



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
July 27, 2017	Please read and respond by e-mail on Monday, July 31
To	Deadline
Members of the Appellate Advisory Committee	Monday, July 31, 5:00 PM
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Action by e-mail on Proposal re: record in juvenile appeals	

As you may remember, at its June 1 meeting, the Appellate Advisory Committee considered the public comments on the committee's proposal to amend Welfare and Institutions Code section 827. At that time, the Rules Subcommittee and the Family and Juvenile Law Advisory Committee members who had provided input on the proposal before it circulated had made different recommendations about how to respond to the public comments regarding defining those records from the juvenile court file that a participant in an appellate proceeding could access without a court order. The committee decided that it needed additional input from the Family and Juvenile Law Advisory Committee members and therefore referred this issue back to the ad hoc joint working group of Appellate Advisory Committee and Family and Juvenile Law Advisory Committee members who had worked on the proposal before it circulated.

That group met and ultimately recommended moving forward with the language that was in the proposal as circulated for public comment. Attached is draft report to the Judicial Council that reflects this recommendation, as well as the committee's responses to the other public comments that were discussed during the June 1 meeting. The discussion of this issue is at pages 4-5 of this draft report.

July 27, 2017

Page 2

Your e-mail vote is being sought on whether to recommend the adoption of this language as circulated for public comment. Action is needed quickly because the deadline for submission of draft reports on proposals for Judicial Council sponsored legislation is Tuesday August 1. However, **PLEASE DO NOT SUBMIT YOUR VOTE UNTIL MONDAY, JULY 31**. Under rule 10.75, relating to meetings of Judicial Council advisory bodies, advisory bodies may act by e-mail between meetings if, as in this case, the advisory body discussed and considered the proposal at a previous meeting but concluded additional information was needed. Under that rule, however, the advisory body must provide public notice and allow one complete business day for public comment concerning the proposal before acting on the proposal. Notice of this potential action by e-mail and a copy of this memo and the draft report to the Judicial Council are being posted on the committee webpage today. To give the public one complete business day to submit public comments, committee members should not vote until Monday. Staff will distribute any public comments received after 5 PM on Friday or on Monday morning.

Thank you.

Attachments

1. Draft report to the Judicial Council
2. Draft comment chart



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
July 21, 2017	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Appellate Advisory Committee Hon. Louis R. Mauro, Chair
Subject	
Proposal for Judicial Council–Sponsored Legislation: Access to Juvenile Case File for Purposes of Appellate Proceedings	

Executive Summary

The Appellate Advisory Committee, after consultation with the Family and Juvenile Law Advisory Committee, recommends that the Judicial Council sponsor legislation to amend the statute that specifies who may access and copy records in a juvenile case file to clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by the juvenile court. The proposed amendment would also clarify that either the juvenile court or the Court of Appeal may permit such individuals to access and copy additional records in the juvenile case file.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council sponsor legislation to amend Welfare and Institutions Code section 827 to provide that:

1. Any individual not otherwise entitled under section 827 to access a juvenile court case file who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding, may, for purposes of the appeal or writ proceeding, inspect and copy any records in the juvenile case file to which the individual was previously granted access by the juvenile court, including any such records or portions thereof that are made a part of the appellate record;
2. The current requirements of section 827(a)(3) regarding release of a juvenile court case file to individuals not otherwise entitled to access under the statute apply if the individual seeks access to any other record or portion thereof in the juvenile case file or made a part of the appellate record, except that a petition seeking release may be filed in, and release of records ordered by, either the juvenile court or the Court of Appeal; and
3. Documents received under this proposed amendment are subject to the confidentiality requirements established by section 827(a)(4).

The proposed amendment to section 827 is attached at pages 7–13.¹

Previous Council Action

In December 2013, the Judicial Council approved sponsoring legislation to amend Welfare and Institutions Code section 827 to ensure the access of Indian tribes to juvenile court files involving tribal children, consistent with the mandates of existing federal and state law.² The Judicial Council sponsored legislation—Assembly Bill 1618 (Stats. 2014, ch. 57, § 1)—was enacted effective January 1, 2015.

The Judicial Council has also adopted rules and forms to implement and govern access to juvenile court records under section 827. The Judicial Council adopted amendments to former rule 1423, effective January 1, 2001, to implement statutory changes requiring the release of a juvenile case file to the public in certain cases when the child is deceased. The Judicial Council adopted rule 5.553 and amended rule 5.552 effective January 1, 2009. At the same time, it adopted forms JV-569, JV-571, JV-572, JV-573, and JV-574, and revised form JV-570. These adopted and amended rules and forms implemented statutory changes concerning access to records and the right to copy those records.

Rationale for Recommendation

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827. This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may

¹ Please note, to help readers to see this proposed amendment in context, the full text of section 827, with the proposed amendment incorporated, is shown in the attachment.

² The report to the Judicial Council regarding this proposal is available at: <http://www.courts.ca.gov/documents/jc-20131213-itemG.pdf>

inspect and receive copies of a juvenile court case file.³ These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

Currently, however, some individuals who have been authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation may occur, for example, when the appellant is a family member or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition or who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In these cases, the juvenile courts and Courts of Appeal are following various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding may receive. Doing so takes time and resources for the persons who are seeking review or who are respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit.

The Proposal

The Appellate Advisory Committee is proposing an amendment to section 827 to provide that persons not otherwise entitled to access the juvenile case file under 827 who file a notice of appeal or petition challenging a juvenile court order or who are a respondent in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The amendment would also provide that an order from either the juvenile court or the Court of Appeal is required for such individuals to access any other item in the juvenile court record.

This proposal was developed after consultation with the Family and Juvenile Law Advisory Committee. The two committees formed an ad hoc joint working group to develop the proposed statutory amendment. The goal in drafting the proposed amendment was to appropriately balance

³ You can access the full text of this section at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC.

the policy considerations favoring confidentiality of juvenile case files against the need for access to certain records by individuals for purposes of effectuating their right to participate in appellate proceedings in these cases. The proposal developed by the joint working group and recommended by the committee would not dilute the confidentiality protections for the child because it would only provide access without a court order to those records to which an individual was already privy in the juvenile court proceedings. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts. The amendment would also clarify the procedure for providing the individuals with access to any additional records from the juvenile case file in these circumstances.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposal to amend section 827 was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Six individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal and two indicated that they agreed with the proposal if modified. Some of the commentators who indicated that they agreed with the proposal also suggested some changes. The public comments were reviewed by the joint working group of the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee. A chart with the full text of the comments received and the committee's responses is attached at pages 14-22. The two main substantive issues raised by the comments and the committee's responses are discussed below.

Identification of records to be provided without court order

As circulated for public comment, the proposed amendment to section 827 would have authorized an individual who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding to inspect and copy any records in the juvenile case file "to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records." The Superior Court of San Diego County, which indicated it agreed with the proposal, raised two concerns about this provision.

First, the court expressed concern about the phrase "including the record on appeal that contains such records" because the record on appeal might contain other records or portions thereof to which an individual should not have access. The court suggested that this phrase be changed to "including such records that are made a part of the record on appeal." The committee agreed with this suggested revision and has incorporated it into the proposal.

Second, the court indicated that it might be difficult to identify those records to which the individual was previously granted access by the juvenile court. They therefore suggested the following alternate language that would specify particular documents that the individual could access and copy: "any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed."

The joint working group of the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee and the full Appellate Advisory Committee considered this suggestion, as well as other possible approaches to addressing the court's concern. Ultimately, the committee decided against incorporating the language suggested by the court because of concerns that it would be over-inclusive: there may be documents related to a hearing, such as probation reports, or parts thereof, to which such an individual involved in the appellate proceeding should not have access. The working group and committee also considered modifying the proposed language to provide that the individual could access any document "filed by or served on the individual." This approach was rejected because of concerns it would be under-inclusive: documents to which an individual was given access by the juvenile court through a WIC 827 request would not have been "served" on the individual, and so would not fall within this language. Ultimately, the committee agreed with the working group recommendation that the proposal retain the language as circulated for public comment and, if the legislation is enacted, that the committees consider the development of rules or a form to assist courts in identifying the documents that can be released without a court order.

Notice and opportunity to object when access to additional records is sought

As circulated for public comment, the proposed amendment to section 827 would have provided that "on order of either the judge of the juvenile court or the Court of Appeal" an individual who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding "may inspect and copy any other record or portion thereof in the juvenile case file or appellate record."

Two commentators – the San Diego Office of County Counsel's Juvenile Dependency Division (one of the two commentators that agreed with the proposal if amended) and the Superior Court of San Diego County – expressed concern about the fact that this provision did not provide for notice and an opportunity to object to the release of this additional information. This notice and objection procedure is required under section 827(a)(3) when a person not otherwise entitled to access to the juvenile case file petitions for access. The committee concluded that it would be appropriate to apply these same notice and objection requirements when an individual involved in an appellate proceeding wants access to records to which he or she did not previously have access and has revised the proposal accordingly.

Alternatives

In addition to the alternatives considered in response to the external and internal comments, the committee considered several options for possible changes to the California Rules of Court to address this issue, including:

- Specifically requiring appellants to file a petition in the juvenile court requesting access to the juvenile case file and allowing the dismissal of the appeal if they fail to do so;

- Requiring the Court of Appeal to determine, on a case-by-case basis, what items from the juvenile case file to include in the record on appeal in these cases and who can access that record on appeal; and
- Setting the contents of the record on appeal in these cases by rule.

The committee ultimately concluded, however, that none of these approaches, by themselves, was sufficient to address the issue.

Implementation Requirements, Costs, and Operational Impacts

The committee believes that this proposal will reduce burdens on litigants, trial courts, and the Courts of Appeal associated with preparing the record on appeal in these cases.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support strategic Goal III, Modernization of Management and Administration (Goal III.B), and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

Attachments

1. Text of proposed Welfare and Institutions Code section 827, at pages 7–13
2. Chart of comments, at pages 14–22

Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

1
2 **§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality**
3 **provisions.**
4

- 5 (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:
6
7 (A) Court personnel.
8
9 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute
10 criminal or juvenile cases under state law.
11
12 (C) The minor who is the subject of the proceeding.
13
14 (D) The minor's parents or guardian.
15
16 (E) The attorneys for the parties, judges, referees, other hearing officers, probation
17 officers, and law enforcement officers who are actively participating in criminal
18 or juvenile proceedings involving the minor.
19
20 (F) The county counsel, city attorney, or any other attorney representing the
21 petitioning agency in a dependency action.
22
23 (G) The superintendent or designee of the school district where the minor is enrolled
24 or attending school.
25
26 (H) Members of the child protective agencies as defined in Section 11165.9 of the
27 Penal Code.
28
29 (I) The State Department of Social Services, to carry out its duties pursuant to
30 Division 9 (commencing with Section 10000), and Part 5 (commencing with
31 Section 7900) of Division 12, of the Family Code to oversee and monitor county
32 child welfare agencies, children in foster care or receiving foster care assistance,
33 and out-of-state placements, Section 10850.4, and paragraph (2).
34
35 (J) Authorized legal staff or special investigators who are peace officers who are
36 employed by, or who are authorized representatives of, the State Department of
37 Social Services, as necessary to the performance of their duties to inspect, license,
38 and investigate community care facilities, and to ensure that the standards of care
39 and services provided in those facilities are adequate and appropriate and to
40 ascertain compliance with the rules and regulations to which the facilities are
41 subject. The confidential information shall remain confidential except for
42 purposes of inspection, licensing, or investigation pursuant to Chapter 3
43 (commencing with Section 1500) and Chapter 3.4 (commencing with Section
44 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or
45 administrative proceeding in relation thereto. The confidential information may be
46 used by the State Department of Social Services in a criminal, civil, or

1 administrative proceeding. The confidential information shall be available only to
2 the judge or hearing officer and to the parties to the case. Names that are
3 confidential shall be listed in attachments separate to the general pleadings. The
4 confidential information shall be sealed after the conclusion of the criminal, civil,
5 or administrative hearings, and may not subsequently be released except in
6 accordance with this subdivision. If the confidential information does not result in
7 a criminal, civil, or administrative proceeding, it shall be sealed after the State
8 Department of Social Services decides that no further action will be taken in the
9 matter of suspected licensing violations. Except as otherwise provided in this
10 subdivision, confidential information in the possession of the State Department of
11 Social Services may not contain the name of the minor.
12

- 13 (K) Members of children's multidisciplinary teams, persons, or agencies providing
14 treatment or supervision of the minor.
15
- 16 (L) A judge, commissioner, or other hearing officer assigned to a family law case
17 with issues concerning custody or visitation, or both, involving the minor, and the
18 following persons, if actively participating in the family law case: a family court
19 mediator assigned to a case involving the minor pursuant to Article 1
20 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the
21 Family Code, a court-appointed evaluator or a person conducting a court-
22 connected child custody evaluation, investigation, or assessment pursuant to
23 Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in
24 the family law case pursuant to Section 3150 of the Family Code. Prior to
25 allowing counsel appointed for the minor in the family law case to inspect the file,
26 the court clerk may require counsel to provide a certified copy of the court order
27 appointing him or her as the minor's counsel.
28
- 29 (M) When acting within the scope of investigative duties of an active case, a
30 statutorily authorized or court-appointed investigator who is conducting an
31 investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who
32 is actively participating in a guardianship case involving a minor pursuant to Part
33 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting
34 within the scope of his or her duties in that case.
35
- 36 (N) A local child support agency for the purpose of establishing paternity and
37 establishing and enforcing child support orders.
38
- 39 (O) Juvenile justice commissions as established under Section 225. The
40 confidentiality provisions of Section 10850 shall apply to a juvenile justice
41 commission and its members.
42
- 43 (P) Any other person who may be designated by court order of the judge of the
44 juvenile court upon filing a petition.
45

- 1 (2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3),
2 juvenile case files, except those relating to matters within the jurisdiction of the
3 court pursuant to Section 601 or 602, that pertain to a deceased child who was
4 within the jurisdiction of the juvenile court pursuant to Section 300, shall be
5 released to the public pursuant to an order by the juvenile court after a petition has
6 been filed and interested parties have been afforded an opportunity to file an
7 objection. Any information relating to another child or which could identify another
8 child, except for information about the deceased, shall be redacted from the juvenile
9 case file prior to release, unless a specific order is made by the juvenile court to the
10 contrary. Except as provided in this paragraph, the presiding judge of the juvenile
11 court may issue an order prohibiting or limiting access to the juvenile case file, or
12 any portion thereof, of a deceased child only upon a showing by a preponderance of
13 evidence that release of the juvenile case file or any portion thereof is detrimental to
14 the safety, protection, or physical or emotional well-being of another child who is
15 directly or indirectly connected to the juvenile case that is the subject of the petition.
16
- 17 (B) This paragraph represents a presumption in favor of the release of documents when
18 a child is deceased unless the statutory reasons for confidentiality are shown to
19 exist.
20
- 21 (C) If a child whose records are sought has died, and documents are sought pursuant to
22 this paragraph, no weighing or balancing of the interests of those other than a child
23 is permitted.
24
- 25 (D) A petition filed under this paragraph shall be served on interested parties by the
26 petitioner, if the petitioner is in possession of their identity and address, and on the
27 custodian of records. Upon receiving a petition, the custodian of records shall serve
28 a copy of the request upon all interested parties that have not been served by the
29 petitioner or on the interested parties served by the petitioner if the custodian of
30 records possesses information, such as a more recent address, indicating that the
31 service by the petitioner may have been ineffective.
32
- 33 (E) The custodian of records shall serve the petition within 10 calendar days of receipt.
34 If any interested party, including the custodian of records, objects to the petition,
35 the party shall file and serve the objection on the petitioning party no later than 15
36 calendar days after service of the petition.
37
- 38 (F) The petitioning party shall have 10 calendar days to file any reply. The juvenile
39 court shall set the matter for hearing no more than 60 calendar days from the date
40 the petition is served on the custodian of records. The court shall render its
41 decision within 30 days of the hearing. The matter shall be decided solely upon the
42 basis of the petition and supporting exhibits and declarations, if any, the objection
43 and any supporting exhibits or declarations, if any, and the reply and any
44 supporting declarations or exhibits thereto, and argument at hearing. The court may
45 solely upon its own motion order the appearance of witnesses. If no objection is
46 filed to the petition, the court shall review the petition and issue its decision within

1 10 calendar days of the final day for filing the objection. Any order of the court
2 shall be immediately reviewable by petition to the appellate court for the issuance
3 of an extraordinary writ.
4

5 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile
6 court pursuant to Section 300 shall be limited as follows:
7

8 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant
9 to any other state law or federal law or regulation, the requirements of that state
10 law or federal law or regulation prohibiting or limiting release of the juvenile case
11 file or any portions thereof shall prevail. Unless a person is listed in subparagraphs
12 (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state
13 law or federal law or regulation without a court order, all those seeking access,
14 pursuant to other authorization, to portions of, or information relating to the
15 contents of, juvenile case files protected under another state law or federal law or
16 regulation, shall petition the juvenile court. The juvenile court may only release the
17 portion of, or information relating to the contents of, juvenile case files protected
18 by another state law or federal law or regulation if disclosure is not detrimental to
19 the safety, protection, or physical or emotional well-being of a child who is directly
20 or indirectly connected to the juvenile case that is the subject of the petition. This
21 paragraph shall not be construed to limit the ability of the juvenile court to carry
22 out its duties in conducting juvenile court proceedings.
23

24 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall
25 afford due process, including a notice of and an opportunity to file an objection to
26 the release of the record or report to all interested parties.
27

28 (4) A juvenile case file, any portion thereof, and information relating to the content of the
29 juvenile case file, may not be disseminated by the receiving agencies to any persons
30 or agencies, other than those persons or agencies authorized to receive documents
31 pursuant to this section. Further, a juvenile case file, any portion thereof, and
32 information relating to the content of the juvenile case file, may not be made as an
33 attachment to any other documents without the prior approval of the presiding judge
34 of the juvenile court, unless it is used in connection with and in the course of a
35 criminal investigation or a proceeding brought to declare a person a dependent child
36 or ward of the juvenile court.
37

38 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of
39 paragraph (1) may also receive copies of the case file. In these circumstances, the
40 requirements of paragraph (4) shall continue to apply to the information received.
41

42 (6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition
43 challenging a juvenile court order or who is a respondent in such an appeal or writ
44 proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy
45 any records in the juvenile case file to which the individual was previously granted
46 access by the juvenile court, including any such records or portions thereof that are

1 made a part of the appellate record. The requirements of paragraph (3) shall
2 continue to apply to any other record or portion thereof in the juvenile case file or
3 made a part of the appellate record, except that a petition seeking release may be
4 filed in and release of records ordered by either the juvenile court or the Court of
5 Appeal. The requirements of paragraph (4) shall continue to apply to documents
6 received under this paragraph. The Judicial Council shall adopt rules to implement
7 this paragraph.
8

9 (b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should
10 be confidential, it is the intent of the Legislature in enacting this subdivision to provide for
11 a limited exception to juvenile court record confidentiality to promote more effective
12 communication among juvenile courts, family courts, law enforcement agencies, and
13 schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the
14 potential for drug use, violence, other forms of delinquency, and child abuse.
15

16 (2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public
17 school, kindergarten to grade 12, inclusive, has been found by a court of competent
18 jurisdiction to have committed any felony or any misdemeanor involving curfew,
19 gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense
20 listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or
21 graffiti shall be provided by the court, within seven days, to the superintendent of
22 the school district of attendance. Written notice shall include only the offense found
23 to have been committed by the minor and the disposition of the minor's case. This
24 notice shall be expeditiously transmitted by the district superintendent to the
25 principal at the school of attendance. The principal shall expeditiously disseminate
26 the information to those counselors directly supervising or reporting on the behavior
27 or progress of the minor. In addition, the principal shall disseminate the information
28 to any teacher or administrator directly supervising or reporting on the behavior or
29 progress of the minor whom the principal believes needs the information to work
30 with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to
31 protect other persons from needless vulnerability.
32

33 (B) Any information received by a teacher, counselor, or administrator under this
34 subdivision shall be received in confidence for the limited purpose of rehabilitating
35 the minor and protecting students and staff, and shall not be further disseminated
36 by the teacher, counselor, or administrator, except insofar as communication with
37 the juvenile, his or her parents or guardians, law enforcement personnel, and the
38 juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or
39 to protect students and staff.
40

41 (C) An intentional violation of the confidentiality provisions of this paragraph is a
42 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).
43

44 (3) If a minor is removed from public school as a result of the court's finding described in
45 subdivision (b), the superintendent shall maintain the information in a confidential
46 file and shall defer transmittal of the information received from the court until the

1 minor is returned to public school. If the minor is returned to a school district other
2 than the one from which the minor came, the parole or probation officer having
3 jurisdiction over the minor shall so notify the superintendent of the last district of
4 attendance, who shall transmit the notice received from the court to the
5 superintendent of the new district of attendance.
6

7 (c) Each probation report filed with the court concerning a minor whose record is subject to
8 dissemination pursuant to subdivision (b) shall include on the face sheet the school at
9 which the minor is currently enrolled. The county superintendent shall provide the court
10 with a listing of all of the schools within each school district, within the county, along with
11 the name and mailing address of each district superintendent.
12

13 (d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the
14 instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any
15 information received from the court shall be kept in a separate confidential file at the
16 school of attendance and shall be transferred to the minor's subsequent schools of
17 attendance and maintained until the minor graduates from high school, is released from
18 juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After
19 that time the confidential record shall be destroyed. At any time after the date by which a
20 record required to be destroyed by this section should have been destroyed, the minor or
21 his or her parent or guardian shall have the right to make a written request to the principal
22 of the school that the minor's school records be reviewed to ensure that the record has been
23 destroyed. Upon completion of any requested review and no later than 30 days after the
24 request for the review was received, the principal or his or her designee shall respond in
25 writing to the written request and either shall confirm that the record has been destroyed
26 or, if the record has not been destroyed, shall explain why destruction has not yet
27 occurred.
28

29 (2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any
30 person who transmits or fails to transmit any notice or information required under
31 subdivision (b).
32

33 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile
34 court proceeding, reports of the probation officer, and all other documents filed in that
35 case or made available to the probation officer in making his or her report, or to the judge,
36 referee, or other hearing officer, and thereafter retained by the probation officer, judge,
37 referee, or other hearing officer.
38

39 (f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of
40 paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian

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tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.

- (g) A case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or 786.

DRAFT

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks Association by Daniel P. Potter Clerk Administrator and President, California Appellate Court clerks Association San Jose, CA	A	The Clerks Association agrees with the proposed amendment to the Welfare & Institutions Code. This change would increase efficiency for the parties to appellate court proceedings as well as court staff.	The committee notes the commentator's support for the proposal; no response required.
2.	Los Angeles County by Alyssa Skolnick Principal Deputy County Counsel Monterey Park, CA	AM	LITIGATION County agencies, including child welfare and probation agencies are subject to civil lawsuits for various reasons. Unless there is a juvenile court order allowing use of a juvenile files by an attorney representing the county or its agencies in a civil lawsuit, the attorney may not inspect the file. Further, mere inspection of the file without court authorization is a violation of privacy rights and may subject the county or its agencies to liability for any unauthorized inspection. (Gonzalez v. Spencer (9th. Cir. (2003) 336 F. 832.) In Los Angeles County, the juvenile court processes all §827 petitions filed each year to allow inspection of juvenile files where the county or its agencies are parties to a civil case involving a minor. Processing these §827 petitions is very time-consuming, often taking more than a year, which results in significant delay in civil cases. If §827 was amended to allow access by counsel involved in these type of civil cases, then there would be no need for processing by the juvenile court, resulting in streamlined access. The current	The additional changes to Welfare and Institutions Code section 827 suggested by the commentator are beyond the scope of the proposal that was circulated for public comment. The committee will treat them as new suggestions for consideration when the committee develops its agenda for the next committee year.

LEG17-02

Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)

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			<p>process requires significant resources from the juvenile courts and county agencies. Further, it causes significant delay in the civil actions, impacting the resources of the civil courts, as well.</p> <p>Section 827 needs to be amended to clarify that an attorney representing the State, political subdivision of the State, or local child welfare and probation agencies is entitled to inspect and receive copies of the case file to investigate or defend against any lawsuit or government claim filed pursuant to Government Code Section 900, et seq. This proposed amendment mirrors State Department of Social Services, Manual of Policies and Procedures Section 19-004.5, governing a government lawyer's ability to access public social services records. This Regulation states:</p> <p>Release of Confidential Information in Conjunction with a Lawsuit: If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to</p>	

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			<p>all files and records relating to the plaintiff. Such files and records may be disclosed to the court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information.</p> <p>CHILD AND FAMILY TEAMS</p> <p>We also recommend that WIC 827 be revised to permit the sharing of information with members of a child and family team, as defined by WIC 16501(a)(4) as part of the State's Continuum of Care Reform. WIC 16501(a)(4) became effective January 1, 2017.</p>	
3.	Orange County Bar Association by Michael L. Baroni President Newport Beach, CA	A	No suggested changes. OCBA will merely add that this modification to Welfare and Institutions Code section 827 is long overdue and critical to efficient appellate practice in appeals taken by relatives and de facto parents who might otherwise be placed in the position of having limited access to appellate relief. That noted, rule 8.409(e) – dealing with the transmission of the appellate record in dependency appeals – may benefit from a minor modification noting that record transmission is subject to the appellants' right to such information under section 827.	The committee notes the commentator's support for the proposal.

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4.	San Diego Office of County Counsel Juvenile Dependency Division by Candice H. Cohen Senior Deputy County Counsel San Diego, CA	AM	<p>My concerns with amendments to section 827, is that it allows for a greater dissemination of confidential records that were not previously provided pursuant to the original in camera review. There is no procedure to notice the parties and the subject of those records that additional information is being inspected and copied. There is no procedure to sufficiently identify what items are now being made accessible or being requested. The proposed changes do not allow for a hearing if there is opposition to portions of the juvenile case files that have not previously been ordered in a previous 827 hearing.</p> <p>There is a greater fear that records could be produced that an individual wanted kept private and are not relevant to the matter at hand. When the appellant or petitioner is self-represented, the misuse of such materials is more likely, whether out of ignorance or maliciousness.</p>	<p>The committee acknowledges the concern about the absence of requirement for notice and opportunity to object to the release of records to which an individual did not previously have access in the juvenile court proceedings. Based on this and the comments of Superior Court of California, County of San Diego, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of section 827(a)(3) apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal</p> <p>The committee also acknowledges the concerns about further dissemination of confidential records by those who receive them under this proposed amendment. The proposed amendments specifies that the existing requirements of section 827 prohibiting the dissemination of material from a juvenile case file by anyone receiving that information apply to individuals receiving information under this proposed amendment. However, as with any other release of information from a juvenile case file, this provision cannot guarantee compliance by a recipient</p>
5.	Superior Court of Los Angeles by: Not stated Los Angeles, CA	A	<i>Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?</i>	The committee notes the commentator's support for the proposal; no response required.

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			<p>This proposal will achieve its stated purpose, of increasing efficiencies and access to justice for the appellants, while reducing work for the court. In treating these appellants as entitled parties, they will be able to submit a Declaration in Support of Access for the appellate transcript, instead of a form JV-570. The form JV-570 necessitates a statutory 21-day notice period to be observed, which requires court clerks to send notices and collect objections from the noticed parties. Reducing the amount of filed form JV-570s will reduce the amount of notices sent by court clerks. Moreover, without having to comply with the statutory notice period, the court will be able to provide the appellant their records faster, which will allow for swifter disposition of the given appeal and permanence for the related child(ren).</p> <p><i>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?</i></p> <p>Any implementation requirements for the court are minimal, if any, because this proposal essentially codifies the court's current procedure for designating the appellate transcript for these types of appellants.</p>	<p>The committee appreciates the commentator's input on these implementation questions</p>

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6.	Superior Court of California County of San Diego by Mike Roddy Executive Officer San Diego, CA 92101	A	<p>Overall, this is a good suggestion that will increase efficiency; however, it might be hard to know what records the individual was previously granted access to; they may not be marked or separated out. Maybe "inspect and copy any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed" would be more clear. It should also specifically state that any information that is privileged or confidential pursuant to any other state law or federal law or regulation must be redacted or removed.</p> <p>The proposed amendment seems to grant access to anyone who files an appeal or writ, even if it turns out that person does not have standing.</p>	<p>The committee notes the commentator's support for the proposal.</p> <p>The committee acknowledges the commentator's concern about identifying the documents to which an individual previously had access. The committee decided not to modify the proposal as suggested by the commentator, however. Both in developing the proposal and in reviewing the public comments, the committee considered a variety of different options for identifying the records to which an individual appellant, petitioner, or respondent should have access without a court order. The committee considered language similar to that suggested by the commentator, but concerns were raised that even some documents or portions thereof that are directly related to the hearing might not have been made available to all participants in a hearing. The committee ultimately decided to recommend the language that was circulated for public comment, but, if the legislation is enacted, to consider rules and/or a form to assist courts in identifying the documents that must be released without a court order.</p> <p>The commentator is correct that the proposal is not drafted to make access to records without a court order dependent upon whether the person has standing to file an appeal or writ. Making access dependent on standing would potentially create difficulties and delay in preparation of the appellate record since standing must be</p>

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			<p>There are also concerns by some in our court about the highlighted language in the proposed amendment.</p> <p>“(6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in the juvenile case file to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records, and, on order of either the judge of the juvenile court or the Court of Appeal, such individual may inspect and copy any other record or portion thereof in the juvenile case file or appellate record. ...”</p> <p>Is it possible there might be documents included in the record on appeal that such an individual should <u>not</u> have access to? Often, before documents are released pursuant to a WIC 827 petition, court staff redacts information which must remain confidential under WIC</p>	<p>determined by the Court of Appeal. Instead, this amendment focuses on clarifying access to those records in the juvenile court file to that the individual had access to during the juvenile court proceedings. The committee believes that this approach protects the confidentiality of the proceedings by not widening existing access.</p> <p>The committee has modified the proposal as suggested by the commentator.</p>

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			<p>827(a)(3)(A), i.e., information that is privileged or confidential under some other state or federal law. An example would be the name of the reporting party, which must remain confidential under PC 11167(d).</p> <p>One of our senior clerks, who has extensive experience in preparing records for writs and appeals, confirmed that names of reporting parties are <u>not</u> redacted when the record is prepared; furthermore, the record often contains other documents that should not be disclosed to parties (e.g., psychological evaluations). If a non-party appellant or respondent is given access to the entire record on appeal, s/he will likely obtain information that should not be released to him/her.</p> <p>A possible solution: Change the language from “including the record on appeal that contains such records” to “including such records that are made a part of the record on appeal.” With this language, the appellant or respondent would not receive the <u>entire</u> record on appeal – which could include information that is confidential or privileged under other state and federal laws. Rather, s/he would receive only the documents to which s/he was previously granted access by the court.</p> <p>Finally, should the notice and opportunity to file an objection requirements when the person seeks access to the entire file be spelled out</p>	<p>Based on this and the comments of the San Diego Office of County Counsel Juvenile Dependency Division, the committee has revised</p>

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			here, or will that be left to the amended rule of court?	the proposal to clarify that the notice and opportunity to object requirements of paragraph 3 apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal