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INVITATION TO COMMENT SPR14-04

Title	Action Requested
Appellate Procedure: Record in Juvenile Appeals	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.661, 8.409, 8.410, and 8.416	January 1, 2015
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Executive Summary and Origin

Based on a suggestion received from the director of one of the appellate projects that assists the Court of Appeal with appointed counsel in criminal and juvenile appeals, the Appellate Advisory Committee is proposing that the rules relating to the record on appeal in juvenile dependency cases be amended to: (1) provide that a copy of the record will only be provided to a child who is not appealing if that child is either represented by counsel or the appointment of counsel has been recommended for that child; (2) require that a copy of the record be provided to an Indian tribe that has intervened in either a case concerning termination of parental rights or other dependency proceedings in certain counties; and (3) make other nonsubstantive changes.

Background

In juvenile dependency, it is often a parent or guardian, rather than the child, who files an appeal. Currently, the rules that address the preparation of the record on appeal in these cases, rules 8.409 and 8.416, require that, in all cases, a copy of the record be prepared for a child who is not appealing. When such a child is not represented by counsel on appeal, the child's copy of the record on appeal is not used. It would save resources if these unnecessary copies of the record in juvenile cases, which are made at public expense, were not prepared.

Effective January 1, 2013, rule 8.409, the general rule on records on appeal in juvenile cases, was amended to require that a copy of the record be prepared for and sent to the child's Indian tribe if the tribe has intervened in the case. Rule 8.416, which addresses appeals in juvenile dependency cases involving the termination of parental rights and other dependency appeals in certain counties, was not similarly amended at that time.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

This proposal would amend both rule 8.409 and rule 8.416 to replace the current requirement that a copy of the record on appeal be prepared in all cases for a child who is not appealing with a requirement that a copy of the record be prepared for a child who is not appealing only if that child is either represented by counsel on appeal or the appointment of appellate counsel for the child has been recommended under rule 5.661.¹ These amendments are intended to ensure that a copy of the record is prepared for a non-appealing child whenever such a record is needed, but to eliminate the preparation of a copy of the record when it will not be needed. Because the records in these proceedings are prepared very quickly, the proposal would require preparation of a copy of the record not only where the child already has appellate counsel, but also where the appointment of counsel has been recommended. This should minimize the cases in which an additional copy of the record must be prepared later during the appeal, which might delay the appellate proceedings and create an additional administrative burden for the trial court.

This proposal would further amend rule 8.416 to require that a copy of the record be prepared for and sent to an Indian tribe that has intervened in the proceeding.² This amendment would ensure that a tribe that has become party to a case subject to rule 8.416 through intervention receives a copy of the record, as do other parties, and bring this rule, which addresses cases regarding termination of parental rights and other dependency proceedings in specified counties, into conformity with the general rule governing preparation of the record on appeal in juvenile cases. It is the advisory committee's understanding that very few tribes intervene in these cases and therefore providing transcripts to these tribes will not impose large new costs on the courts. It is also the committee's understanding that currently both courts and tribes incur additional costs, beyond the cost of providing the appellate record, if tribes that intervene and wish to participate in the appellate proceedings have to prepare, and the courts have to consider, requests that they receive the appellate record.

This proposal would also make several nonsubstantive changes to rules 8.409, 8.410, and 8.416:

- Adding language that independently specifies the number of copies of the record that must be prepared, rather than using a cross-reference to another subdivision or another rule for this purpose. This should make the rules easier to follow and understand.
- Eliminating other cross-references by replacing them with the relevant content of the cross-referenced provision. This should also make the rules easier to follow and understand.

¹ Rule 5.661 requires that in any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal, the child's trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel.

² Under state statutes, an Indian child's tribe has the right to intervene at any point in a custody proceeding involving that Indian child (Welf. & Inst. Code, § 224.4). This right is part of state and federal laws designed to protect the essential tribal relations and best interests of Indian children (see Welf. & Inst. Code, § 224 et seq., and the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)).

- Replacing references to the “minor” in rule 8.409 with references to the “child.” This will bring rule 8.409 into conformity with the language used in the remainder of the rules relating to appellate proceedings in juvenile cases.
- Updating cross-references to reflect the proposed amendments to rules 8.409 and 8.416.

Alternatives Considered

The committee considered not proposing these rule amendments. However, the committee concluded that eliminating the requirement to prepare copies of the record on appeal that are not used would save superior court resources and that clarifying that intervening Indian tribes must receive a copy of the record would also reduce costs associated with the tribe having to make, and the court having to consider, motions to obtain a copy of the record. Given these potential costs savings, the committee concluded that it should propose these rule amendments at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal should reduce costs for superior courts associated with preparing unnecessary records for non-appealing children in juvenile appeals. In those courts that do not currently routinely provide copies of these records to Indian tribes that have intervened in juvenile cases under rule 8.416, there are likely to be some additional costs associated with providing copies of these records in a small number of cases, but this proposed amendment should also reduce costs associated with the tribe having to make, and the court having to consider, motions to obtain a copy of the record.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rules 5.661, 8.409, 8.410, and 8.416 of the California Rules of Court would be amended, effective January 1, 2015, to read:

1 **Rule 5.661. Representation of the child on appeal**

2
3 (a)–(d) * * *

4
5 (e) **Service of recommendation**

6
7 Child’s trial counsel or guardian ad litem must serve a copy of the recommendation filed in
8 the Court of Appeal on the district appellate project and the trial court.

9
10 (f)–(g) * * *

11
12
13 **Rule 8.409. Preparing and sending the record**

14
15 (a) **Application**

16
17 ~~Except as provided in 8.416(e)(1), This rule applies to appeals in juvenile cases except~~
18 ~~does not apply to cases under rule 8.416.~~

19
20 (b) **Form of record**

21
22 The clerk’s and reporter’s transcripts must comply with rules 8.45–8.46, relating to sealed
23 and confidential records, and, ~~except in cases governed by rule 8.416(b),~~ with rule 8.144.

24
25 (c) **Preparing and certifying the transcripts**

26
27 Within 20 days after the notice of appeal is filed:

28
29 (1) The clerk must prepare and certify as correct an original of the clerk’s transcript and
30 ~~sufficient copies to comply with (d)~~ one copy each for the appellant, the respondent,
31 the child’s Indian tribe if the tribe has intervened, and the child if the child is
32 represented by counsel on appeal or appointment of counsel for the child has been
33 recommended under rule 5.661(c) and that recommendation is either pending with or
34 has been approved by the Court of Appeal but counsel has not yet been appointed;
35 and

36
37 (2) * * *

38
39 (d) * * *

1 (e) **Sending the record**

- 2
- 3 (1) When the transcripts are certified as correct, the ~~superior~~ court clerk must
- 4 immediately send:
- 5
- 6 (A) The original transcripts to the reviewing court, noting the sending date on each
- 7 original; and
- 8
- 9 (B) One copy of each transcript to the appellate counsel for the following, if they
- 10 have appellate counsel:
- 11
- 12 (i) The appellant;
- 13
- 14 (ii) The respondent;
- 15
- 16 (iii) The minor and the minor's child's Indian tribe if the tribe has
- 17 intervened; and
- 18
- 19 (iv) The child.
- 20
- 21 (2) If appellate counsel has not yet been retained or appointed for the appellant, or the
- 22 respondent, or the minor if a recommendation for appointment of counsel for the
- 23 child has been made under rule 5.661(c) and is either pending with or has been
- 24 approved by the Court of Appeal but counsel has not yet been appointed, when the
- 25 transcripts are certified as correct, the clerk must send that counsel's copy of the
- 26 transcripts to the district appellate project. If a tribe that has intervened is not
- 27 represented by counsel when the transcripts are certified as correct, the clerk must
- 28 send that counsel's copy of the transcripts to the tribe.
- 29
- 30 (3) The clerk must not send a copy of the transcripts to the Attorney General or the
- 31 district attorney unless that office represents a party.
- 32

33 **Advisory Committee Comment**

34

35 **Subdivision (a).** Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416)

36 governs ~~sending~~ the record in appeals from judgments or orders terminating parental rights and in

37 dependency appeals in certain counties. ~~Rule 8.408(b) governs preparing and certifying the record in~~

38 ~~those appeals. (See rule 8.416(c)(1) ["The record must be prepared and certified as provided in rule~~

39 ~~8.409(b)"].)~~

40

41 **Subdivision (b).** * * *

42

43 **Subdivision (c)(2).** * * *

44

45 **Subdivision (e).** Subsection (1)(B) clarifies that when a ~~minor's~~ child's Indian tribe has intervened in the

46 proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require

47 notices to be sent to a tribe by registered or certified mail return receipt requested and generally be

1 addressed to the tribal chairperson (25 U.S.C. 1912 (a), 25 C.F.R. 23.11, and Welf. & Inst. Code, § 224.2)
2 do not apply to the sending of the appellate record.
3
4

5 **Rule 8.410. Augmenting and correcting the record in the reviewing court**
6

7 **(a) Omissions**
8

9 If, after the record is certified, the superior court clerk or the reporter learns that the record
10 omits a document or transcript that any rule or order requires to be included, without the
11 need for a motion or court order, the clerk must promptly copy and certify the document or
12 the reporter must promptly prepare and certify the transcript and the clerk must promptly
13 send the document or transcript—as an augmentation of the record—to all those who are
14 listed under 8.409~~(d)~~(e).
15

16 **(b) Augmentation or correction by the reviewing court**
17

- 18 (1) On motion of a party or on its own motion, the reviewing court may order the record
19 augmented or corrected as provided in rule 8.155(a) and (c).
20
21 (2) If, after the record is certified, the trial court amends or recalls the judgment or
22 makes any other order in the case, the trial court clerk must notify each entity and
23 person to whom the record is sent under rule 8.409~~(d)~~(e).
24
25

26 **Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in**
27 **Orange, Imperial, and San Diego Counties and in other counties by local rule**
28

29 **(a) Application**
30

- 31 (1) This rule governs:
32
33 (A) Appeals from judgments or appealable orders of all superior courts terminating
34 parental rights under Welfare and Institutions Code section 366.26 or freeing a
35 child from parental custody and control under Family Code section 7800 et
36 seq.; and
37
38 (B) Appeals from judgments or appealable orders in all juvenile dependency cases
39 of:
40
41 (i) The Superior Courts of Orange, Imperial, and San Diego Counties; and
42
43 (ii) Other superior courts when the superior court and the District Court of
44 Appeal with jurisdiction to hear appeals from that superior court have
45 agreed and have adopted local rules providing that this rule will govern
46 appeals from that superior court.
47

1 (2) In all respects not provided for in this rule, rules 8.403–8.412 apply.
2

3 (b) **Cover Form of record**
4

5 (1) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.46, relating to
6 sealed and confidential records, and, except as provided in (2) and (3), with rule
7 8.144.
8

9 ~~(1)~~(2) In appeals under (a)(1)(A), the cover of the record must prominently display the title
10 “Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and
11 Institutions Code Section 366.26 or Family Code Section 7800 et seq.],” whichever
12 is appropriate.
13

14 ~~(2)~~(3) In appeals under (a)(1)(B), the cover of the record must prominently display the title
15 “Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section
16 300 et seq. or Family Code Section 7800 et seq.],” whichever is appropriate.
17

18 (c) **Preparing, certifying, and sending the record**
19

20 (1) ~~The record must be prepared and certified as provided in rule 8.409(b).~~ Within 20
21 days after the notice of appeal is filed:
22

23 (A) The clerk must prepare and certify as correct an original of the clerk’s
24 transcript and one copy each for the appellant, the respondent, the district
25 appellate project, the child’s Indian tribe if the tribe has intervened, and the
26 child if the child is represented by counsel on appeal or appointment of counsel
27 for the child has been recommended under rule 5.661(c) and the
28 recommendation is either pending with or has been approved by the Court of
29 Appeal but counsel has not yet been appointed; and
30

31 (B) The reporter must prepare, certify as correct, and deliver to the clerk an
32 original of the reporter’s transcript and the same number of copies as (A)
33 requires of the clerk’s transcript. On request, and unless the trial court orders
34 otherwise, the reporter must provide the Court of Appeal and any party with a
35 copy of the reporter’s transcript in computer-readable format. Each computer-
36 readable copy must comply with the format, labeling, content, and numbering
37 requirements of Code of Civil Procedure section 271(b).
38

39 (2) When the clerk’s and reporter’s transcripts are certified as correct, the clerk must
40 immediately send:
41

42 (A) The original transcripts to the reviewing court by the most expeditious method,
43 noting the sending date on each original; and
44

1 (B) One copy of each transcript to the district appellate project and to the attorneys
2 of record appellate counsel for the appellant, the respondent, and the child, and
3 to the district appellate project, the following, if they have appellate counsel,
4 by any method as fast as United States Postal Service express mail-;

5
6 (i) The appellant;

7
8 (ii) The respondent;

9
10 (iii) The child's Indian tribe if the tribe has intervened; and

11
12 (iv) The child.

13
14 (3) If appellate counsel has not yet been retained or appointed for the appellant or the
15 respondent or if a recommendation for appointment of counsel for the child under
16 rule 5.661(c) is either pending with or has been approved by the Court of Appeal but
17 counsel has not yet been appointed to the district appellate project, when the
18 transcripts are certified as correct, the clerk must send that counsel's copies of the
19 transcripts to the district appellate project. If a tribe that has intervened is not
20 represented by counsel when the transcripts are certified as correct, the clerk must
21 send that counsel's copy of the transcripts to the tribe.

22
23 (d)-(h) * * *