



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
November 13, 2018	Please review before subcommittee meeting on November 15
To	Deadline
Member of the Rules Subcommittee of the Appellate Advisory Committee	November 15, 2018
From	Contact
Christy Simons Attorney, Legal Services	Christy Simons Legal Services 415-865-7694 phone christy.simons@jud.ca.gov
Subject	
Access to Juvenile Case Files in Appellate Court Proceedings	

Introduction

This proposal is a new project that will be listed on the committee's annual agenda for this year.

You may recall that, in 2017, the Appellate Advisory Committee recommended that the Judicial Council sponsor legislation to amend Welfare and Institutions Code section 827, which specifies who may access and copy records in a juvenile case file, to clarify that people who are parties to appeals or writ proceedings challenging a juvenile court order may, for purposes of those appeals or writ proceedings, access and copy those records to which they were previously given access by the juvenile court. The Judicial Council sponsored the legislation. Assembly Bill 1617, as amended, takes effect on January 1, 2019.¹

¹ Provisions that would have allowed the Court of Appeal to permit individuals to access and copy additional records in the juvenile case file were objected to by stakeholders and removed by the Assembly Judiciary Committee.

New paragraph (a)(6) of section 827 authorizes a person who is not generally authorized under other specific provisions in the section to inspect juvenile case files but received authorization from the juvenile court pursuant to a petition process, and who files a notice of appeal or petition for writ challenging a juvenile court order or who is a respondent in that appeal or real party in interest in that writ proceeding, for purposes of that appeal or writ proceeding, to inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court.

New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the paragraph. Therefore, it is necessary to circulate an invitation to comment in the winter “urgent” cycle.

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 inspect and receive copies of a juvenile court case file.² 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

² You can access the full text of this section at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC.

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 Legislative Proposal

The Appellate Advisory Committee proposed 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.

The legislative 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 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 Rule Proposal

Draft rule amendments to implement AB 1617 and a draft invitation to comment are attached. The language of the rule amendments closely tracks the new statutory language. In addition, a new advisory committee comment regarding the petition process referenced in the rule is included.

The subcommittee should review the draft rule language including the draft advisory committee comment and the draft invitation to comment in order to provide feedback at the meeting on Thursday. The full text of rule 8.401 is provided; the draft amendments are highlighted in yellow.

In addition, please consider whether placement of the draft rule provision as new paragraph (b)(2) of rule 8.401 is appropriate or whether some other placement or reorganization of rule 8.401 would be better. See the question presented in the invitation to comment.

Subcommittee Task

The subcommittee's task is to review the draft invitation to comment and draft rule amendments and provide feedback. The subcommittee may choose to:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment; or
- Ask staff or committee members for further information/analysis.

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www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Appellate Procedure: Access to Juvenile Case Files	Review and submit comments by February 8, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.401	May 17, 2019
Proposed by	Contact
Appellate Advisory Committee	Christy Simons, 415-865-7694
Hon. Louis R. Mauro, Chair	christy.simons@jud.ca.gov
Christy Simons, Attorney	

Executive Summary and Origin

To implement recent legislation, the Appellate Advisory Committee proposes amending the rule regarding confidentiality in juvenile appeals and writs to incorporate a provision that clarifies access to juvenile case files by parties who were previously granted access by the juvenile court. This proposal is based on a suggestion from a court executive at a Court of Appeal.

Background

Welfare and Institutions Code section 827¹ governs access to juvenile case files, which is limited by existing law that generally provides for the confidentiality of information regarding a minor in proceedings in the juvenile court and related court proceedings.² Section 827 authorizes only certain specified individuals to inspect a juvenile case file, including, among others, the minor, the minor's parent or guardian, the attorneys for the parties, judges, referees, hearing officers, probation officers, and court personnel.³ Some of these individuals are also authorized to receive

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

² See Welfare and Institutions Code, Division 2, Part 1, Chapter 2, Article 22, which can be accessed at: http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=WIC&division=2.&title=&part=1.&chapter=2.&article=22.

³ (§ 827(a)(1).)

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.

copies of the case file.⁴ Any other person who is not entitled to inspect or copy a juvenile case file but is seeking to access the record must petition the juvenile court for access.⁵

Assembly Bill 1617 (stats. 2017-2018, ch. 992),⁶ which takes effect January 1, 2019, amends section 827 to clarify that a person who petitioned for, and was granted access to, a juvenile case file by the juvenile court⁷ is authorized to access the same records in a proceeding in the Court of Appeal. New paragraph (a)(6) of section 827 provides, in relevant part:

An individual other than a person [identified specifically in paragraph (1) as authorized to inspect a case file] who files a notice of appeal or petition for writ challenging a juvenile court order, or who is a respondent in that appeal or real party in interest in that writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court [after filing a petition], including any records or portions thereof that are made a part of the appellate record.

Section 827(a)(6) directs the Judicial Council to adopt rules to implement this paragraph.

Rule 8.401 provides for confidentiality to protect the anonymity of minors involved in juvenile court proceedings and limits access to the appellate case file and oral argument in those proceedings. Currently, this rule contains only the following provision regarding access to the record and filed documents:

[T]he record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.⁸

The rule should be amended to add a new provision implementing the statutory change.

The Proposal

The committee is proposing to amend rule 8.401 to implement section 827(a)(6) as directed by the Legislature. New paragraph (b)(2) of rule 8.401 would provide that a person who petitioned for, and was granted access to, a juvenile case file by the juvenile court and is a party to an appeal or writ proceeding challenging a juvenile court order is entitled to the same access to records previously granted to that person by the juvenile court. This access is only for purposes of that appeal or writ proceeding, and includes any records or portions of records that are made a part of the appellate record.

⁴ (§ 827(a)(5).)

⁵ (§ 827(a)(1)(Q).)

⁶ AB 1617 can be accessed at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1617

⁷ See rule 5.552 regarding petitioning the juvenile court for access to juvenile case files.

⁸ Section 827(b)(1).

The committee also proposes adding an advisory committee comment to clarify that a petition for access to a juvenile case file is authorized by section 827(a)(1)(Q) and that the procedure is set forth in rule 5.552.

This proposal is required by statute. It is also urgently needed to respond to a change in the law that takes effect on January 1, 2019.

Alternatives Considered

The committee considered reorganizing rule 8.401 to separate provisions protecting juvenile anonymity from provisions addressing access to records and oral argument, but concluded that this probably was not necessary. The committee agreed to seek comments on this alternative.

The committee did not consider recommending no action because the Legislature directed the Judicial Council to adopt rules implementing the amendment to section 827.

Fiscal and Operational Impacts

No appreciable fiscal or operational impacts are anticipated.

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 rule 8.401 be further amended to separate provisions regarding protecting juvenile anonymity from provisions regarding access to juvenile records?
- Does the legislation require any other rule amendments?

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 an effective date immediately following Judicial Council approval of this proposal provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rule 8.401, at pp. 5-6

2. Link A: Welf.& Inst. Code, § 827:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=827.

3. Link B: AB 1617:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1617

Rule 3.670 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 8.401. Confidentiality**

2
3 **(a) References to juveniles or relatives in documents**

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5 To protect the anonymity of juveniles involved in juvenile court proceedings:

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7 (1) In all documents filed by the parties in proceedings under this chapter, a
8 juvenile must be referred to by first name and last initial; but if the first name
9 is unusual or other circumstances would defeat the objective of anonymity,
10 the initials of the juvenile may be used.
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12 (2) In opinions that are not certified for publication and in court orders, a
13 juvenile may be referred to either by first name and last initial or by his or her
14 initials. In opinions that are certified for publication in proceedings under this
15 chapter, a juvenile must be referred to by first name and last initial; but if the
16 first name is unusual or other circumstances would defeat the objective of
17 anonymity, the initials of the juvenile may be used.
18
19 (3) In all documents filed by the parties and in all court orders and opinions in
20 proceedings under this chapter, if use of the full name of a juvenile's relative
21 would defeat the objective of anonymity for the juvenile, the relative must be
22 referred to by first name and last initial; but if the first name is unusual or
23 other circumstances would defeat the objective of anonymity for the juvenile,
24 the initials of the relative may be used.

25
26 *(Subd (a) adopted effective January 1, 2012.)*

27
28 **(b) Access to filed documents**

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30 (1) Except as provided in (2)–~~(3)~~(4), the record on appeal and documents filed by
31 the parties in proceedings under this chapter may be inspected only by the
32 reviewing court and appellate project personnel, the parties or their attorneys,
33 and other persons the court may designate.
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35 (2) A person designated by order of the juvenile court pursuant to a petition
36 process to inspect a juvenile case file who files a notice of appeal or petition
37 for writ challenging a juvenile court order, or who is a respondent in that
38 appeal or real party in interest in that writ proceeding, may, for purposes of
39 that appeal or writ proceeding, inspect and copy any records in a juvenile
40 case file to which the person was previously granted access by the juvenile
41 court, including any records or portions of records that are made a part of the
42 appellate record.

Rule 8.401 of the California Rules of Court would be amended, effective May 17, 2019, to read:

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

~~(3)~~(4) Access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

(Subd (b) amended effective January 1, 2014; adopted as subd (a); previously amended and relettered effective January 1, 2012.)

(c) Access to oral argument

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

(Subd (c) relettered effective January 1, 2012; adopted as subd (b).)

Rule 8.401 amended effective January 1, 2014; adopted effective July 1, 2010; previously amended effective January 1, 2012.

Advisory Committee Comment

Subdivision (b)(2). Welfare and Institutions Code section 827(a)(1)(Q) authorizes a petition by which a person may seek to be designated by order of the juvenile court to inspect a juvenile case file. The petition process is set forth in rule 5.552.