  
4 custodial institution after the period specified in (a) has expired but the  
5 envelope shows that the notice was mailed or delivered to custodial officials  
6 for mailing within the period specified in (a), the notice is deemed timely.  
7 The clerk must retain in the case file the envelope in which the notice was  
8 received.

9  
10 **(d) No extension of time; late notice of appeal**

11  
12 Except as provided in rule 8.66, no court may extend the time to file a notice  
13 of appeal. The superior court clerk must mark a late notice of appeal  
14 “Received [date] but not filed,” notify the party that the notice was not filed  
15 because it was late, and send a copy of the marked notice of appeal to the  
16 district appellate project.

17  
18 **(e) Premature notice of appeal**

19  
20 A notice of appeal is premature if filed before the judgment is rendered or  
21 the order is made, but the reviewing court may treat the notice as filed  
22 immediately after the rendition of judgment or the making of the order.

23  
24 **REVISERS' NOTES**

- 25  
26 1. As noted above, to mirror the structure of the rules on appeals in  
27 civil and criminal cases, the topic of the time to appeal would be  
28 covered in a separate rule from the topic of filing an appeal.  
29  
30 2. The language of proposed new rule 8.406 is taken from current rule  
31 8.400 (d)–(g) concerning the time for filing notices of appeal.  
32  
33 3. The provisions concerning extending the time to appeal from current  
34 8.400 (d)(1) and concerning late notices of appeal from current  
35 8.400(g)(2) have been combined together into a new subdivision (d).  
36 This is similar to the structure of rule 8.104, relating to the time for  
37 filing notices of appeal in civil cases. It would also put the provision  
38 on extending the time to appeal in a more logical place where it is  
39 clearer that it applies to all the possible deadlines for filing a notice  
40 of appeal.

1  
2  
3 **Rule ~~8.404.~~ 8.407. Record on appeal**  
4

5 **(a) – (b) \* \* \***  
6

7 **(c) Application in superior court for addition to normal record**  
8

9 (1) Any party or Indian tribe that has intervened in the proceedings may  
10 apply to the superior court for inclusion in the record of any of the  
11 following items:  
12

13 (A) In the clerk’s transcript: any written motion or notice of motion  
14 by any party, with supporting and opposing memoranda and  
15 attachments, and any written opinion of the court; and  
16

17 (B) In the reporter’s transcript: any oral proceedings.  
18

19 (2) – (7) \* \* \*  
20

21 **(d) – (f) \* \* \***  
22

23 **Advisory Committee Comment**  
24

25 **Subdivision (b).** Subdivision (b)(1) provides that only the reporter’s transcript of a hearing that  
26 resulted in the order being appealed must be included in the normal record. This provision is  
27 intended to achieve consistent record requirements in all appeals of cases under Welfare and  
28 Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by  
29 transcribing proceedings not necessary to the appeal.  
30

31 Subdivision (b)(2)(A) recognizes that findings made in a jurisdictional hearing are not separately  
32 appealable and can be challenged only in an appeal from the ensuing dispositional order. The rule  
33 therefore specifically provides that a reporter’s transcript of jurisdictional proceedings must be  
34 included in the normal record on appeal from a dispositional order.  
35

36 Subdivision (b)(2)(B) specifies that the oral proceedings on any motion by the appellant that was  
37 denied in whole or in part must be included in the normal record on appeal from a disposition  
38 order. Rulings on such motions usually have some impact on either the jurisdictional findings or  
39 the subsequent disposition order. Routine inclusion of these proceedings in the record will  
40 promote expeditious resolution of appeals of cases under Welfare and Institutions Code section  
41 300, 601, or 602.  
42  
43

1 **REVISERS' NOTES**

2  
3 The proposed change to subdivision (c) would clarify that only an Indian  
4 tribe that has intervened in the proceedings can apply to the court to add  
5 materials to the record on appeal.

6  
7  
8 **Rule ~~8.406~~, 8.408. \* \* \***

9  
10 **REVISERS' NOTES**

11  
12 There is no proposed change to this rule other than giving it a new rule  
13 number.

14  
15  
16 **Rule ~~8.408~~, 8.409. Preparing, and sending, augmenting, and correcting the**  
17 **record**

18  
19 **(a) Application**

20  
21 Except as provided in ~~(b)~~ 8.416(c)(1), this rule does not apply to cases under  
22 rule 8.416.

23  
24 **(b) – (d) \* \* \***

25  
26 **~~(e) – Augmenting and correcting the record in the reviewing court~~**

27  
28 ~~(1) – Rule 8.340(a) (b) governs augmentation of the record without court~~  
29 ~~order.~~

30  
31 ~~(2) – On request of a party or on its own motion, the reviewing court may~~  
32 ~~order the record augmented or corrected as provided in rule 8.155(a)~~  
33 ~~and (e).~~

34  
35 **Advisory Committee Comment**

36  
37 **Subdivision (a).** Subdivision (a) calls litigants' attention to the fact that a different rule (rule  
38 8.416) governs *sending, augmenting, and correcting* the record in appeals from judgments or  
39 orders terminating parental rights and in dependency appeals in certain counties. Rule 8.408(b)  
40 governs *preparing and certifying* the record in those appeals. (See rule ~~8.416(a)(2)~~ [~~“In all~~  
41 ~~respects not provided for in this rule, rules 8.400–8.412 apply.”~~] 8.416(c)(1) [~~“The record must be~~  
42 ~~prepared and certified as provided in rule 8.409(b).”~~].)

1  
2 **REVISERS' NOTES**

- 3  
4 1. To mirror the structure of the rules on appeals in civil and criminal  
5 cases, the topic of augmenting and correcting the record would be  
6 covered in a separate rule from the topic of preparing and sending  
7 the record (see proposed new rule 8.410, below).  
8  
9 2. Subdivision (a) and the accompanying advisory committee comment  
10 have been amended to make it clearer that only the requirements  
11 concerning preparing and certifying the record in this rule apply in  
12 appeals governed by rule 8.416.  
13  
14

15 **Rule 8.410. Augmenting and correcting the record in the reviewing court**

16  
17 **(a) Omissions**

18  
19 If, after the record is certified, the superior court clerk or the reporter learns  
20 that the record omits a document or transcript that any rule or order requires  
21 to be included, without the need for a motion or court order, the clerk must  
22 promptly copy and certify the document or the reporter must promptly  
23 prepare and certify the transcript and the clerk must promptly send the  
24 document or transcript—as an augmentation of the record—to all those who  
25 are listed under 8.409(d).  
26

27 **(b) Augmentation or correction by the reviewing court**

- 28  
29 (1) On motion of a party or on its own motion, the reviewing court may  
30 order the record augmented or corrected as provided in rule 8.155(a)  
31 and (c).  
32  
33 (2) If, after the record is certified, the trial court amends or recalls the  
34 judgment or makes any other order in the case, the trial court clerk must  
35 notify each entity and person to whom the record is sent under rule  
36 8.409(d).  
37

38 **REVISERS' NOTES**

- 39  
40 1. To mirror the structure of the rules on appeals in civil and criminal  
41 cases, the topic of augmenting and correcting the record would be

1 covered in this separate rule, rather than being part of rule 8.409,  
2 which covers preparing and sending the record.

- 3
- 4 2. This rule is based on current rule 8.408(e).
- 5
- 6 3. In recognition of the fact that there may be many subsequent orders  
7 in juvenile cases that are not relevant to the judgment or order being  
8 appealed, this proposal would eliminate the cross-reference to rule  
9 8.340(a), which calls for automatic augmentation of the record  
10 whenever the trial court amends or recalls the judgment or makes  
11 any other order in the case. Instead, a new provision would be  
12 added to subdivision (b) providing for notice to the parties of such  
13 action by the trial court. The parties can use this information to  
14 determine whether to request that the record be augmented.
- 15
- 16 4. To make it clearer when trial court clerks and reporters must  
17 automatically correct a record, this proposal would replace the  
18 cross-reference to rule 8.340(b) that is currently in 8.408(e)(1) with  
19 the content of rule 8.340(b).
- 20
- 21 5. The reference to correcting or augmenting the record “on request” of  
22 a party in current rule 8.408(e)(2) has been replaced with “on  
23 motion” of a party. Rule 8.155, which is referenced as establishing  
24 the procedures for such corrections and augmentations, calls for  
25 parties to file motions in these circumstances. Rule 8.340, which  
26 governs augmentation and correction in felony appeals, similarly  
27 calls for parties to file motions in these circumstances.
- 28
- 29

30 **Rule 8.411. Abandoning the appeal**

31

32 **(a) How to abandon**

33

34 An appellant may abandon the appeal at any time by filing an abandonment  
35 of the appeal. The abandonment must be authorized by the appellant and  
36 signed by either the appellant or the appellant’s attorney of record. In a  
37 Welfare and Institutions Code section 300 proceeding in which the child is  
38 the appellant, the abandonment must be authorized by the child, or if the  
39 child is not capable of giving authorization, by the child’s CAPTA guardian  
40 ad litem.  
41

1 **(b) Where to file; effect of filing**

2  
3 (1) If the record has not been filed in the reviewing court, the appellant  
4 must file the abandonment in the superior court. The filing effects a  
5 dismissal of the appeal and restores the superior court’s jurisdiction.

6  
7 (2) If the record has been filed in the reviewing court, the appellant must  
8 file the abandonment in that court. The reviewing court may dismiss  
9 the appeal and direct immediate issuance of the remittitur.

10  
11 **(c) Clerk’s duties**

12  
13 (1) If the abandonment is filed in the superior court, the clerk must  
14 immediately mail a notification of the abandonment to:

15  
16 (A) Every other party;

17  
18 (B) The reviewing court; and

19  
20 (C) The reporter if the appeal is abandoned before the reporter has  
21 filed the transcript.

22  
23 (2) If the abandonment is filed in the reviewing court and the reviewing  
24 court orders the appeal dismissed, the clerk must immediately mail a  
25 notification of the order of dismissal to every party.

26  
27 **Advisory Committee Comment**

28  
29 The Supreme Court has held that appellate counsel for an appealing minor has the power to move  
30 to dismiss a dependency appeal based on counsel’s assessment of the child’s best interests, but  
31 that the motion to dismiss requires the authorization of the child or, if the child is incapable of  
32 giving authorization, the authorization the child’s CAPTA guardian ad litem (*In re Josiah Z.*  
33 (2005) 36 Cal.4th 664).

34  
35 **REVISERS’ NOTES**

- 36  
37 1. This is a proposed new rule on abandonment of appeals.  
38  
39 2. The language of this rule is modeled on rule 8.316 regarding  
40 abandonment of felony appeals.  
41

- 1 a. The second sentence in subdivision (a) articulates the  
2 requirement for authorization from the child or the child's  
3 guardian ad litem for the dismissal of juvenile dependency  
4 appeals by a child.  
5  
6 b. Subdivision (b) is exactly the same as 8.316.  
7  
8 c. Subdivision (c) differs from 8.316 in that it is organized into  
9 subsections based on whether the abandonment was filed in the  
10 trial court or reviewing court. This organization seems preferable  
11 because the notice requirements differ depending on where the  
12 abandonment was filed.  
13  
14 3. An advisory committee comment referring to *In re Josiah Z.* has  
15 been included.  
16  
17

18 **Rule 8.412. Briefs by parties and amici curiae**

19  
20 **(a) Contents, form, and length**

- 21  
22 (1) Rules 8.200 governs the briefs that may be filed by parties and amici  
23 curiae.  
24  
25 (2) Except as provided in (3), rule 8.204 governs the form and contents of  
26 briefs. Rule 8.216 also applies in appeals in which a party is both  
27 appellant and respondent.  
28  
29 (3) Rule 8.360(a)–(b) governs the ~~contents, form, and~~ length of briefs.  
30

31 **(b) Time to file**

- 32  
33 (1) Except in ~~eases~~ appeals governed by rule 8.416(e), the appellant must  
34 serve and file the appellant's opening brief within 40 days after the  
35 record is filed in the reviewing court.  
36  
37 (2) The respondent must serve and file the respondent's brief within 30  
38 days after the appellant's opening brief is filed.  
39  
40 (3) The appellant must serve and file any reply brief within 20 days after  
41 the respondent's brief is filed.

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- (4) In dependency cases in which the child is not an appellant but has appellate counsel, the child must serve and file any brief within 10 days after the respondent’s brief is filed.
- (5) Rule 8.220 applies if a party fails to timely file an appellant’s opening brief or a respondent’s brief, but the period specified in the notice required by that rule must be 30 days.

**(c) Extensions of time**

The superior court may not order any extensions of time to file briefs. Except in ~~cases~~ appeals governed by rule 8.416(f), the reviewing court may order extensions of time for good cause.

**(d) Failure to file a brief**

- (1) Except in ~~dependency appeals in Orange, Imperial, and San Diego Counties, and in appeals from the termination of parental rights~~ appeals governed by rule 8.416, if a party fails to timely file an appellant’s opening brief or a respondent’s brief, the reviewing court clerk must promptly notify the party’s counsel, or if not represented, the party, by mail that the brief must be filed within 30 days after the notice is mailed, and that failure to comply may result in one of the following sanctions:

(A) – (B) \* \* \*

(2) – (3) \* \* \*

(e) \* \* \*

**REVISERS’ NOTES**

- 1. Subdivision (a) would be amended to clarify that rule 8.200 governs what briefs can be filed, including amicus briefs, and rule 8.204 governs the form and content of briefs. Rule 8.360(a), which is currently cross-referenced in subdivision (a), in turn, cross-references rules 8.200 and 8.204. Subdivision (a) would also be



1 amended to include a cross-reference to rule 8.216, which  
2 addresses the sequence and contents of briefs when there is a  
3 cross-appeal.

- 4  
5 2. A few other changes have been made to use uniform language in  
6 those provisions indicating that rule 8.416, rather than this rule,  
7 applies.  
8

9  
10 **Rule 8.416. Appeals from all terminations of parental rights; dependency**  
11 **appeals from the superior courts of in Orange, Imperial, and San Diego**  
12 **Counties and from other superior courts by local rule**

13  
14 **(a) Application**

- 15  
16 (1) This rule governs:

17  
18 (A) Appeals from judgments or appealable orders of all superior  
19 courts terminating parental rights under Welfare and Institutions  
20 Code section 366.26 or freeing a child from parental custody and  
21 control under Family Code section 7800 et seq.; and

22  
23 (B) Appeals from judgments or appealable orders ~~of the Superior~~  
24 ~~Courts of Orange, Imperial, and San Diego Counties~~ in all  
25 juvenile dependency cases ~~of:~~

26  
27 (i) The Superior Courts of Orange, Imperial, and San Diego  
28 Counties; and

29  
30 (ii) Other superior courts when the superior court and the  
31 District Court of Appeal with jurisdiction to hear appeals  
32 from that superior court have agreed and have adopted local  
33 rules providing that this rule will govern appeals from that  
34 superior court.

- 35  
36 (2) In all respects not provided for in this rule, rules ~~8.400-8.403~~-8.412  
37 apply.  
38  
39

1 **(b) Cover of record**

2  
3 (1) In appeals under (a)(1)(A), the cover of the record must prominently  
4 display the title “Appeal From [Judgment or Order] Terminating  
5 Parental Rights Under [Welfare and Institutions Code Section 366.26  
6 or Family Code Section 7800 et seq.],” whichever is appropriate.  
7

8 (2) In appeals ~~from judgments or appealable orders of the Superior Courts~~  
9 ~~of Orange, Imperial, and San Diego Counties~~ under (a)(1)(B), the cover  
10 of the record must prominently display the title “Appeal From  
11 [Judgment or Order] Under [Welfare and Institutions Code Section 300  
12 et seq. or Family Code Section 7800 et seq.],” whichever is  
13 appropriate.  
14

15 **(c) Preparing, certifying, and sending the record**

16  
17 (1) The record must be prepared and certified as provided in rule 8.409(b).

18  
19 ~~(1)~~(2) When the clerk’s and reporter’s transcripts are certified as correct,  
20 the clerk must immediately send:

21  
22 (A) The original transcripts to the reviewing court by the most  
23 expeditious method, noting the sending date on each original; and  
24

25 (B) One copy of each transcript to the attorneys of record for the  
26 appellant, the respondent, and the minor, and to the district  
27 appellate project, by any method as fast as United States Postal  
28 Service express mail.  
29

30 ~~(2)~~(3) If appellate counsel has not yet been retained or appointed when the  
31 transcripts are certified as correct, the clerk must send that counsel’s  
32 copies of the transcripts to the district appellate project.  
33

34 **(d) Augmenting or correcting the record in the reviewing court**

35  
36 (1) Except as provided in (2) and (3), rule ~~8.155~~ 8.410 governs any  
37 augmentation or correction of the record.  
38

39 (2) An appellant must serve and file any ~~request~~ motion for augmentation  
40 or correction within 15 days after receiving the record. A respondent

1 must serve and file any such ~~request~~ motion within 15 days after the  
2 appellant's opening brief is filed.

3  
4 (3) The clerk and the reporter must prepare any supplemental transcripts  
5 within 20 days, giving them the highest priority.

6  
7 (4) The clerk must certify and send any supplemental transcripts as  
8 required by (c).

9  
10 **(e) Time to file ~~appellant's opening briefs~~**

11  
12 (1) To permit determination of the appeal within 250 days after the notice  
13 of appeal is filed, the appellant must serve and file the appellant's  
14 opening brief within 30 days after the record is filed in the reviewing  
15 court.

16  
17 (2) Rule 8.412(b) governs the time for filing other briefs.

18  
19 **(f) \* \* \***

20  
21 **(g) Failure to file a brief**

22  
23 Rule 8.412(d) applies if a party fails to timely file an appellant's opening  
24 brief or a respondent's brief, but the period specified in the notice required  
25 by that rule must be 15 days.

26  
27 **(h) \* \* \***

28  
29 **REVISERS' NOTES**

- 30  
31 1. Subdivision (a) would be amended to expand the courts that may  
32 follow these expedited appeal procedures in juvenile dependency  
33 cases to include other superior courts when the superior court and  
34 the District Court of Appeal with jurisdiction to hear appeals from that  
35 superior court have agreed and have adopted local rules providing  
36 that this rule will govern appeals from that superior court.  
37  
38 2. As indicated above, subdivision (c) of this rule and rule 8.409 above  
39 would be amended to make it clearer that the requirements  
40 concerning preparing and certifying the record in rule 8.409 apply in  
41 appeals governed by rule 8.416.

- 1  
2 3. Subdivision (d) would be amended to reflect the changes relating to  
3 augmentation and correction of the record in proposed rule 8.410  
4 above. This includes amending subdivision (d) so that it references  
5 rule 8.410 rather than rule 8.155.  
6  
7 4. Subdivision (e) would be amended to provide that the times for filing  
8 all briefs other than the appellant's opening brief are set by rule  
9 8.412.  
10

11  
12 **Article ~~2~~ 3. Writs**  
13

14 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**  
15 **under Welfare and Institutions Code section 366.26**  
16

17 **(a) Application**  
18

19 Rules 8.450–8.452 ~~and 5.600~~ govern writ petitions to review orders setting a  
20 hearing under Welfare and Institutions Code section 366.26. Except as  
21 provided in rule 8.452, rules 8.485–8.493 do not apply to petitions governed  
22 by these rules.  
23

24 **(b) Purpose**  
25

26 Rules 8.450–8.452 are intended to encourage and assist the reviewing courts  
27 to determine on their merits all writ petitions filed under these rules within  
28 the 120-day period for holding a hearing under Welfare and Institutions  
29 Code section 366.26.  
30

31 **(c) Who may file**  
32

33 The petitioner's trial counsel, or, in the absence of trial counsel, the party, is  
34 responsible for filing any notice of intent and writ petition under rules 8.450–  
35 8.452. Trial counsel is encouraged to seek assistance from or consult with  
36 attorneys experienced in writ procedure.  
37  
38

1 (d) **Extensions of time**

2  
3 The superior court may not extend any time period prescribed by rules  
4 8.450–8.452. The reviewing court may extend any time period, but must  
5 require an exceptional showing of good cause.  
6

7 (e) **Notice of intent**

8  
9 (1) A party seeking writ review under rules 8.450–8.452 must file in the  
10 superior court a notice of intent to file a writ petition and a request for  
11 the record.  
12

13 (2) The notice must include all known dates of the hearing that resulted in  
14 the order under review.  
15

16 (3) The notice must be ~~signed~~ authorized by the party intending to file the  
17 petition and must be signed by that party or, ~~if filed on behalf of a~~  
18 ~~child,~~ by the attorney of record for the child that party. ~~The reviewing~~  
19 ~~court may waive this requirement for good cause on the basis of a~~  
20 ~~declaration by the attorney of record explaining why the party could~~  
21 ~~not sign the notice.~~  
22

23 (4) – (5) \* \* \*

24  
25 (f) **Sending the notice of intent**

26  
27 (1) When the notice of intent is filed, the superior court clerk must  
28 immediately mail a copy of the notice to:

29  
30 (A) ~~Each counsel~~ The attorney of record for each party;

31  
32 (B) Each party, ~~including the child, if the child is 10 years of age or~~  
33 ~~older~~;

34  
35 (C) The mother; the father; and the any presumed and alleged  
36 parents; ~~the dependent child's present caregiver~~;

37  
38 (D) ~~any~~ The child's legal guardian; ~~and~~  
39

1            ~~(E)~~ Any person who has been declared a currently awarded by the  
2            juvenile court the status of the child's de facto parent and given  
3            standing to participate in the juvenile court proceedings;  
4

5            ~~(C)~~(F) The probation officer or social worker;

6  
7            ~~(D)~~(G) Any Court Appointed Special Advocate (CASA) volunteer;

8  
9            ~~(E)~~(H) The grandparents of the child, if their address is known and if  
10            the parents' whereabouts are unknown; and

11  
12            ~~(F)~~(I) If the court knows or has reason to know that an Indian child is  
13            involved, the Indian custodian, if any, and tribe of the child or the  
14            Bureau of Indian Affairs if the identify or location of the parent or  
15            Indian custodian and the tribe cannot be determined as required  
16            under Welfare and Institutions Code section 224.2.  
17

- 18            (2) The clerk must promptly send a copy of the notice of intent and a proof  
19            of service list to the reviewing court, by first-class mail or fax. If the  
20            party was notified of the order setting the hearing only by mail, the  
21            clerk must include the date that the notification was mailed.

22  
23            **(g) Preparing the record**

24  
25            When the notice of intent is filed, the superior court clerk must:

- 26  
27            (1) Immediately notify ~~the~~ each court reporter by telephone and in writing  
28            to prepare a reporter's transcript of the oral proceedings at each session  
29            of the hearing that resulted in the order under review and deliver the  
30            transcript to the clerk within 12 calendar days after the notice of intent  
31            is filed; and

- 32  
33            (2) Within 20 days after the notice of intent is filed, prepare a clerk's  
34            transcript that includes the notice of intent, proof of service, and all  
35            items listed in rule 8.404(a).

36  
37            **(h) – (i) \* \* \***  
38  
39

1 **REVISERS' NOTES**

- 2
- 3 1. In subdivision (a), the reference to rule 5.600 would be deleted  
4 because under this proposal, rule 5.600 would be deleted.  
5
- 6 2. In subdivision (a), the last sentence would be modified to reflect the  
7 proposed amendments to rules 8.452 and 8.456, below, that refer to  
8 rule 8.490 to address finality of the decision.  
9
- 10 3. Subdivision (e) paragraph (3) would be amended to eliminate the  
11 requirement that the party sign the notice of intent. This would be  
12 replaced with a requirement, similar to that proposed in rule  
13 8.405(a), providing that the notice of intent must be authorized by  
14 the party. This change would allow the attorney of record to sign the  
15 notice of intent and is intended to eliminate concerns that a party  
16 may be precluded from seeking review simply because he or she  
17 was unavailable to sign the notice of intent and to make this rule  
18 more consistent with the general rule that attorneys may sign  
19 documents that will be filed on behalf of their clients if the clients  
20 have authorized the filing.  
21
- 22 4. In subdivision (f), the child's present caregiver would be deleted  
23 from the list of those entitled to the notice of intent. The child's  
24 present caregiver is not a party, unless the caregiver has been  
25 granted de facto parent status by the juvenile court. Based on this,  
26 the committees concluded that the caregiver should not be entitled  
27 to a copy of the notice of intent. This is consistent with the rules on  
28 appeals, which do not provide that caregivers are entitled to receive  
29 notice that an appeal has been filed. Note also that the duplicative  
30 provision in rule 5.600 relating to who must be sent a copy of the  
31 notice of intent would be deleted. That rule contains a broader list of  
32 recipients than this rule. Deleting that rule would eliminate the  
33 current requirement that the notice of intent be sent to (1) siblings  
34 and their caregivers and attorneys; and (2) unknown parents.  
35
- 36 5. Also in subdivision (f), to reflect that all persons found by the juvenile  
37 court to be de facto parents have the right to participate in the  
38 proceedings and that persons declared de facto parents can lose  
39 that status, the reference to "any person who has been declared a  
40 de facto parent and given standing to participate in the juvenile court  
41 proceedings" would be changed to "any person currently awarded  
42 by the juvenile court the status of the child's de facto parent."

- 1  
2 6. To give additional guidance about statutory notice requirements in  
3 cases involving Indian children, the current language of  
4 8.450(f)(1)(F) would be modified. As amended, this provision would  
5 indicate that, if the court knows or has reason to know that an Indian  
6 child is involved, notice must be sent to the Indian custodian, if any,  
7 and the child's tribe. It would also include a cross-reference to  
8 Welfare and Institutions Code section 224.2, which sets out the  
9 requirements for notice to Indian tribes in juvenile cases. This is  
10 modeled in part on the language of current rule 8.452(d).  
11  
12 7. Subdivision (g) paragraph (1) would be amended to clarify that  
13 notice must be given to each court reporter, as these trials often  
14 take place over multiple days. This is also the language in current  
15 rule 5.600(f)(1) and is consistent with 8.304(c), relating to felony  
16 appeals.  
17  
18

19 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**  
20 **Institutions Code section 366.26 and rule 5.600**

21  
22 **(a) Petition**

23  
24 (1) The petition must include:

25  
26 (A) The identities of the parties;

27  
28 (B) The date on which the superior court made the order setting the  
29 hearing;

30  
31 (C) The date on which the hearing is scheduled to be held;

32  
33 (D) A summary of the grounds of the petition; and

34  
35 (E) The relief requested.  
36

37 ~~(2) — The petition must be liberally construed.~~

38  
39 ~~(3)~~(2) The petition must be accompanied by a memorandum.  
40

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



1  
2 **(c) Time to file Serving and filing the petition and response**

3  
4 (1) The petition must be served and filed within 10 days after the record is  
5 filed in the reviewing court. The petitioner must serve the petition on:

6  
7 (A) Each attorney of record;

8  
9 (B) Any unrepresented party;

10  
11 (C) The child's Court Appointed Special Advocate (CASA)  
12 volunteer;

13  
14 (D) Any person currently awarded by the juvenile court the status of  
15 the child's de facto parent; and

16  
17 (E) If the court knows or has reason to know that an Indian child is  
18 involved, the Indian custodian, if any, and tribe of the child or the  
19 Bureau of Indian Affairs as required under Welfare and  
20 Institutions Code section 224.2.

21  
22 (2) Any response must be served on each of the people and entities listed  
23 above and filed:

24  
25 (A) Within 10 days—or, if the petition was served by mail, within 15  
26 days—after the petition is filed; or

27  
28 (B) Within 10 days after a respondent receives a request from the  
29 reviewing court for a response, unless the court specifies a shorter  
30 time.

31  
32 **~~(d)~~—Sending the writ**

33  
34 ~~Petitioner must send the writ to all parties entitled to receive notice under~~  
35 ~~Welfare and Institutions Code section 294, the child's Court Appointed~~  
36 ~~Special Advocate (CASA) volunteer, the child's present caregiver, and any~~  
37 ~~de facto parent given standing to participate in the juvenile court~~  
38 ~~proceedings.~~

39  
40 **~~(e)~~(d) \* \* \***

1 **(f)(e) Augmenting or correcting the record in the reviewing court**

- 2
- 3 (1) Except as provided in (2) and (3), rule ~~8.155~~ 8.410 governs any
- 4 augmentation or correction of the record.
- 5
- 6 (2) The petitioner must serve and file any request for augmentation or
- 7 correction within 5 days—or, if the record exceeds 300 pages, within 7
- 8 days; or, if the record exceeds 600 pages, within 10 days—after
- 9 receiving the record. A respondent must serve and file any such request
- 10 within 5 days after the petition is filed or an order to show cause has
- 11 issued, whichever is later.
- 12
- 13 (3) A party must attach to its motion a copy, if available, of any document
- 14 or transcript that it wants added to the record. The pages of the
- 15 attachment must be consecutively numbered, beginning with the
- 16 number one. If the reviewing court grants the motion it may augment
- 17 the record with the copy.
- 18
- 19 (4) If the party cannot attach a copy of the matter to be added, the party
- 20 must identify it as required under rules 8.122 and 8.130.
- 21
- 22 ~~(3)~~(5) An order augmenting or correcting the record may grant no more than
- 23 15 days for compliance. The clerk and the reporter must give the order
- 24 the highest priority.
- 25
- 26 ~~(4)~~(6) The clerk must certify and send any supplemental transcripts as
- 27 required by rule 8.450(h). If the augmentation or correction is ordered,
- 28 the time to file any petition or response is extended by the number of
- 29 additional days granted to augment or correct the record.
- 30

31 ~~(g)~~(f) \* \* \*

32

33 ~~(h)~~(g) \* \* \*

34

35 ~~(i)~~(h) \* \* \*

36

37 **(i) Filing, modification, finality of decision, and remittitur**

38

39 Rule 8.490 governs the filing, modification, finality of decisions, and

40 remittitur in writ proceedings under this rule.

41

1 **Advisory Committee Comment**

2  
3 **Subdivision ~~(e)~~(d).** Subdivision ~~(e)~~(d) tracks the second sentence of former rule 39.1B(l). (But  
4 see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

5  
6 **Subdivision ~~(i)~~(h).** Subdivision ~~(i)~~(h)(1) tracks former rule 39.1B(o). (But see *Maribel M. v.*  
7 *Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

8  
9 **REVISERS' NOTES**

- 10  
11 1. Paragraph (2) of subdivision (a) would be deleted because it is a  
12 direction to the appellate court and does not belong with the  
13 subdivision on what the petition must include.  
14  
15 2. Subdivisions (c) and (d) would be consolidated, so the information  
16 on whom the petition must be served, and when, is included in one  
17 subdivision.  
18  
19 3. As with the list of those who are sent a copy of the notice of intent to  
20 under rule 8.450(f), the list of who is required to be served with a  
21 copy of the petition would be narrowed.  
22  
23 a. Unlike for 8.450, if a party is represented, the petition would  
24 be sent only to the party's attorney; the party would not be  
25 sent a separate copy. This is the usual practice with respect to  
26 service of documents on represented parties (see rule  
27 1.21(a): "Whenever a document is required to be served on a  
28 party, the service must be made on the party's attorney if the  
29 party is represented.")  
30  
31 b. As was proposed for 8.450, the petition would no longer be  
32 sent to the child's present caregiver.  
33  
34 c. In addition, if the current language in 8.452(d) requiring the  
35 petition be sent to "all parties entitled to receive notice under  
36 Welfare and Institutions Code section 294" is interpreted to  
37 mean that the petition must be sent to all persons (rather than  
38 just parties) entitled to receive notice under section 294, this  
39 proposal would eliminate service of the petition on any of the  
40 following individuals who are not parties: (1) parents, alleged  
41 parents, and unknown parents; (2) siblings, their caregivers or  
42 counsel; and (3) grandparents.

- 1  
2 4. Subdivision (f), relating to augmenting or correcting the record,  
3 would be modified to include a cross-reference to proposed new rule  
4 8.410, relating to augmentation and correction of the record in  
5 appeals. It would also be modified to include provisions requiring  
6 parties requesting augmentation to attach to their augmentation  
7 motion a copy of the materials to be included in the record. This  
8 provision is modeled on rule 8.155(a), relating to augmentation  
9 motions in civil appeals.  
10  
11 5. A new subdivision (i), relating to filing, modification, and finality of  
12 decisions and remittitur in these proceedings, would be added to  
13 address an omission created with the renumbering of the rules. This  
14 provision would cross-reference to rule 8.490. Current rule 8.490(a)  
15 and (b) addresses filing, finality, and modification of decisions in  
16 proceedings relating to proceedings for writs of mandate, certiorari,  
17 and prohibition, and 8.490(c) addresses remittitur.  
18  
19

20 **Rule 8.454. Notice of intent to file writ petition under Welfare and**  
21 **Institutions Code section 366.28 to review order designating specific**  
22 **placement of a dependent child after termination of parental rights**  
23

24 **(a) Application**  
25

26 Rules 8.454–8.456 govern writ petitions to review placement orders  
27 following termination of parental rights entered on or after January 1, 2005.  
28 “Posttermination placement order” as used in this rule and rule 8.456 refers  
29 to orders following termination of parental rights. Except as provided in rule  
30 8.452, rules 8.485–8.493 do not apply to petitions governed by these rules.  
31

32 **(b) \* \* \***  
33

34 **(c) Who may file**  
35

36 The petitioner's trial counsel, or, in the absence of trial counsel, the party, is  
37 responsible for filing in the superior court any notice of intent and writ  
38 petition under rules 8.454–8.456. Trial counsel is encouraged to seek  
39 assistance from, or consult with, attorneys experienced in writ procedure.  
40

41 **(d) \* \* \***

1  
2 **(e) Notice of intent**

3  
4 (1) A party seeking writ review under rules 8.454–8.456 must file in the  
5 superior court a notice of intent to file a writ petition and a request for  
6 the record.

7  
8 (2) \* \* \*

9  
10 (3) The notice must be ~~signed~~ authorized by the party intending to file the  
11 petition and signed by the party or, if filed ~~on behalf of the child~~, by the  
12 attorney of record for the petitioner. child. ~~The reviewing court may~~  
13 ~~waive this requirement for good cause on the basis of a declaration by~~  
14 ~~the attorney of record explaining why the party could not sign the~~  
15 ~~notice.~~

16  
17 (4) – (5) \* \* \*

18  
19 **(f) \* \* \***

20  
21 **(g) Sending the notice of intent**

22  
23 (1) When the notice of intent is filed, the superior court clerk must  
24 immediately mail a copy of the notice to:

25  
26 (A) ~~Each counsel~~ The attorney of record for each party;

27  
28 (B) ~~Each relevant party; , including the child, if the child is 10 years~~  
29 ~~of age or older, the child’s present caregiver;~~

30  
31 (C) ~~any~~ The child’s legal guardian; and

32  
33 (D) ~~Any person who has been declared a~~ currently awarded by the  
34 juvenile court the status of the child’s de facto parent and given  
35 standing to participate in the juvenile court proceedings;

36  
37 (E) ~~(C)~~ The probation officer or social worker;

38  
39 (F) ~~(D)~~ The child’s Court Appointed Special Advocate (CASA)  
40 volunteer; and



1 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28**  
2 **to review order designating or denying specific placement of a**  
3 **dependent child after termination of parental rights**  
4

5 **(a) Petition**  
6

7 (1) The petition must include:  
8

9 (A) The identities of the parties;  
10

11 (B) The date on which the superior court made the posttermination  
12 placement order;  
13

14 (C) A summary of the grounds of the petition; and  
15

16 (D) The relief requested.  
17

18 ~~(2) The petition must be liberally construed.~~  
19

20 ~~(3)~~(2) The petition must be accompanied by a memorandum.  
21

22 **(b) \* \* \***  
23

24 **(c) ~~Time to file~~ Serving and filing the petition and response**  
25

26 (1) The petition must be served and filed within 10 days after the record is  
27 filed in the reviewing court. The petitioner must ~~give notice to all~~  
28 ~~parties entitled to receive notice under rule 8.454.~~ serve the petition on:  
29

30 (A) Each attorney of record;  
31

32 (B) Any unrepresented party;  
33

34 (C) The child's Court Appointed Special Advocate (CASA)  
35 volunteer;  
36

37 (D) Any person currently awarded by the juvenile court the status of  
38 the child's de facto parent; and  
39

40 (E) If the court knows or has reason to know that an Indian child is  
41 involved, the Indian custodian, if any, and tribe of the child or the

1 Bureau of Indian Affairs as required under Welfare and  
2 Institutions Code section 224.2.

3  
4 (2) Any response must be served on each of the people and entities listed  
5 in (1) and filed:

6  
7 (A) Within 10 days—or, if the petition was served by mail, within 15  
8 days—after the petition is filed; or

9  
10 (B) Within 10 days after a respondent receives a request from the  
11 reviewing court for a response, unless the court specifies a shorter  
12 time.

13  
14 ~~(d)~~ **Sending the writ**

15  
16 ~~Petitioner must send the writ to all parties entitled to receive notice under~~  
17 ~~Welfare and Institutions Code section 294, any Court Appointed Special~~  
18 ~~Advocate (CASA) volunteer, the child's present caregiver, the child's~~  
19 ~~prospective adoptive parties, and any de facto parent given standing to~~  
20 ~~participate in the juvenile court proceedings.~~

21  
22 ~~(e)~~(d) **Order to show cause or alternative writ**

23  
24 If the court intends to determine the petition on the merits, it must issue an  
25 order to show cause or alternative writ.

26  
27 ~~(f)~~(e) **Augmenting or correcting the record in the reviewing court**

28  
29 (1) Except as provided in (2) and (3), rule 8.155 governs augmentation or  
30 correction of the record.

31  
32 (2) The petitioner must serve and file any request for augmentation or  
33 correction within 5 days—or, if the record exceeds 300 pages, within 7  
34 days; or, if the record exceeds 600 pages, within 10 days—after  
35 receiving the record. A respondent must serve and file any such request  
36 within 5 days after the petition is filed or an order to show cause has  
37 issued, whichever is later.

38  
39 (3) A party must attach to its motion a copy, if available, of any document  
40 or transcript that it wants added to the record. The pages of the  
41 attachment must be consecutively numbered, beginning with the



1 number one. If the reviewing court grants the motion, it may augment  
2 the record with the copy.

3  
4 (4) If the party cannot attach a copy of the matter to be added, the party  
5 must identify it as required under rules 8.122 and 8.130.

6  
7 ~~(3)~~(5) An order augmenting or correcting the record may grant no more than  
8 15 days for compliance. The clerk and the reporter must give the order  
9 the highest priority.

10  
11 ~~(4)~~(6) The clerk must certify and send any supplemental transcripts as  
12 required by rule 8.454(i). If the augmentation or correction is ordered,  
13 the time to file any petition or response is extended by the number of  
14 additional days granted to augment or correct the record.

15  
16 ~~(g)~~(f) \* \* \*

17  
18 ~~(h)~~(g) \* \* \*

19  
20 ~~(i)~~(h)

21  
22 (1) – (4) \* \* \*

23  
24 (5) Rule 8.490 governs the filing, modification, finality of decisions, and  
25 remittitur in writ proceedings under this rule.

26  
27 ~~(j)~~(i) \* \* \*

28  
29 **REVISERS' NOTES**

30  
31 The same changes proposed to rule 8.452 are proposed for this rule. See  
32 revisers' notes following rule 8.452.

33  
34 Note that this rule contains two different provisions relating to who is to be served  
35 with a copy of the petition. The second sentence in subdivision (c) currently  
36 provides that "The petitioner must give notice to all parties entitled to receive  
37 notice under rule 8.454." Subdivision (d) currently provides that: "Petitioner must  
38 send the writ to all parties entitled to receive notice under Welfare and Institutions  
39 Code section 294, any Court Appointed Special Advocate (CASA) volunteer, the  
40 child's present caregiver, the child's prospective adoptive parties, and any de  
41 facto parent given standing to participate in the juvenile court proceedings." Both  
42 of these current provisions require broader service than this proposal.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>   TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>   <b>Draft 1</b> <b>04/03/09 xyz</b> <b>Not approved by the</b> <b>Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>ORDERS UNDER WELFARE AND INSTITUTIONS CODE</b> <b>SECTIONS 366.26, 727.3, 727.31</b>	CASE NUMBER:

Child's name: Date of birth: _____ Age: _____ Parent's name <i>(if known):</i> _____ <input type="checkbox"/> Mother <input type="checkbox"/> Father Parent's name <i>(if known):</i> _____ <input type="checkbox"/> Mother <input type="checkbox"/> Father
--

1. a. Hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 b. Judicial officer:  
 c. Parties and attorneys present:

2.  The court has read and considered the assessment prepared under Welfare and Institutions Code section 366.21(i) or 366.22(b) and the report and recommendation of the  social worker  probation officer  and other evidence.
3.  The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

**THE COURT FINDS AND ORDERS**

4. a.  Notice has been given as required by law.  
 b.  This case involves an Indian child and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5.  The child is 10 years or older and is not present; the court finds that the child was properly notified of the right to be present.
6.  The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7.  The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code sections 361.5, 366.21, 366.22, 727.2, or 727.3, for  
 Parent *(name):* \_\_\_\_\_  Mother  Father  
 Parent *(name):* \_\_\_\_\_  Mother  Father

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

8. a.  There is clear and convincing evidence that it is likely the child will be adopted.
- b.  This case involves an Indian child and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(If item 8a or 8b is checked, go to item 9 unless item 10, 11, or 12 is applicable. If item 8a or 8b is not checked, go to item 14 or 15.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**
9.  The parental rights of
- a.  Parent (name):  Mother  Father
- b.  Parent (name):  Mother  Father
- c.  Alleged fathers (names):
- d.  Unknown mother  All unknown fathers  
are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**  
*(If item 9 is checked, go to items 16, 17, 18, 19, and 20.)*
10.  The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 10 is checked, go to item 14 or 15.)*
11.  Termination of parental rights would be detrimental to the child for the following reasons *(If item 11 is checked, check reasons below and go to item 14 or 15):*
- a.  The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b.  The child is 12 years or older and objects to termination of parental rights.
- c.  The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d.  The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.
- e.  There would be substantial interference with the child's sibling relationship.
- f.  The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
- (2) The child's tribe has identified guardianship or another permanent plan for the child.
12.  Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 12 is checked, check reasons below and go to item 13):*
- a.  is a member of a sibling group that should stay together.
- b.  has a diagnosed medical, physical, or mental disability.
- c.  is 7 years or older.

CHILD'S NAME:  _____	CASE NUMBER:  _____
----------------------------	---------------------------

13. a.  Termination of parental rights is not ordered at this time. Adoption is the permanent placement goal, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order)*:  
*(If item 13a is checked, provide for visitation in items 13b and 13c as appropriate, and go to items 16, 17, 18, 19, and 20.)*

b.  Visitation between the child and

<input type="checkbox"/> Parent (name):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> Parent (name):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> Legal guardian (name):		
<input type="checkbox"/> Other (name):		

is scheduled as follows *(specify)*:

c.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

14.  The child's permanent plan is legal guardianship. *(Name)*:  
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(If item 14 is checked, provide for visitation in items 14a and 14b as appropriate, and go to item 14c or 14d.)*

a.  Visitation between the child and

<input type="checkbox"/> Parent (name):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> Parent (name):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> Legal guardian (name):		
<input type="checkbox"/> Other (name):		

is scheduled as follows *(specify)*:

b.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

c.  Dependency  Wardship is terminated.

d.  Dependency  Wardship is not terminated. The likely date for termination of the dependency or wardship is *(date)*:  
*(If this item is checked, go to items 16, 17, 18, 19, and 20.)*

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

15. a.  The child's permanent plan is an identified placement with *(name of placement)*:  
with a specific goal of *(specify)*:

- |   |   |
|---|---|
| (1) <input type="checkbox"/> returning home     | (4) <input type="checkbox"/> permanent placement with a fit and willing relative  |
| (2) <input type="checkbox"/> adoption           | (5) <input type="checkbox"/> a less restrictive foster care setting   |
| (3) <input type="checkbox"/> legal guardianship | (6) <input type="checkbox"/> independent living with identification of a caring adult to serve as a lifelong connection |

**The child's specific goal is likely to be achieved by *(date)*:**  
*(If item 15a is checked, provide for visitation in items 15b and 15c as appropriate, and go to items 16, 17, 18, 19, and 20.)*

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

- b.  Visitation between the child and
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent (name):         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent (name):         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian (name): |                                 |                                 |
| <input type="checkbox"/> Other (name):          |                                 |                                 |
- is scheduled as follows (specify):

- c.  Visitation between child and (names):  
is detrimental to the child's physical or emotional well-being and is terminated.

16.  The child's placement is necessary.
17.  The child's placement is appropriate.
18.  The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been proven unsuccessful.
19.  The services set forth in the case plan include those needed to assist the child age 16 or older in making the transition from foster care to independent living. (This finding is required only for a child 16 years or older.)
20.  The child remains a  dependent  ward of the court. (If this box is checked, go to items 21 and 22 if applicable, and items 23 and 24.)
21.  All prior orders not in conflict with this order will remain in full force and effect.
22.  Other (specify):

23.  Next hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- a.  Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b.  Six-month postpermanency review

24. The  Parent (name): \_\_\_\_\_  Mother  Father
- Parent (name): \_\_\_\_\_  Mother  Father
- Child
- Other (name): \_\_\_\_\_
- have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY  <b>Draft 4</b> <b>04/09/09 xyz</b> <b>Not approved by the</b> <b>Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>PROOF OF SERVICE—JUVENILE</b>	CASE NUMBER: _____

I served a copy of the \_\_\_\_\_ (*name of document*) on the following persons or entities by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

- |  |                                   |
|--|-----------------------------------|
| 1. <input type="checkbox"/> Social worker <input type="checkbox"/> Probation officer | <input type="checkbox"/> Attorney |
| a. Name and address: _____   | a. Name and address: _____        |
| b. Date of service: _____  | b. Date of service: _____         |
| c. Method of service: _____  | c. Method of service: _____       |
- |  |                                   |
|--|-----------------------------------|
| 2. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal guardian | <input type="checkbox"/> Attorney |
| a. Name and address: _____   | a. Name and address: _____        |
| b. Date of service: _____  | b. Date of service: _____         |
| c. Method of service: _____  | c. Method of service: _____       |
- |  |                                   |
|--|-----------------------------------|
| 3. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal guardian | <input type="checkbox"/> Attorney |
| a. Name and address: _____   | a. Name and address: _____        |
| b. Date of service: _____  | b. Date of service: _____         |
| c. Method of service: _____  | c. Method of service: _____       |
- |  |                                   |
|--|-----------------------------------|
| 4. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal guardian | <input type="checkbox"/> Attorney |
| a. Name and address: _____   | a. Name and address: _____        |
| b. Date of service: _____  | b. Date of service: _____         |
| c. Method of service: _____  | c. Method of service: _____       |

CASE NAME:  	CASE NUMBER:  
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5.  Child (if 10 years of age or older)  
a. Name and address:

b. Date of service:  
c. Method of service:

Attorney  
a. Name and address:

b. Date of service:  
c. Method of service:

6.  Child (if 10 years of age or older)  
a. Name and address:

b. Date of service:  
c. Method of service:

Attorney  
a. Name and address:

b. Date of service:  
c. Method of service:

7.  Child's sibling  
a. Name and address:

b. Date of service:  
c. Method of service:

Attorney  
a. Name and address:

b. Date of service:  
c. Method of service:

8.  CASA  
a. Name and address:

b. Date of service:  
c. Method of service:

Attorney for party  
a. Name and address:

b. Date of service:  
c. Method of service:

9.  Tribe/Bureau of Indian Affairs  
a. Name and address:

b. Date of service:  
c. Method of service:

Attorney  
a. Name and address:

b. Date of service:  
c. Method of service:

10.  Indian custodian  
a. Name and address:

b. Date of service:  
c. Method of service:

Attorney  
a. Name and address:

b. Date of service:  
c. Method of service:

CASE NAME: _____	CASE NUMBER: _____
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11.  Child's caregiver  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

Attorney \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

12.  De facto parent  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

Attorney \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

13.  Grandparent  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

Attorney \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

14. Other (*specify*): \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

Attorney \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

15. Other (*specify*): \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

Attorney \_\_\_\_\_  
 a. Name and address: \_\_\_\_\_  
 \_\_\_\_\_  
 b. Date of service: \_\_\_\_\_  
 c. Method of service: \_\_\_\_\_

16. At the time of service I was at least 18 years of age and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (*specify*): \_\_\_\_\_  
 \_\_\_\_\_

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

Date: \_\_\_\_\_  
 \_\_\_\_\_

▶ \_\_\_\_\_

(TYPE OR PRINT NAME)

(SIGNATURE)



ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  TELEPHONE NO. : _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>Draft 1</b>  <b>04/03/09 xyz</b>  <b>Not approved by the</b>  <b>Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTICE OF APPEAL—JUVENILE</b>	CASE NUMBER:

**—NOTICE—**

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, 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, within **60** days after the order of the referee becomes final.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by  
 a. Appellant *(name):*  
 b. Address:

c. Phone number:

d. Name and address and phone number of person to be contacted *(if different from appellant):*

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
 (SIGNATURE OF  APPELLANT  ATTORNEY)

3. Items 4 through 6 on the reverse are  completed  not completed.

CASE NAME:  _____	CASE NUMBER:  _____
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4. Appellant is the
- |                                      |   |
|--------------------------------------|---|
| a. <input type="checkbox"/> child    | e. <input type="checkbox"/> de facto parent   |
| b. <input type="checkbox"/> mother   | f. <input type="checkbox"/> county welfare department   |
| c. <input type="checkbox"/> father   | g. <input type="checkbox"/> district attorney   |
| d. <input type="checkbox"/> guardian | h. <input type="checkbox"/> other ( <i>state relationship to child or interest in the case</i> ): |
5. This notice of appeal pertains to the following child or children (*specify number of children included*): \_\_\_\_\_
- a. Name of child:  
Child's date of birth:
- b. Name of child:  
Child's date of birth:
- c. Name of child:  
Child's date of birth:
- d. Name of child:  
Child's date of birth:  
 Continued in Attachment 5.
6. The order appealed from was made under Welfare and Institutions Code section (*check all that apply*):
- a.  **Section 360** (declaration of dependency)  Removal of custody from parent or guardian  Other orders  
 with review of section 300 jurisdictional findings  
Dates of hearing (*specify*):
- b.  **Section 366.26** (selection and implementation of permanent plan)  
 Termination of parental rights  Appointment of guardian  Planned permanent living arrangement  
Dates of hearing (*specify*):
- c.  **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)  
Dates of hearing (*specify*):
- d.  Other appealable orders relating to dependency (*specify*):  
Dates of hearing (*specify*):
- e.  **Section 725** (declaration of wardship and other orders)  
 with review of section 601 jurisdictional findings  
 with review of section 602 jurisdictional findings  
Dates of hearing (*specify*):
- f.  Other appealable orders relating to wardship (*specify*):  
Dates of hearing (*specify*):
- g.  Other (*specify*):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>Draft 4</b>  <b>03/24/09 xyz</b>  <b>Not approved by the</b>  <b>Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTICE OF INTENT TO FILE WRIT PETITION          AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING          UNDER WELFARE AND INSTITUTIONS CODE Section 366.26          (California Rules of Court, Rule 8.450)</b>	CASE NUMBER:

**NOTICE**

The juvenile court has decided it will make a permanent plan for this child that may result in the termination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
  - a.  parent (name):
  - b.  guardian
  - c.  county welfare agency
  - d.  child
  - e.  other (state relationship to child or interest in the case):
5. Child's name: \_\_\_\_\_ Child's date of birth: \_\_\_\_\_
6. a. On (date): \_\_\_\_\_ the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
  - b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for (date, if known):

Date: \_\_\_\_\_

\_\_\_\_\_ (TYPE OR PRINT NAME)       \_\_\_\_\_ (SIGNATURE OF  PETITIONER  ATTORNEY)

**The Notice of Intent to File Writ Petition must be signed by the person intending to file the writ petition or by the attorney of record.**

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

APPELLATE CASE TITLE:  _____	APPELLATE CASE NUMBER:  
------------------------------------	--------------------------------

**WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?**

- The court may order the termination of parental rights and adoption of the child.
  - The court may order a legal guardianship for the child.
  - The court may order a permanent plan of placement of the child with a fit and willing relative.
  - The court may order a permanent plan of placement of the child in a foster home.
- The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

**SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION**

**HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?**

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de fac • • to parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

**SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450-8.452**

**WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?**

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

**SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)**

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

**SEE WELF. & INST. CODE, §§ 248-252; CAL. RULES OF COURT, RULE 5.538 and rule 5.540**

**SIGNATURE ON NOTICE OF INTENT**

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number (court will provide):
---	---

In re the Matter of:

\_\_\_\_\_

(Name and date of birth of subject child or children)

\_\_\_\_\_

Petitioners

v.

Superior Court of California, County of \_\_\_\_\_

\_\_\_\_\_

Respondent

\_\_\_\_\_

Real Party in Interest

\_\_\_\_\_

(FILE STAMP)

(FILE STAMP)

Superior Court No. \_\_\_\_\_

Superior Court No. \_\_\_\_\_

Related Appeal Pending

Appellate Court No. \_\_\_\_\_

**NOTICE OF ACTION**  
**(California Rules of Court, Rules 8.452)**

BY THE COURT:

The following order to Show Cause or Alternative Writ is issued:

- Response must be filed under rule 8.452 of the California Rules of Court,  within 10 days after receiving this notice. or  within \_\_\_\_\_ days after receiving this notice (must be less than 10 days.)
- Oral argument will not be granted unless requested by party.
- Hearing in trial court pursuant to Welfare and Institutions Code section 366.26 is stayed.
- Other (specify):

Date: \_\_\_\_\_

\_\_\_\_\_

(Signature)

## Item SPR09-10 Response Form

**Title:** **Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases** (adopt Cal. Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 5.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise form JV-820)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

- Commenting on behalf of an organization**

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*