

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-30

Title

Family Law: Duty of Judge Hearing Matter
Under Family Code Sections 4521(a),
4252(b)(7)

Action Requested

Review and submit comments by June 10,
2019

Proposed Effective Date

January 1, 2020

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 5.305(b)

Contact

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Proposed by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amendments to rule 5.305(b) governing the circumstances under which a judge may hear a title IV-D matter when exceptional circumstances prevent a child support commissioner from doing so. The amendments would more clearly define the roles of the judge and the court at the hearing, as authorized in the Family Code.

Background

Assembly Bill 1058 (Stats. 1996, ch. 957) created a statewide court program to expedite the processing of child support cases receiving services from the local child support agency (i.e., “title IV-D matters”). As part of that legislation, Family Code sections 4251–4253 were enacted to establish the parameters of the child support commissioner program, including when title IV-D matters may be heard by a judge instead of a child support commissioner. Specifically, Family Code section 4251(a) states that a judge may hear a title IV-D matter only if a child support commissioner is unavailable “due to exceptional circumstances.” Further, Family Code section 4252(b)(7) dictates that the Judicial Council shall “[a]dopt rules that define the exceptional circumstances.”

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 It is circulated for comment purposes only.

Effective July 1, 1997, California Rules of Court, rule 1280.1¹ was adopted to implement this directive and define the exceptional circumstances under which a judge may hear a title IV-D matter. In addition to defining “exceptional circumstances,” the rule also states in the subdivision entitled “Duty of judge hearing matter” that a judge “must make an interim order and refer the matter to the commissioner for further proceedings.” (Cal. Rules of Court, rule 5.305(b).) This provision has been interpreted inconsistently statewide. In some courts, the judge’s order is treated as an interim order and the motion is subsequently calendared to be heard by the title IV-D child support commissioner when he or she is available. In other courts, the order is treated as final, and only later motions are calendared for hearing by the title IV-D child support commissioner.

Interpreting the rule as requiring the judge to make an interim order and requiring referral to the title IV-D child support commissioner for further action places the subordinate judicial officer in the position of reviewing a judge’s order and unnecessarily incurs additional costs by the courts, parties, and local child support agency. Finally, as stated above, Family Code section 4251(a) provides that a judge may hear a title IV-D matter only if a child support commissioner is unavailable “due to exceptional circumstances.” However, nothing in the statute requires that the judge only make an interim order or that a commissioner review that order at a follow-up hearing.

The Proposal

The Family and Juvenile Law Advisory Committee proposes amending rule 5.305(b) to clarify the duties of a judge hearing a title IV-D matter because of exceptional circumstances. The rule would be revised to delete the word “interim” and simply state that the judge must make an “order.” Additionally, the requirement that the judge refer the matter back to a child support commissioner for “further proceedings” would be removed, with the rule instead stating that “any future proceedings” must be heard by a child support commissioner, as long as the local child support agency remains a party to the case.

The proposed amended rule would benefit the judicial branch, attorneys, self-represented litigants, and the local child support agency by eliminating the requirement for the setting of a second hearing, thereby eliminating the increased time and costs that an additional hearing entails. The requirement of setting a second hearing is especially burdensome for self-represented litigants, who make up the vast majority of case participants in title IV-D matters and often must take time off from work, arrange childcare, and pay for transportation or parking to attend such court hearings.

Alternatives Considered

Revisions to rule 5.305 are needed to ensure uniformity statewide with regard to the authority of judges to hear title IV-D motions when the child support commissioner is unavailable and to eliminate the need for a second court hearing. The committee considered either taking no action

¹ Effective January 1, 2003, this rule was renumbered to rule 5.305.

at this time or circulating the rule to request specific comment on the proposed changes. The committee decided to recommend circulation of the proposal to obtain suggestions for alternative language and give courts notice regarding this change in court operations and procedures.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in some initial costs to the courts to train judicial officers and court staff regarding the amended rule. However, the committee expects that the changes will reduce costs in the long term for the courts, parties, and local child support agencies, by simplifying procedures and reducing the number of court hearings on calendar.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 5.305, at page 4
2. Fam. Code, §§ 4250–4253,
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=2.&chapter=2.&article=4

Rule 5.305 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and**
2 **4252(b)(7)**

3
4 **(a) * * ***

5
6 **(b) Duty of judge hearing matter**

7
8 A judge hearing a title IV-D support action under this rule and Family Code
9 sections 4251(a) and 4252(b)(7) must make an ~~interim~~ order ~~and refer the matter to~~
10 ~~the commissioner for further proceedings.~~ As long as a local child support agency
11 is a party to the action, any future proceedings must be heard by a commissioner,
12 unless the commissioner is unavailable because of exceptional circumstances.

13
14 **(c) * * ***

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16