



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

www.courts.ca.gov/aac.htm
aac@jud.ca.gov

APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

September 25, 2019

12:30 p.m.

Teleconference

Advisory Body Members Present: Hon. Louis Mauro, chair; Hon. Kathleen M. Banke, vice-chair; Mr. Michael G. Colantuono, Mr. Kevin Green, Mr. Jonathan Grossman, Hon. Adrienne M. Grover, Hon. Joan K. Irion, Mr. Joshua A. Knight, Hon. Leondra R. Kruger, Ms. Mary K. McComb, Mr. Jorge Navarrete, Ms. Milica Novakovic, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy Schooley, Ms. M.C. Sungaila, and Hon. Helen E. Williams

Advisory Body Members Absent: Mr. Jeffrey Laurence, Ms. Heather MacKay, Hon. Stephen D. Schuett, and Hon. M. Bruce Smith

Others Present: Ms. Christy Simons

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:30 PM and roll was called.

No public comments were received.

Chair's Report

Justice Mauro welcomed new members and explained the applicable open meetings rules and his approach to running committee meetings. All spring 2019 rules and forms proposals were approved by the Judicial Council and will take effect January 1, 2020. For the upcoming year, the Joint Appellate Technology Subcommittee (JATS) will be inactive and its work will be handled by the Rules Subcommittee to streamline the process. Justice Mauro will keep the technology committees apprised of these projects. In closing, Justice Mauro thanked the committee for all its work in the public interest.

Approval of Minutes

The advisory body reviewed and approved the minutes of the July 19, 2019, Appellate Advisory Committee meeting.

DISCUSSION AND ACTION ITEMS

Item 1

Review the proposed advisory committee 2019-2020 annual agenda.

Justice Mauro introduced this item and explained that the process of approving the annual agenda was different this year because of timing issues. Ms. Simons provided an overview of the items on the proposed annual agenda and explained the timing and priority of each item. Ms. Novakovic suggested that item #1 be expanded to include the right to self-representation in misdemeanor appeals. Justice Mauro asked Ms. Novakovic to send some draft language to him and Ms. Simons. In addition, Ms. Novakovic suggested changing the priority assigned to item #6, Consent to electronic service, from 2 (must be done) to 1 (should be done). In light of the fact that changing the priority level would not affect the completion date of the project, the suggestion was withdrawn.

Action: After discussion, the committee approved the proposed annual agenda for consideration by RUPRO.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:00 PM.

Approved by the advisory body on enter date.

Item

01

Center for Judicial Education and Research Advisory Committee
Proposal for Potential Amendment to Rule 10.469

Background

On July 19, 2019, the Judicial Council adopted the recommendations of the Prevention of Discrimination and Harassment Work Group (“Work Group”). Work Group recommendation 2(A)(1) asked the council to direct the CJER Advisory Committee to consult with other advisory bodies in considering modifications to the California Rules of Court to achieve the Work Group objectives. The specific language of that recommendation is below.

Work Group Recommendation 2(A)(1)

Consistent with the requirements of California Government Code sections 68088 and 11135, and the California Rules of Court, rules 10.461 et seq., the Work Group recommends that the Center for Judicial Education and Research Advisory Committee (CJERAC), under the oversight of the Rules and Projects Committee, engage in the rulemaking process regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. In making this recommendation, the workgroup understands that CJERAC will work in consultation with the administrative presiding justices, appellate court clerk/executive officers, trial court presiding judges, and trial court executive officers.

Current Education Rule Structure

The principle education rules for judicial officers are separated by public role. The Supreme Court and Appellate Court Justices are covered by rule 10.461. Superior Court judges and subordinate judicial officers (“SJOs”) are covered by rules 10.462. Both rules discuss content-based and hours-based education recommendations for justices and judges

Rule 10.469 applies to all categories of judicial officers and has a specific section that discusses education *recommendations* in the areas of access and fairness. All rules are readily available online.¹

Rule Amendment for Consideration by Other Advisory Bodies

CJERAC requests your input on a proposed modification to rule 10.469. This proposal would change the wording under access and fairness education to mandatory as opposed to permissive as it pertains to the Work Group recommendation. The current rule is below with the potential modifications highlighted and italicized after the current version of the rule.

Rule 10.469. Judicial education recommendations for justices, judges, and subordinate judicial officers *and additional requirements*

(a) Judicial education recommendations generally

¹ Available at <https://www.courts.ca.gov/rules.htm>.

Each justice, judge and subordinate judicial officer, as part of his or her continuing judicial education, should regularly participate in educational activities related to his or her responsibilities and particular judicial assignment or assignments. Minimum education requirements and expectations related to judicial responsibilities and assignments are set forth in rules 10.461-10.462. Additional education requirements related to specific responsibilities are set forth in rule 10.463 (for those hearing family law matters), rule 10.464 (for those hearing domestic violence issues), and rule 10.468 (for those hearing probate proceedings). The following recommendations illustrate for some specific responsibilities and assignments how justices, judges, and subordinate judicial officers should participate in more judicial education than is required and expected.

(b) Jury trial assignment

Each judge or subordinate judicial officer assigned to jury trials should regularly use the Judicial Council CJER educational materials or other appropriate materials and should regularly complete CJER or other appropriate educational programs devoted to the conduct of jury voir dire and the treatment of jurors.

(c) Hearing of juvenile dependency matters

Each judge or subordinate judicial officer who hears juvenile dependency matters, including retired judges who sit on court assignment, should regularly use appropriate educational materials and should annually complete appropriate education programs on juvenile dependency law and procedure, consistent with the requirements in Welfare and Institutions Code section 304.7.

(d) Capital case assignment

Each judge assigned to hear a capital case should complete before the commencement of the trial a comprehensive education program on California law and procedure relevant to capital cases provided by CJER. A judge with a subsequent assignment to a capital case should complete a periodic update course within two years before the commencement of the trial. The periodic update may be provided through actual classroom instruction or through video, audio, or other media as determined by CJER.

(e) Fairness and access education; *prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct*

(1) In order to achieve the objective of assisting judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of bias, each justice, judge, and subordinate judicial officer should regularly participate in education on fairness and access. The education should include the following subjects: race and ethnicity, gender, sexual orientation, *and* persons with disabilities, *and sexual harassment*.

(2) Each justice, judge, and subordinate judicial officer must participate in education on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct. This education must be taken at least once every three-year continuing education period as determined by rule 10.461(c)(1) and 10.462(d)(1).

Item

02

Report will be provided orally
at meeting.

Item

03



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
October 23, 2019	For Your Information
To	Deadline
Court of Appeal Presiding Justices and Clerks Members, Administrative Presiding Justices Advisory Committee	N/A
Members, Appellate Advisory Committee	Contact
	Nichole Rocha, 916-323-3121 nichole.rocha@jud.ca.gov
From	
Nichole Rocha, Supervising Attorney	
Subject	
Final Report of 2019 Legislation of Interest to Appellate Courts	

Attached you will find the two final charts reflecting actions on legislation in the 2019–2020 legislative session. The first chart consists of legislation of potential interest to the appellate courts. The second consists of legislation that is responding to California appellate and Supreme Court decisions.

These and other bills can be found on the Internet at <http://leginfo.legislature.ca.gov/>

NR/YC-S

Attachments

cc: Martin Hoshino
Millicent Tidwell

2019–20 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>AB 685</u>	Reyes	<p>Juveniles: Indian tribes: counsel</p> <p>Requires the State Bar of California to administer grants to qualified legal services projects and support centers for the purpose of providing legal services to Indian tribes in child welfare matters under the Indian Child Welfare Act (ICWA). Requires adoption of training requirements that include instruction on ICWA. Requires the Court of Appeal to appoint separate counsel for a child’s tribe, at the request of the tribe, in any appellate proceeding involving an Indian child. [As introduced.]</p>	<p>Senate Judiciary Committee</p> <p>2-year bill</p>
<u>AB 1820</u>	Committee on Judiciary	<p>Personal rights: civil liability and enforcement</p> <p>The California Fair Employment and Housing Act protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of various personal characteristics. Under existing law, the Department of Fair Employment and Housing is responsible for receiving, investigating, conciliating, mediating, and prosecuting complaints alleging violations of specified civil rights, including sexual harassment claims.</p> <p>This bill additionally clarifies that the department may bring civil actions for violations of Title VII of the Civil Rights Act, the federal Americans with Disabilities Act, and the federal Fair Housing Act.</p>	<p>Signed into law (Stats. 2019, ch. 834)</p>

NOTE: This cumulative table is current through 08.16.19. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

2019–20 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>SB 25</u>	Caballero and Glazer	<p>California Environmental Quality Act: expedited review: projects funded by qualified opportunity zone funds or other public funds.</p> <p>Until January 1, 2025, requires, to the extent feasible, a 270-day expedited judicial review, including any potential appeals, of the environmental review and approvals granted for an undefined number of projects that are at least partially funded by a qualified opportunity zone fund. [As amended April 30, 2019.]</p>	<p>Assembly Natural Resources Committee</p> <p>2-year bill</p>
<u>SB 621</u>	Glazer and Caballero	<p>California Environmental Quality Act: expedited judicial review: affordable housing projects</p> <p>Until January 1, 2025, requires the Judicial Council, on or before July 1, 2020, to adopt a rule of court applicable to actions or proceedings brought pursuant to the California Environmental Quality Act seeking judicial review of environmental review documents and approvals granted for certain affordable housing projects. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. [As amended June 17, 2019.]</p>	<p>Assembly Natural Resources Committee</p> <p>2-year bill</p>

NOTE: This cumulative table is current through 10.15.19. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

2019–20 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>AB 5</u>	Gonzalez	<p>Worker status: employees and independent contractors</p> <p>Among other things, states the intent of the Legislature to codify <i>Dynamex Operations West, Inc. v. Superior Court of Los Angeles</i> (2018) 4 Cal.5th 903. Provides that the “ABC” test be applied to determine the status of a worker as an employee or independent contractor unless another definition or specification of “employee” is provided. Exempts specified professions from these provisions and instead substitutes the test adopted in <i>S.G. Borello & Sons, Inc. v. Department of Industrial Relations</i> (1989) 48 Cal.3d 341 to determine the employment relationship.</p>	Signed into law (Stats. 2019, ch. 296)
<u>AB 71</u>	Melendez	<p>Employment standards: independent contractors and employees</p> <p>Among other things, seeks to abrogate the California Supreme Court’s holding in <i>Dynamex Operations West, Inc. v. Superior Court</i> (2018) 4 Cal.5th 903 by requiring, instead, a determination of whether a person is an employee or an independent contractor to be based on a specific multifactor test, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. [As amended February 25, 2019.]</p>	Assembly Labor and Employment Committee 2-year bill
<u>AB 227</u>	Jones-Sawyer	<p>Crimes: assessments: restitution: ability to pay</p> <p>Makes a defendant’s inability to pay a fine a compelling and extraordinary reason for a court to not impose a restitution fine upon a conviction for a misdemeanor or felony. Requires the court to impose the court facility and court operation assessments unless the court determines that the defendant does not have the ability to pay. Codifies the decision of <i>People v. Dueñas</i> (2019) 30 Cal.App.5th 1157. [As introduced.]</p>	Assembly Appropriations Committee—suspense file. 2-year bill

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2019–20 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>AB 233</u>	Cooley	<p>Insurance: independent contractors.</p> <p>Clarifies the application of <i>Dynamex Operations West, Inc. v. Superior Court</i> (2018) 4 Cal.5th 903 to persons licensed by the Department of Insurance to transact insurance in specified capacities by providing that those persons are not employees when they have entered into a written agreement with an insurer or organizational licensee that includes specified provisions, including that the worker is classified as an independent contractor, that each party has the right to terminate the agreement upon notice to the other party, and that the worker is responsible for the payment of necessary expenditures and applicable taxes. Allows the parties to the agreement to classify the worker as either an employee or an independent contractor, but prohibits a worker from being classified as an independent contractor unless the agreement contains specified provisions. [As amended April 11, 2019.]</p>	<p>Senate Insurance Committee</p> <p>2-year bill</p>
<u>AB 303</u>	Cervantes	<p>Mental health: sexually violent predators: trial: continuances</p> <p>Establishes procedures and timelines for requesting, responding to, and granting continuances in Sexually Violent Predator (SVP) civil trial proceedings. This legislation is in response to <i>People v. Superior Court (Vasquez)</i> (2018) 27 Cal.App.5th 36, in which an SVP petition against George Vasquez was dismissed for due process violations based on the lengthy delay in bringing the case to trial. Mr. Vasquez was detained in state hospitals for over 17 years awaiting trial on the petition, as a series of six appointed attorneys slowly moved his case toward trial. The court applied a due process balancing test established by the U.S. Supreme Court and concluded that under the balancing test Mr. Vasquez had suffered prejudice due to the excessive delay and that the delay was caused by the state. In reaching that holding, the appellate court stated, “[t]he ultimate responsibility for bringing a person to trial on an SVP petition at a ‘meaningful time’ rests with the government.” (Id. at 58.)</p>	<p>Signed into law (Stats. 2019, ch. 606)</p>

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2019–20 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>AB 1380</u>	Obernolte	<p>Premarital agreements: enforcement</p> <p>Requires that the party against whom enforcement of a premarital agreement is sought be advised to seek independent legal counsel, and that advisement shall be made at least seven days before the final agreement is signed. States that this provision is declaratory of existing law. Provides that, with respect to premarital agreements executed on or after January 1, 2020, the agreement may not be deemed voluntary unless the party against whom enforcement is sought had at least seven days between being first presented with the final agreement and signing the agreement, regardless of whether the party is represented by legal counsel. States that paragraph (B) of paragraph (2) of subdivision (c) of section 1615 of the Family Code is intended to supersede, on a prospective basis, the holding in <i>in re Marriage of Caldwell, Faso v. Faso</i> (2011) 191 Cal.App.4th 945.</p>	Signed into law (Stats. 2019, ch. 193)
<u>AB 1618</u>	Jones-Sawyer	<p>Plea bargaining: benefits of later enactments</p> <p>States that a provision of a plea bargain that requires a defendant to generally waive future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy. The bill appears to be in response to <i>People v. Wright</i> (2019) 31 Cal.App.5th 749, which ruled that “[i]f parties to a plea agreement want to insulate the agreement from future changes in the law they should specify that the consequences of the plea will remain fixed despite amendments to the relevant law,” and <i>People v. Barton</i> (2019) 32 Cal.App.5th 1088, which held that when a defendant negotiates a plea for a stipulated sentence and waives the right to appeal the sentence, the defendant cannot seek to change their sentence after a favorable sentencing law is later enacted.</p>	Signed into law (Stats. 2019, ch. 586)

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2019–20 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>AB 1798</u>	Levine	<p>California Racial Justice Act: death penalty</p> <p>Prohibits a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race if the court makes a finding that race was a significant factor in seeking or imposing the death penalty. Provides that a finding that race was a significant factor would include statistical evidence or other evidence that death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race or that race was a significant factor in decisions to exercise preemptory challenges during jury selection. Codifies the holding in <i>People v. Wheeler</i> (1978) 22 Cal. 3d 258, which held that the practice of excusing jurors from the jury pool on the basis of race was unconstitutional. [As amended March 21, 2019.]</p>	<p>Assembly Appropriations Committee—suspense file.</p> <p>2-year bill</p>
<u>SB 145</u>	Wiener	<p>Sex offenders: relief from registration</p> <p>Exempts a person convicted of certain offenses involving minors from the duty to register as a sex offender if the person is not more than 10 years older than the minor. This bill seeks to abrogate the decision of the California Supreme Court in <i>Johnson v. California Department of Justice</i> (2015) 60 Cal.4th 871. [As amended July 11, 2019.]</p>	<p>Assembly Appropriations Committee—suspense file.</p> <p>2-year bill</p>

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2019–20 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>SB 238</u>	Grove	<p>Worker status: factors for determination of employee status</p> <p>Among other things, seeks to abrogate the California Supreme Court’s holding in <i>Dynamex Operations West, Inc. v. Superior Court</i> (2018) 4 Cal.5th 903. Requires, for purposes of claims for wages and benefits arising under wage orders, an analysis as to whether the worker is economically dependent upon the hiring entity to determine whether that worker is an employee based upon the economic reality of the relationship with the hiring entity. Requires this analysis to be based solely upon enumerated factors that are similar to those used as a part of the Economic Realities Test in the federal Fair Labor Standards Act of 1938. In addition, provides legislative findings and declarations in support of these provisions, and states in the findings and declarations that it is the intent of the Legislature that the test under these provisions be applied retroactively to claims filed on and after April 30, 2018. [As amended March 28, 2019.]</p>	<p>Senate Labor, Public Employees and Retirement Committee</p> <p>2-year bill</p>

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2019–20 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 16, 2019
<u>SB 707</u>	Wieckowski	<p>Arbitration agreements: enforcement</p> <p>Among other things, specifies that in an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration administrator, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within 30 days of their due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under Code of Civil Procedure section 1281.2. States the intent of the Legislature in enacting this measure to affirm the decisions in <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> (2000) 24 Cal.4th 83, <i>Brown v. Dillard’s, Inc.</i> (2005) 430 F.3d 1004, and <i>Sink v. Aden Enterprises, Inc.</i> (2010) 352 F.3d 1197, that a company’s failure to pay arbitration fees pursuant to a mandatory arbitration provision constitutes a breach of the arbitration agreement and allows the non-breaching party to bring a claim in court. Specifies that sanctions shall be monetary sanctions on the drafting party who impartially breaches an arbitration agreement and would authorize the court to impose other sanctions as specified in an employment or consumer arbitration, regardless of whether the drafting party, as defined, is required to pay certain fees and costs before the arbitration can proceed, or during the pendency of the arbitration proceeding.</p>	Signed into law (Stats. 2019, ch. 870)

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Item

04

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

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

INVITATION TO COMMENT

W20-__

Title	Action Requested
Appellate Procedure: Appointment of Counsel in Misdemeanor Appeals	Review and submit comments by February 11, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.851; revise forms CR-131-INFO and CR-133	September 1, 2020
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

To implement the California Supreme Court’s decision in *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, the Appellate Advisory Committee proposes amending the rule regarding appointment of counsel in misdemeanor appeals to expand the circumstances under which the appellate division must appoint counsel for an indigent defendant. The committee also proposes amending this rule to address appointed counsel for a defendant whose request for self-representation on appeal has been denied. In addition, this proposal would revise two forms to be consistent with the rule amendments.

Background

Scope of the right to appointed counsel in the appellate division

Currently, rule 8.851 of the California Rules of Court provides for the appointment of counsel on appeal only for convicted defendants. On application, the appellate division must appoint appellate counsel for a defendant convicted of a misdemeanor who was represented by appointed counsel in the trial court or establishes indigency and who either “is subject to incarceration or a fine of more than \$500,” or “is likely to suffer significant adverse collateral consequences as a result of the conviction.” (Cal. Rules of Court, rule 8.851(a)(1).) The appellate division “may appoint counsel for any other indigent defendant convicted of a misdemeanor.” (Rule 8.851(a)(2).) The rule does not authorize the appointment of counsel for defendants who have not been convicted.

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.

In *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998 (*Gardner*), the Supreme Court addressed the question of whether a defendant facing misdemeanor charges, who filed a successful motion to suppress evidence with the help of court-appointed counsel, was entitled to appointed counsel's assistance in responding to a pretrial prosecution appeal of the suppression order. The court set forth the analysis for determining whether a defendant has a right to appointed counsel in confrontational proceedings other than trial, and held that the pretrial prosecution appeal of an order granting the defendant's motion to suppress evidence was a "critical stage" of the proceedings at which the defendant had a right to appointed counsel as a matter of state constitutional law. (*Gardner*, 6 Cal.5th at p. ____.)

No right of self-representation in the appellate division

In connection with a past proposal in the spring 2019 cycle, an appellate division of a superior court and a committee member noted that *Information on Appeal Procedures for Misdemeanors*, form CR-131-INFO, incorrectly suggested that a misdemeanor defendant could choose self-representation on appeal. However, there is no right to represent oneself in a criminal appeal. (*Martinez v. State of California* (2000) 528 U.S. 152, 161; *People v. Barnett* (2003) 31 Cal. 4th 466, 473.) A defendant may request self-representation, and the appellate division may grant or deny the request. The information sheet was revised to correct the errors.

Since rule 8.851 is under consideration by the committee to implement *Gardner*, the committee member suggested that rule 8.851 be amended to clarify that an appellate division may deny a defendant's request to be self-represented on appeal and instead appoint appellate counsel.

The Proposal

Rule 8.851

This proposal would amend rule 8.851(a) to require the appellate division to appoint counsel in circumstances that qualify as "critical stages" of the proceedings, as prescribed in *Gardner*. A pretrial prosecution appeal of a suppression order is a critical stage for which counsel must be appointed, but the *Gardner* court did not limit its holding to this one situation. Accordingly, the proposed language is intended to be broad enough to encompass other possible critical stages in the proceedings for a defendant who has been accused, but not convicted, of a misdemeanor. For clarity and to avoid repetitiveness, the committee proposes reorganizing paragraph (1) of subdivision (a) to include the indigency requirement, keep the provisions regarding convicted defendants in subdivision (a)(1)(A), and draft new language for subdivision (a)(1)(B) regarding accused defendants who are entitled to appointed counsel.

The proposal includes minor conforming changes to other parts of subdivisions (a) and (b) and the existing advisory committee comment. It also includes a new advisory committee comment for subdivision (a)(1)(B) describing the *Gardner* decision.

The committee is also proposing a new subdivision (d) of rule 8.851 to address appointment of counsel for a defendant whose request for self-representation was denied. This provision would state that "[i]f the appellate division denies a defendant's request to be self-represented on

appeal, the defendant may retain counsel or apply to the appellate division for appointment of counsel subject to these rules.” A new advisory committee comment for subdivision (d) would state, with case citations, that there is no right of self-representation in a criminal appeal, and that, therefore, the appellate division may grant or deny a request for self-representation.

Form CR-131-INFO

The committee proposes revisions to this information sheet that conform to the proposed rule amendments. Currently, item 4 (“Do I need a lawyer to appeal?”) contains content for a defendant whose request for self-representation has been granted. This proposal would add language advising a defendant whose request for self-representation was denied of the need to either hire an attorney or request that an attorney be appointed.

The proposal would revise item 5 (“How do I get a lawyer to represent me?”), which addresses appointment of counsel, to include defendants who have been charged but not convicted of a misdemeanor and face potential substantial prejudice (i.e., a *Gardner* situation) in the appellate proceeding.

Form CR-133

The committee proposes a number of changes to this form for requesting a court-appointed lawyer to make it consistent with *Gardner*. Currently, the form is addressed exclusively to an appellant who has filed a notice of appeal, and the instructions only refer to a convicted defendant as eligible for appointed counsel. References to “appellant” and “your notice of appeal” in various places on the form would be replaced with “defendant” and “the notice of appeal.” The instructions would be revised to include defendants in *Gardner* situations by adding the same new language proposed for item 5 on form CR-131-INFO.

Alternatives Considered

The committee considered proposing narrower language in rule 8.851 to implement *Gardner*, but concluded that the Supreme Court’s analysis of entitlement to appointed counsel on appeal was broad enough potentially to include proceedings other than a pretrial prosecution appeal of an order granting a motion to suppress evidence.

The committee considered adding language to implement *Gardner* by retaining current rule 8.851(a)(1) regarding convicted defendants for whom the appellate division must appoint counsel and adding a new subdivision (a)(2) regarding defendants accused of a misdemeanor. However, for clarity and to avoid repetitiveness, the committee is proposing to reorganize subdivision (a)(1) as described above.

The committee considered proposing that subdivision (a)(2), which authorizes the appellate division to appoint counsel for any other indigent defendant “convicted of a misdemeanor,” be amended to include any other indigent defendant “accused of a misdemeanor.” However, the committee concluded that this might be an unwarranted expansion of the rule with unintended consequences. The committee is seeking comments on this alternative.

The committee also considered not proposing new subdivision (d) of rule 8.851 regarding appointment of counsel for a defendant whose request for self-representation is denied. The committee is unsure whether this provision adds helpful guidance and will reduce confusion in an area of appellate procedure or, alternatively, functions mainly as a point of substantive law that that a criminal defendant has no right of self-representation on appeal. The committee is seeking comments on this proposed new subdivision.

Fiscal and Operational Impacts

Implementation requirements of this proposal will include education and training for judges and court staff. It may also result in more attorneys appointed to represent misdemeanor defendants on appeal, and a commensurate increase in the cost of providing appointed counsel. However, this proposal is required to respond to a change in the law; providing appointed counsel in circumstances encompassed by *Gardner* is mandatory, not optional.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should subdivision (a)(2) of the rule be amended to authorize the appellate division, in its discretion, to appoint counsel for any other indigent defendant *accused* of a misdemeanor?
- Should the rule address the denial of a defendant's request for self-representation and the defendant's option to hire an attorney or apply for appointed counsel?

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 3 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 8.551, at pages 5-7
2. Forms CR-131-INFO and CR-133, at pages 8-19
3. Attachment A: *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998

Rule 8.851 of the California Rules of Court would be amended, effective September 1, 2020, to read:

1 **Rule 8.851. Appointment of appellate counsel**

2
3 **(a) Standards for appointment**

4
5 (1) On application, the appellate division must appoint appellate counsel for a
6 defendant ~~convicted of a misdemeanor~~ who was represented by appointed
7 counsel in the trial court or establishes indigency and who:

8
9 (A) Was convicted of a misdemeanor and is subject to incarceration or a
10 fine of more than \$500 (including penalty and other assessments), or
11 who is likely to suffer significant adverse collateral consequences as a
12 result of the conviction; ~~and~~ or

13
14 (B) ~~Was represented by appointed counsel in the trial court or establishes~~
15 ~~indigency.~~ Is charged with a misdemeanor and the proceeding qualifies
16 as a critical stage of the criminal process under *Gardner v. Appellate*
17 *Division of Superior Court* (2019) 6 Cal.5th 998.

18
19 (2) On application, the appellate division may appoint counsel for any other
20 indigent defendant convicted of a misdemeanor.

21
22 (3) For applications under (1)(A), a defendant is subject to incarceration or a fine
23 if the incarceration or fine is in a sentence, is a condition of probation, or may
24 be ordered if the defendant violates probation.

25
26 **(b) Application; duties of trial counsel and clerk**

27
28 (1) If defense trial counsel has reason to believe that the client is indigent and
29 will file an appeal or is a party in a proceeding described in (a)(1)(B), counsel
30 must prepare and file in the trial court an application to the appellate division
31 for appointment of counsel.

32
33 (2) If the defendant was represented by appointed counsel in the trial court, the
34 application must include trial counsel's declaration to that effect. If the
35 defendant was not represented by appointed counsel in the trial court, the
36 application must include a declaration of indigency in the form required by
37 the Judicial Council.

38
39 (3) Within 15 court days after an application is filed in the trial court, the clerk
40 must send it to the appellate division. A defendant may, however, apply

1 directly to the appellate division for appointment of counsel at any time after
2 ~~filing~~ the notice of appeal is filed.

- 3
4 (4) The appellate division must grant or deny a defendant's application for
5 appointment of counsel within 30 days after the application is filed.
6

7 **(c) Defendant found able to pay in trial court**
8

- 9 (1) If a defendant was represented by appointed counsel in the trial court and was
10 found able to pay all or part of the cost of counsel in proceedings under Penal
11 Code section 987.8 or 987.81, the findings in those proceedings must be
12 included in the record or, if the findings were made after the record is sent to
13 the appellate division, must be sent as an augmentation of the record.
14
15 (2) In cases under (1), the appellate division may determine the defendant's
16 ability to pay all or part of the cost of counsel on appeal, and if it finds the
17 defendant able, may order the defendant to pay all or part of that cost.
18

19 **(d) Appointment of counsel after denial of a defendant's request for self-**
20 **representation**
21

22 If the appellate division denies a defendant's request to be self-represented on
23 appeal, the defendant may retain counsel or apply to the appellate division for
24 appointment of counsel subject to these rules.
25

26 **Advisory Committee Comment**
27

28 *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) may be used to
29 request that appellate counsel be appointed in a misdemeanor case. If the defendant appellant was
30 not represented by the public defender or other appointed counsel in the trial court, the defendant
31 appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel*
32 *and Reimbursement and Record on Appeal at Public Expense* (form CR-105 MC-210) to show
33 indigency. These forms are available at any courthouse or county law library or online at
34 www.courts.ca.gov/forms.
35

36 **Subdivision (a)(1)(B).** *In Gardner v. Appellate Division of Superior Court* (2019) 6 Cal. 5th 998,
37 the California Supreme Court set forth the analysis for determining whether a defendant has a
38 right to counsel in confrontational proceedings other than trial, and held that the pretrial
39 prosecution appeal of an order granting the defendant's motion to suppress evidence was a critical
40 stage of the proceedings at which the defendant, who was represented by appointed counsel in the
41 trial court, had a right to appointed counsel as a matter of state constitutional law.
42

1 **Subdivision (d).** There is no right to represent oneself in a criminal appeal. (*Martinez v. State of*
2 *California* (2000) 528 U.S. 152, 161; *People v. Barnett* (2003) 31 Cal. 4th 466, 473.) Thus, an
3 appellate division may grant or deny a defendant's request for self-representation.
4

DRAFT

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division’s job is to review a record of what happened in the trial court and the trial court’s decision to see if certain kinds of legal errors were made in the case:

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury’s or trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You will probably need a lawyer. You are allowed to represent yourself in an appeal in a misdemeanor case only if the appellate division permits you to do so. But appeals can be complicated, and you would have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If the appellate division permits you to represent yourself, you must put your address, telephone number,

fax number, and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

If the appellate division does not permit you to represent yourself, you must hire a lawyer at your own expense or ask the court to appoint a lawyer to represent you.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- You were convicted and your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments); or
- You are likely to suffer other significant harm as a result of being convicted; or
- The appeal is before the trial and you are likely to suffer significant harm if you lose on appeal.

See rule 8.851 of the California Rules of Court for more information about when the court is required to appoint a lawyer to represent you.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at www.courts.ca.gov/forms.

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get

information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp.htm at the “Getting Started” tab.

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only the final judgment—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. With the exception listed below, rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal:

- Before the trial court issues a final judgment in the case, from an order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- From an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal (Misdemeanor)* (form

CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed (“stayed”) only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court makes (“renders”) its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at www.courts.ca.gov/rules). The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

12 What do I need to do after I file my appeal?

You must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at www.courts.ca.gov/forms). You must file this notice either:

- Within 20 days after you file your notice of appeal; or, if it is later,

- Within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

local rule permitting this and you and the respondent (the prosecuting agency) agree (“stipulate”) to this, you can use the *official electronic recording* itself as the record, instead of a transcript.

- c. You can use a *statement on appeal*.

Read below for more information about these options.

a. Reporter’s transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter’s transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.866 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.866 you can decide to use a different form of the record or take other action instead of proceeding with a reporter’s transcript.

If, however, you are indigent (you cannot afford to pay the cost of a reporter’s transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant’s Financial Statement on Eligibility for Appointment*

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

14 What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

- a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a

of Counsel and Reimbursement and Record on Appeal at Public Expense (form CR-105), to show that you are indigent. You can get form CR-105 at any courthouse or county law library or online at

www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.866.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.866 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to

see if your case was officially electronically recorded before you choose this option. As with reporter's transcripts, some courts also have local rules that establish procedures for deciding

whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.868.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105) to show that you are indigent. You can get form CR-105 at any courthouse or county law library or online at www.courts.ca.gov/forms. The

court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. As with reporter's transcripts, whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.868.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the

record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in

the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form CR-135 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)*

(form APP-109) can be used to make this record. The proof of service must show who

served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the

statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a “clerk’s transcript,” and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.)
- **Exhibits submitted during trial:** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent’s brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.) Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If the appellate division has permitted you to represent yourself, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.

- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to

make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at www.courts.ca.gov/selfhelp-serving.htm.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

19 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case unless your case presents no arguable issues for the court to

consider. If your case presents no arguable issues, the court will not hold oral argument.

20 What is oral argument?

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” (give up) oral argument by serving and filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument (Misdemeanor)* (form CR-138) to waive oral argument.

If all parties waive oral argument, and the appellate division approves the waiver and takes the oral argument off calendar, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

If you choose to participate in oral argument, each party will have up to 10 minutes for argument, unless the court orders otherwise. If the appellate division has permitted you to represent yourself, remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

21 What happens after oral argument?

After the oral argument is held (or all parties waive oral argument and the court approves the waiver), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after oral argument (or the date its waiver was approved) to decide the appeal. The clerk of the court will mail you a notice of that decision.

22 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

Clerk stamps date here when form is filed.

DRAFT

10-29-19

**Not approved by
the Judicial Council**

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a **defendant in a misdemeanor appeal**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:
 - (1) **You were convicted and** your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments); or
 - (2) You are likely to suffer other significant harm as a result of being convicted; **or**
 - (3) **The appeal is before the trial and you are likely to suffer significant harm if you lose on appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where the notice of appeal was filed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of **Defendant** (the party who is filing this **request**):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

b. **Defendant’s** lawyer (skip this if the **defendant** is filling out this form):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



Information About Your Case

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (Check a or b.)

a. Yes

b. No (Complete and attach Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.)

3 If you have been convicted, describe the punishment the trial court gave you/your client in this case (check all that apply and fill in any required information):

a. Jail time

b. A fine (including penalty and other assessments) (fill in the amount of the fine): \$ _____

c. Restitution (fill in the amount of the restitution): \$ _____

d. Probation (fill in the amount of time on probation): _____

e. Other punishment (describe any other punishment that the trial court gave you/your client in this case):

f. Describe any significant harm that you are/your client is likely to suffer because of this conviction:

4 If this appeal is before the trial, describe any significant harm that you/your client is likely to suffer if you lose/your client loses the appeal:

Notice to Defendant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: _____

Type or print name

Signature of defendant or attorney

Item

05

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W20-__

Title	Action Requested
Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings	Review and submit comments by February 12, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-574, JV-800, JV-820, and JV-822	September 1, 2020
Proposed by	Contact
Appellate Advisory Committee	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov
Hon. Louis R. Mauro, Chair	Daniel Richardson, 415-865-7619 daniel.richardson@jud.ca.gov
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

To implement recent Judicial Council-sponsored legislation amending the statute that governs access to records in a juvenile case, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose amending the rules regarding confidentiality in juvenile court and appellate court proceedings. Under the statutory amendment, individuals who are required to file a petition and obtain a juvenile court order to access records in a juvenile case file, and have done so, are entitled to the same access to records for purposes of appellate court proceedings in which they are parties. This proposal would revise a number of forms to add a notice and make other clarifying changes. The committees also propose a new information sheet to assist litigants who must file a petition to seek access to records.

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.

Prior Circulation

This proposal circulated previously in spring 2019. At that time, the committees proposed amending several rules relating to juvenile appeals and writs to include provisions relating to persons required to petition for access to records in the juvenile case file and the limited record to be prepared and provided to these persons. The proposal included a new information sheet and a notice on certain forms regarding the process to seek authorization from the juvenile court to access records in the juvenile case file.

The committees received a number of public comments raising various concerns with the proposed rule amendments, including due process and perceived gaps in the proposed rules that would require more rules, among others. The committees concluded that, in attempting to provide detailed procedures and information for litigants and courts and to account for various situations that could arise, the proposal's scope and complexity expanded beyond what was necessary to implement the legislation, which was narrow in scope and aimed at a situation that arises relatively infrequently. Accordingly, the committees determined that the best way to move forward would be a more focused rules proposal to add the juvenile court petition process to the appellate rule on access to records in a juvenile case.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827.¹ 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, including 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 in the juvenile case file.

However, some individuals who are 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

¹ All further unspecified statutory references are to the Welfare and Institutions Code, and all rule references are to the California Rules of Court. You can access the full text of this statute at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC.

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 occurs, for example, when the appellant is a family member or other person who files a petition seeking de facto parent status and is appealing the denial of that petition or who files a petition under 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 those cases, before the recent legislation, the juvenile courts and Courts of Appeal followed various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding could receive. Doing so took time and resources of the juvenile court, the Court of Appeal, and the persons seeking review or the respondents in such proceedings. It also resulted in delays and, particularly when the appellant or petitioner was self-represented, procedural dismissals of these appeals without consideration of their merit.

In 2017, the Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, recommended that the Judicial Council sponsor legislation to address this situation. The legislation, Assembly Bill 1617, which added new paragraph (a)(6) to section 827, took effect on January 1, 2019. The new paragraph provides that a person who is not otherwise authorized to access the case file under section 827(a)(1)(A)–(P) and files a notice of appeal or petition challenging a juvenile court order or who is a respondent or real party in interest in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they have been given access by the juvenile court. New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the new provision.

The Proposal

Rule amendments

The committees propose amending both the appellate and juvenile rules on confidentiality of documents. Rule 8.401(b), which addresses access to documents and records in juvenile appellate proceedings, would be amended to add a provision regarding access to records in the juvenile case file and clarifying that persons who have been granted access by order of the juvenile court may have the same access for purposes of the appellate court proceeding. These individuals do not need to go back to the juvenile court or follow some other procedure to obtain access for purposes of the appeal or writ petition in the Court of Appeal. The proposed amendments to rule 5.552 are minor, mostly changes to make the language consistent across the rules and forms in this proposal.

The committees believe that these proposed rule amendments appropriately balance the policy considerations favoring confidentiality of juvenile case files against certain individuals' need for access to these records to effectuate their right to participate in appellate proceedings in these cases. Because these individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections of the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would reduce barriers to their access to justice, delays in these proceedings, and time and expenses for the parties and the courts.

Rule 5.552

To better align with the language of section 827, the committees propose amending the rule on confidentiality of records in the juvenile court to replace the terms “disclosure” and “disclosed” with “access to” and “released,” respectively. This change would more accurately describe the juvenile court’s action in granting a petition as permitting *access* to records in the juvenile case file rather than permitting *disclosure*, which could suggest that the petitioner may disclose the information. The amendments would also update the names of several forms that are referenced in the rule and are part of this proposal.

Rule 8.401

Rule 8.401 is the appellate rule on confidentiality in juvenile proceedings; subdivision (b) addresses access to documents and records. The proposal would add a new paragraph regarding access to records in the juvenile case file under section 827 and stating that individuals who were granted access to records by order of the juvenile court are entitled to access the same records for purposes of an appeal or writ proceeding. A new advisory committee comment would describe the petition process under section 827 and refer to rule 5.552 and the mandatory form a petitioner must use.

Other amendments to this rule would add definitions to clarify terms. Existing rule 8.401(b) refers to “filed documents,” “documents filed by the parties,” “the record on appeal,” and “records” in setting forth various rules regarding access to documents and records, and proposed new subdivision (b)(2) adds the term “records in the juvenile case file.” To eliminate confusion and draw clear distinctions, the committees propose defining “filed document,” “record on appeal,” and “records in the juvenile case file.”

New and revised forms

While the rules component of this revised proposal has narrowed over what was originally circulated, the forms portion has expanded. As in the prior proposal, the committees suggest adding a notice to certain forms regarding the petition process and a new information sheet for individuals who are not entitled to access records in the juvenile case file without filing a petition. Other form revisions are intended to raise awareness of the possible need to petition for access to records and to assist the juvenile court and litigants in that process.

Proposed information sheet

New Information on Requesting Access to Records for Persons with a Limited Right to Appeal (form JV-291-INFO) would provide information for individuals with a limited right to seek review of a juvenile court order, such as relatives and de facto parents, and the requirement to request access to the juvenile case file through a petition under section 827(a)(1)(Q). The form emphasizes that these individuals have a right to appeal or file a writ petition only in limited circumstances. This form is substantially similar to the version included in the earlier proposal, but renamed and with other minor clarifying changes.

Notice on JV forms

The committees anticipate that potential parties in appellate proceedings who are not entitled to access records in the juvenile case file often may be unaware of the requirement to petition for such access, and thus might not file such a petition until after the appellate proceeding has begun. This situation could cause delays and difficulties for litigants and the courts—problems the legislation was intended to solve. The committees propose adding a short notice to forms typically used by these litigants in dependency and delinquency cases. The notice would read as follows:

“If you are not the child, the child’s parent, or the child’s legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons with a Limited Right to Appeal* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.”

The committees propose adding this notice to the following forms:

- *Relative Information* (form JV-285)
- *Caregiver Information Form* (form JV-290)
- *De Facto Parent Request* (form JV-295)
- *Request for Prospective Adoptive Parent Designation* (form JV-321)
- *Objection to Removal* (form JV-325)
- *Notice of Appeal—Juvenile* (form JV-800)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26* (form JV-820)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Designating or Denying Specific Placement of a Dependent Child After Termination of Parental Rights* (form JV-(822))

Revisions to notice of appeal and notice of intent to file writ petition forms

In addition to adding the notice described above, the committees propose adding an item to these forms so that the appellant or petitioner who has been granted access to records by order of the juvenile court may indicate this and attach the order, if it is available. This will provide notice to the juvenile court clerk who prepares the record that the litigant’s access to records is specified in the court’s order.

The committees propose adding this item to the following forms:

- *Notice of Appeal—Juvenile* (form JV-800)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Setting a Hearing under Welfare and Institutions Code Section 366.26 (California Rules of Court, Rule 8.450)* (form JV-820)

- *Notice of Intent to File Writ Petition and Request for Record to Review Order Designating or Denying Specific Placement of a Dependent Child after Termination of Parental Rights (California Rules of Court, Rule 8.454) (form JV-822)*

Revisions to mandatory forms for the section 827 petition process

The Judicial Council adopted mandatory forms for use by litigants and the juvenile courts in the section 827 petition process. The committees propose revisions to update the names of these forms and language within the forms to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure.”

The committees propose making these revisions to the following forms:

- *Proof of Service—Request for Disclosure (form JV-569), renamed as Proof of Service—Petition for Access to Juvenile Case File*
- *Request for Disclosure of Juvenile Case File (form JV-570), renamed as Petition for Access to Juvenile Case File*
- *Notice of Request for Disclosure of Juvenile Case File (form JV-571), renamed as Notice of Petition for Access to Juvenile Case File*
- *Objection to Release of Juvenile Case File (form JV-572)*
- *Order on Request for Disclosure of Juvenile Case File (form JV-573), renamed as Order on Petition for Access to Juvenile Case File*
- *Order After Judicial Review (form JV-574), renamed as Order After Judicial Review on Petition for Access to Juvenile Case File*

Other revisions to forms

The committees propose additional changes to the forms as described below.

Form JV-569 is the mandatory form for filing proof of service of the petition under section 827(a)(1)(Q). The revision would add a new item 3 for attorneys filling out the form to provide more information if they are not able to serve notice of the petition on certain parties.

Form JV-570 is the mandatory form used to petition for access to the juvenile case file. It requires the petitioner to describe in detail the records that are sought and why the records are needed. The committees propose expanding the instructions for item 5, which requires the petitioner to describe the records being sought, and revising item 6 to add the option that records are sought for an appellate court proceedings and provide space for the petitioner to list the relevant hearing dates.

Form JV-573 is the form for the juvenile court to make its ruling on the petition. The revisions would add checkboxes and space in item 1 for the judicial officer to indicate the reason for denying the petition, and add new item 6 to provide space for other orders.

Form JV-574 is the mandatory form for the juvenile court to issue orders after judicial review of the juvenile case file. The revisions would add checkboxes and space in item 2 for the judicial

officer to indicate the reason for the denying the petition, add a checkbox to item 3 for the option of requiring that records released to the petitioner be redacted, and add checkboxes to item 6 to permit the petitioner to release records to a specified person and to indicate that the records are subject to a protective order.

Form JV-800, the notice of appeal form, would be revised to add item 2e for the appellant to self-identify as having been granted access to records in the juvenile case file and to attach the juvenile court's order, if it is available. The committees also propose adding a checkbox to item 7, which lists appealable orders under different sections of the Welfare and Institutions Code, to include an order under section 388 (request to change a court order).

Forms JV-820 and JV-822, notices of intent to file a writ petition in different underlying case types, would both be revised to add an item (item 8 in form JV-820 and item 7 in form JV-822) for the petitioner to self-identify as having been granted access to records in the juvenile case file and to attach the juvenile court's order, if it is available. In addition, on form JV-822, language would be added to the box on page two titled Signature and Notice of Intent to clarify that the notice of intent may be signed by the person who intends to file the writ petition or by that person's attorney of record.

Alternatives Considered

The committees did not consider proposing no rule changes because the legislation requires the Judicial Council to adopt implementing rules.

As described above, the committees previously proposed more extensive rule amendments to set forth procedures for appellate proceedings involving individuals whose access to records is limited. However, these extensive changes to the juvenile appellate rules added numerous new procedures, raised many more issues that would have to be addressed, and went well beyond what is necessary to implement the new statutory provision.

The committees considered making no changes to the JV forms, but rejected this option. Because of the likelihood that individuals who are not authorized to access the juvenile case file but who are involved in appellate proceedings may be unaware of the requirement to petition for access to records in the juvenile case file, the committees chose to develop a new information sheet, include a notice on certain forms, and make other changes to improve awareness of the petition process, and assist litigants and courts in navigating it.

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 adequately address the stated purpose?
- Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely mirror the definition of “juvenile case file” in section 827(e)?
- Does the proposed information sheet, form JV-291-INFO, provide the information necessary for an individual to understand the right to appeal and the process for requesting access to records in the juvenile case file? Should other information be included?

The advisory committees also seek 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?

Attachments and Links

1. Cal. Rules of Court, rules 5.552 and 8.401, at pages X-X
2. Forms JV-285, JV-290, JV-291-INFO, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822, at pages X-X

Rule 5.552 of the California Rules of Court would be amended, effective September 1, 2020, to read:

1
2 **Rule 5.552. Confidentiality of Records (§§ 827, 827.12, 828)**

3
4 (a) ***

5
6 (b) **Petition**

7
8 Juvenile case files may be obtained or inspected only in accordance with sections
9 827, 827.12, and 828. They may not be obtained or inspected by civil or criminal
10 subpoena. With the exception of those persons permitted to inspect juvenile case
11 files without court authorization under sections 827 and 828, and the specific
12 requirements for accessing juvenile case files provided in section 827.12(a)(1),
13 every person or agency seeking to inspect or obtain juvenile case files must petition
14 the court for authorization using ~~Request for Disclosure of~~ Petition for Access to
15 Juvenile Case File (form JV-570). A chief probation officer seeking juvenile court
16 authorization to access and provide data from case files in the possession of the
17 probation department under section 827.12(a)(2) must comply with the
18 requirements of subdivision (e) of this rule.

19
20 (1)-(2) ***

21
22 (c) **Notice of petition for disclosure access**

23
24 (1) At least 10 days before the petition is submitted to the court, the petitioner
25 must personally or by first-class mail serve ~~Request for Disclosure of~~ Petition
26 for Access to Juvenile Case File (form JV-570), ~~Notice of Request for~~
27 ~~Disclosure of~~ Petition for Access to Juvenile Case File (form JV-571), and a
28 blank copy of Objection to Release of Juvenile Case File (form JV-572) on
29 the following:

30
31 (A)-(I) ***

32
33 (2) The petitioner must complete ~~Proof of Service-Request for Disclosure~~
34 Petition for Access to Juvenile Case File (form JV-569) and file it with the
35 court.

36
37 (3) If the petitioner does not know the identity or address of any of the parties in
38 (c)(1) above, the clerk must:

39
40 (A) Serve personally or by first-class mail to the last known address a
41 copy of ~~Request for Disclosure of~~ Petition for Access to Juvenile
42 Case File (form JV-570), ~~Notice of Request for Disclosure~~ Petition

Rule 5.552 of the California Rules of Court would be amended, effective September 1, 2020, to read:

1 *for Access to Juvenile Case File* (form JV-571), and a blank copy
2 of *Objection to Release of Juvenile Case File* (form JV-572); and

3
4 (B) Complete *Proof of Service-~~Request for Disclosure~~ Petition for Access*
5 *to Juvenile Case File* (form JV-569) and file it with the court.

6
7 (4) For good cause, the court may, on the motion of the person seeking the order
8 or on its own motion, shorten the time for service of the petition for
9 disclosure.

10
11 **(d) Procedure**

12
13 (1)-(5) ***

14
15 (6) The court may permit ~~disclosure of~~ access to juvenile case files only insofar
16 as is necessary, and only if petitioner shows by a preponderance of the
17 evidence that the records requested are necessary and have substantial
18 relevance to the legitimate need of the petitioner.

19
20 (7) If, after in-camera review and review of any objections, the court determines
21 that all or a portion of the juvenile case file may be ~~disclosed~~ released, the
22 court must make appropriate orders, specifying the information to be
23 ~~disclosed~~ released and the procedure for providing access to it.

24
25 (e) ***

26
27 (f) ***

28
29
30

Rule 8.401 of the California Rules of Court would be amended, effective September 1, 2020, to read:

1 **Rule 8.401. Confidentiality**

2
3 (a) * * *

4
5 (b) **Access to filed documents and records**

6
7 For the purposes of this rule, “filed document” means a brief, petition, motion,
8 application, or other thing filed by the parties in the reviewing court in a proceeding
9 under this chapter; “record on appeal” means the documents referenced in rule
10 8.407; and “records in the juvenile case file” means all or part of a document,
11 paper, exhibit, transcript, opinion, order, or other thing filed in the juvenile court.

12
13 (1) Except as provided in (2)–~~(3)~~(4), a filed document or the record on appeal
14 and documents filed by the parties in proceedings under this chapter may be
15 inspected only by the reviewing court, ~~and~~ appellate project personnel, the
16 parties, ~~or their~~ attorneys for the parties, ~~and~~ or other persons the reviewing
17 court may designate.

18
19 (2) Access to records in the juvenile case file, including any such records made
20 part of the record on appeal, is governed by Welfare and Institutions Code
21 section 827. Persons who are not described in subdivision (a)(1)(A)-(P) or
22 (a)(1)(R) and have petitioned the juvenile court under subdivision (a)(1)(Q),
23 may inspect and copy only those records in the juvenile case file to which the
24 party was granted access by order of the juvenile court.

25
26 ~~(2)~~(3) A filed documents that protects anonymity as required by (a) may be
27 inspected by any person or entity that is considering filing an amicus curiae
28 brief.

29
30 ~~(3)~~(4) Access to a filed documents or records that are items in the record on appeal
31 or the juvenile case file that are sealed or confidential under authority other
32 than Welfare and Institutions Code section 827 is governed by rules 8.45–
33 8.47 and the applicable statute, rule, sealing order, or other authority.

34
35 (c) * * *

36
37 **Advisory Committee Comment**

38
39 Subdivision (b)(2). Welfare and Institutions Code section 827(a)(1)(Q) authorizes a petition by
40 which a person may request access to records in the juvenile case file. The petition process is set
41 forth in rule 5.552. The Judicial Council has adopted a mandatory form—*Petition for Access to*
42 *Juvenile Case File* (form JV-570)—that must be filed in the juvenile court to make the request.

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

- 1 This form is available at any courthouse or county law library or online at
- 2 www.courts.ca.gov/forms.
- 3

Clerk stamps date here when form is filed.

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out *Confidential Information* (form JV-287) and do not write your address or telephone number below.

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Social worker fills in court name and street address.

Superior Court of California, County of

Social worker fills in child's name and date of birth.

Child's Name:

Date of Birth:

Social worker fills in case number.

Case Number:

① Your name: _____

Your Address: _____

Your telephone number: _____

Check here if contact information is confidential and form JV-287 is attached.

② Your relation to the child: maternal paternal

grandparent brother/sister aunt/uncle cousin

family friend

tribal extended family member

other (specify): _____

③ Child's name: _____

④ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

⑤ Information about the child's medical, dental, and general physical health:

⑥ Information about the child's emotional and behavioral health:

⑦ Information about the child's education:

⑧ Other information that might be helpful to the court:



Child's name: _____

Case Number: _____

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

- 9 I want to
- | | |
|---|---|
| <input type="checkbox"/> telephone the child. | <input type="checkbox"/> take the child to visits with parents. |
| <input type="checkbox"/> write letters to the child. | <input type="checkbox"/> take the child to medical appointments. |
| <input type="checkbox"/> take the child on outings. | <input type="checkbox"/> supervise the child during visits with brothers and sisters. |
| <input type="checkbox"/> take the child to/from school. | <input type="checkbox"/> watch the child after school. |
| <input type="checkbox"/> take the child to visits with brothers or sisters. | <input type="checkbox"/> have the child live with me. |
| <input type="checkbox"/> take the child to therapy. | <input type="checkbox"/> other (describe): _____ |
| <input type="checkbox"/> take the child to family gatherings. | _____ |
| <input type="checkbox"/> help the social worker make a case plan for the child. | _____ |

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

- 10 I want to help the father mother
 (Describe): _____

- 11 Other relatives who might be able to help the child:
- a. Name: _____ Relationship to child: _____
 Contact information: _____
 or I want to keep the contact information confidential and ask that the child's social worker get this information from me.
- b. Name: _____ Relationship to child: _____
 Contact information: _____
 or I want to keep the contact information confidential and ask that the child's social worker get this information from me.
- c. Name: _____ Relationship to child: _____
 Contact information: _____
 or I want to keep the contact information confidential and ask that the child's social worker get this information from me.

- 12 If you need more space to respond to any section on this form, please check this box and attach additional pages.
 Number of pages attached: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date: _____

 Type or print your name

▶

 Sign your name

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council
CHILD'S NAME: HEARING DATE AND TIME:	
CAREGIVER INFORMATION FORM	CASE NUMBER:

To the current caregiver, preadoptive parent, community care facility, or foster family agency caring for the child: You may submit written information to the court, and you may attend review and permanency hearings. You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days, if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. See form JV-290-INFO for instructions on how to complete this form and file it with the court.

1. a. Child's name:
 b. Child's date of birth: c. Child's age:
2. **Caregiver Information** *(Answer only if you are a caregiver, skip #3.):*
 - a. Name of caregiver:
 - b. Type of caregiver: Foster parent Relative Legal guardian Preadoptive parent
 Nonrelative extended family member Other *(specify)*:
 - c. The child has been living in my home for *(specify)*: _____ years _____ months.
3. **Agency or Facility Information** *(Answer only if you are an agency or facility, skip #2.):*
 - a. Name of agency or facility:
 - b. Address:
 - c. Telephone number:
 - d. Type of facility: Foster family agency Community care agency Other *(specify)*:
 - e. The child has been placed with our agency/facility for *(specify)*: _____ years _____ months and in the current home for *(specify)*: _____ years _____ months.
 - f. Name of person completing form: _____ Title: _____
 - g. Hours per week the person completing this form spends with the child *(specify)*: _____ hours/week.
 - h. The information on this form consists of
 - (1) the observations and recommendations of the person filling out this form.
 - (2) the observations and recommendations of a group or team made up of the following individuals *(specify)*:
4. **Current Status of Child's Medical, Dental, and General Physical and Emotional Health**
 - a. There is no new or additional information since the last court hearing.
 - b. There is new or additional information since the last court hearing, as follows *(do not include the names of doctors)*:
5. **Current Status of Child's Education**
 - a. There is no new or additional information since the last court hearing.
 - b. There is new or additional information since the last court hearing, as follows *(do not include the names of schools)*:

CHILD'S NAME:

CASE NUMBER:

6. Child's Special Education Status

- a. The child is a special education student. Date of last Individualized Education Plan (IEP):
- b. The child is not a special education student.
- c. I do not know the child's special education status.

7. Current Status of Child's Adjustment to Living Arrangement

- a. There is no new or additional information since the last court hearing.
- b. There is new or additional information since the last court hearing, as follows:

8. Current Status of Child's Social Skills and Peer Relationships

- a. There is no new or additional information since the last court hearing.
- b. There is new or additional information since the last court hearing, as follows:

9. Current Status of Child's Special Interests and Activities

- a. There is no new or additional information since the last court hearing.
- b. There is new or additional information since the last court hearing, as follows:

10. Other Helpful Information

- a. There is no new or additional information since the last court hearing.
- b. There is new or additional information since the last court hearing, as follows:

11. Recommendation for Disposition (*Outcome*)

- a. I have no recommendation for disposition (*outcome*).
- b. I am recommending the following disposition (*outcome*).

12. If you need more space to respond to any section on this form, please check this box and attach additional pages.
Number of pages attached:

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CAREGIVER OR FACILITY/AGENCY STAFF PERSON
WHO HAS COMPLETED THIS FORM)

Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ

Under very limited circumstances, a person who is not the child, parent, or legal guardian in a dependency or delinquency case has the right to seek review of decisions made by the juvenile court by filing an appeal or writ petition in the Court of Appeal. These individuals, however, are typically not entitled to access records that will be considered on appeal from the juvenile court case file for purposes of an appeal or writ proceeding unless they get approval from the juvenile court. The purpose of this information sheet is to inform those individuals who are not the child, parent, or legal guardian, and who may have the right to seek appellate review, of the requirement to request access to records in the juvenile court case file by filing a *Petition for Access to Juvenile Case File* (form JV-570) to have access to the juvenile case file during an appeal or writ.

1 When would I have the right to seek review?

To have a right to seek review, you must be harmed by an order or judgment of the juvenile court. In the vast majority of cases, only the child, parent, legal guardian, the county welfare department or district attorney will have the right to file an appeal or a writ petition challenging a juvenile court ruling. However, the law also protects those individuals who have a compelling relationship to the child in certain situations.

You might have a right to appeal or file a writ petition if, for example, you are:

- The child's relative, and the child was removed from your home, or you requested that the child be placed in your home or that your home be assessed for possible placement, and the court denied your request for placement or the placing agency never assessed your home.
- Someone who requested de facto parent status, which was denied.
- Someone who requested a change of court order through a section 388 petition (JV-180), which was denied.
- A prospective adoptive parent or de facto parent challenging the juvenile court's decision to remove the child from your home.

2 If I want to file an appeal or writ petition, what additional steps must I take?

To have access to records in the juvenile case file for an appeal or writ proceeding, you must request access from

the juvenile court. To make this request, you must file *Petition for Access to Juvenile Case File* (form JV-570). You will need to serve a copy of this form on all interested parties to the case if you know their names and addresses, including the child, parents, social worker, and probation officer.

On the request form, you will need to identify which specific records you are requesting. Your request for information can include any documents that you are aware of that exist in the juvenile court file, or are in possession of the social worker or probation officer. Be sure to indicate the dates of the hearings that relate to the decision you are challenging. As the basis for the request, you may indicate the appeal or writ proceeding in the Court of Appeal. You will also need to explain why you are requesting the records. Your explanation should show how the records, including any transcripts, relate to the decision you are challenging (for example, a report or court order following a hearing on your issue). The juvenile court will make a decision on your request by issuing an order that identifies the records you are authorized to access. The court's order is made on *Order After Judicial Review* (form JV-574).

When you file a notice of appeal or a notice of intent to file a writ petition, you should attach the court's order if you have one. Doing so will alert the clerk that you are authorized to access records in the case file and will ensure that a record will be prepared for you.

Note: an order from the juvenile court granting you access to records in the case file is not a condition for filing an appeal or writ petition.

You may wish to consult with an attorney when considering whether to file an appeal or a writ petition and request access to records in the juvenile case file. The timelines for filing an appeal or a writ petition apply whether or not the juvenile court has granted you access to the juvenile case file. A notice of appeal usually must be filed within sixty days of the date the order being appealed was made. For writ review, a notice of intent to file a writ petition must be filed as early as seven days after the court makes the challenged order, either orally in court or in writing, whichever occurs first. But note that the deadlines for filing a notice of appeal or a notice of intent to file a writ petition may be different, depending on the circumstances. For more information, read rules 8.406, 8.450, and 8.454 of the California Rules of Court.

Clerk stamps date here when form is filed.

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The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

1 My/Our name(s): _____

Fill in court name and street address:

Superior Court of California, County of

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: _____

2 I am/We are asking that I/we be appointed de facto parent(s) of
(Child's name): _____

Court fills in case number when form is filed.

Case Number:

Date: _____
Type or print your name

Signature of person requesting de facto parent status

Date: _____
Type or print your name

Signature of person requesting de facto parent status

Date: _____
Type or print attorney's name

Signature of attorney (if applicable)

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, do not write the information on this form. Instead, fill out Confidential Information—Prospective Adoptive Parent (form JV-322).

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- ① Information about the person or persons you want to be designated as prospective adoptive parents:

a. Name: _____
 b. Name: _____
 c. Street address: _____
 d. City: _____ State: _____ Zip: _____
 e. Telephone number: _____

Fill in court name and street address:

Superior Court of California, County of

- ② If you are not a person in ①, fill out below.

a. Name: _____
 b. I am the child child's attorney other
 (specify role): _____
 c. Street address: _____
 d. City: _____ State: _____ Zip: _____
 e. Telephone number: _____

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

- ③ If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____
 b. Street address of child's attorney: _____
 c. City: _____ State: _____ Zip: _____
 d. Telephone number of child's attorney: _____

- ④ The child is 10 years of age or older. Child's telephonenumber: _____
 or Telephone number is confidential.

- ⑤ The child has lived with the person from (date): _____ to the present.
 In order for the person in ① to become a prospective adoptive parent, the child must be living with that person now.

- ⑥ Date of Welfare and Institutions Code section 366.26 hearing: _____
 The person in ① should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.

- ⑦ The person in ① is committed to adopting the child.



Child's name: _____

Case Number: _____

- 8 The person in 1 has (check all that apply):
- a. Applied for an adoptive home study.
 - b. In a case in which tribal customary adoption is the permanent plan, been identified by the Indian child's tribe as the prospective adoptive parent.
 - c. Cooperated with an adoptive home study.
 - d. Signed an adoptive placement agreement.
 - e. Requested de facto parent status.
 - f. Been designated by the juvenile court or the licensed adoption agency as the adoptive parent.
 - g. Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court.
 - h. Worked to overcome any impediments that have been identified by the California Department of Social Services or the licensed adoption agency.
 - i. Attended any of the classes required of prospective adoptive parent.
 - j. Taken other steps toward adopting the child (explain): _____

If you need more space, attach a sheet of paper and write "JV-321, Item 8—Steps Toward Adoption" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 8 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name

▶ _____
Sign your name

Type or print your name

▶ _____
Sign your name

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

If you do not agree with the removal, you can request a court hearing by filling out this form. The following people can object to removal: a current caregiver, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court. If you want to keep an address or a phone number confidential, fill out Confidential Information—Prospective Adoptive Parent (form JV-322), and do not write the address or phone number on this form.

If you are a caregiver or the child and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are the child's attorney and you requested the hearing, you must provide notice of the hearing to all other participants.

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Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

1 Information about the caregiver or caregivers:

- a. Name: _____
- b. Name: _____
- c. Address: _____
- d. Phone number: _____

2 If you (the person objecting to the removal) are not the caregiver, fill out below.

- a. Name: _____
- b. I am the child child's attorney child's identified Indian tribe
 child's identified Indian custodian child's CASA program

- c. Address: _____
- d. Phone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

- a. Name of child's attorney: _____
- b. Address of child's attorney: _____
- c. Phone number of child's attorney: _____

4 The child is 10 years of age or older. Child's telephonenumber: _____
 Confidential phone number in court file

5 The child has an identified Indian tribe (specify tribe): _____
Phone number of tribe: _____

6 The child has a Court Appointed Special Advocate (CASA) volunteer.
Phone number of CASA program, if known: _____

7 The caregiver or caregivers have been designated by the judge as the child's prospective adoptive parent or parents.



Child's name: _____

Case Number: _____

8 The caregiver or caregivers may meet the definition of prospective adoptive parent or parents. *Request for Prospective Adoptive Parent Designation* (form JV-321), will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because (*give reasons*):

If you need more space, attach a sheet of paper and write "JV-325, Item 9—Reasons to Not Remove Child" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date:

Type or print your name

Sign your name

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

What if I am deaf or hard of hearing?



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known.

Case Number:

1 Your name: _____
Relationship to child (if any): _____
Street address: _____
City: _____ State: _____ Zip: _____
Telephone number: _____
Lawyer (if any) (name, address, telephone numbers, and state Bar number): _____

- 2 I was not able to provide notice of this petition to the following because I did not know their names or addresses. If this is a request for the case file of a living child, the clerk must serve a copy of the petition. If this is a request for the case file of a deceased child, the custodian of records must serve a copy of the petition.
- a. County counsel or other attorney representing the child welfare agency if petition filed under section 300
 - b. District attorney if petition filed under section 601 or 602
 - c. Child
 - d. Attorney of record for the child
 - e. Child's parent
 - f. Child's legal guardian
 - g. Probation department if petition filed under section 601 or 602
 - h. Child welfare agency/custodian of records if petition filed under section 300
 - i. Child's identified Indian tribe
 - j. Child's CASA volunteer

3 If you are an attorney and checked box 2a, 2b, 2g, or 2h, describe the efforts made to locate those addresses and explain why you are not able to locate the addresses:

4 Copies of **Petition for Access to Juvenile Case File (JV-570)**, **Notice of Petition for Access to Juvenile Case File (JV-571)**, and a blank **Objection to Release of Juvenile Case File (JV-572)** have been placed in a sealed envelope with postage paid and deposited in the United States mail addressed to the following:

- a. County counsel or other attorney representing the child welfare agency if petition filed under section 300 (name and address): _____

- Date mailed: _____ or Personally served on (date): _____



Your name: _____

b. District attorney if petition filed under section 601 or 602 (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

c. Child (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

d. Attorney of record for the child (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

e. Child's parent (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

f. Child's parent (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

g. Child's legal guardian (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

h. Probation department if petition filed under section 601 or 602 (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____



Case Number: _____

Your name: _____

i. Child welfare agency/custodian of records if petition filed under section 300 (*name and address*):

Date mailed: _____ or Personally served on (*date*): _____

j. The Indian child's tribal representative (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

k. The child's CASA volunteer (*name and address*): _____

Date mailed: _____ or Personally served on (*date*): _____

5 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

Type or print your name



Sign your name

Clerk stamps date here when form is filed.

If you are requesting a court order to obtain **access to** the juvenile case file of a child who is alive, fill out all items on this form, and file it with the juvenile court. You must also fill out and file Proof of Service—**Petition for Access** (form JV-569).

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. Fill out items 1–4 and 7 on this form and file it with the **juvenile** court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this **petition**.

Or

b. Do not complete the form, and **instead** request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.

DRAFT
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number, if known:

Case Number:

① Your name: _____
 Relationship to child (if any): _____
 Street address: _____
 City: _____ State: _____ Zip: _____
 Telephone number: _____
 Lawyer (if any) (name, address, telephone numbers, and State Bar number): _____

② Name of child (if known): _____

③ Child's date of birth (if known): _____

④ a. A petition regarding the child in ② has been filed under
 Welfare and Institutions Code section 300
 Welfare and Institutions Code section 601
 Welfare and Institutions Code section 602 or

b. I believe the child in ② died as a result of abuse or neglect. Approximate date of death: _____

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.



Your name: _____

Case Number: _____

5 The records I want are: *(Describe in detail. Attach more pages if you need more space. If you are an individual involved in a pending proceeding in an appellate court or you are preparing to participate in such a proceeding, you should include in your petition the transcripts and evidence considered by the juvenile court at hearings related to the appeal or writ proceeding. For example, you should describe a report by providing its title (such as, "status review report," "jurisdiction/disposition report," or "CASA report") and the date of the hearing when the document was considered.)*

Continued on Attachment 5.

6 The reasons for this petition are:

a. Civil court case pending in *(name of county)*: _____
Case number: _____ Hearing date: _____

b. Criminal court case pending in *(name of county)*: _____
Case number: _____ Hearing date: _____

c. Juvenile court case pending in *(name of county)*: _____
Case number: _____ Hearing date: _____

d. Writ or appeal case pending in *(name of district)*:
Case number *(if available)*: _____
Hearing dates related to the juvenile court order being challenged or to be challenged on appeal or by writ:

e. Other *(specify)*: _____
Case number: _____ Hearing date: _____


7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

Type or print your name

 _____
Sign your name

Clerk stamps date here when form is filed.

**RE: Release of Juvenile Case File and Right to File
an Objection**

*You must provide notice to all those listed in item 2 on Proof of Service—
Petition for Access to Juvenile Case File (form JV-569).*

TO (names):

DRAFT
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

① Child's name: _____

② Information relating to the child named in item ① is being sought by
(name): _____

③ The requested information is described in the attached
Petition for Access to Juvenile Case File (form JV-570).

④ If you object to the release of these records and information, you must fill out *Objection to Release of Records*
(form JV-572) and return it to the court listed at the address above within 10 days of the date you received this
notice.

Date: _____

Type or print your name



Sign your name

Warning: If you do not object, the court may release the child's case file.

Clerk stamps date here when form is filed.

*Objections to the release of information and records described in the attached
Petition for Access to Juvenile Case File (form JV-570) must be filed with the
juvenile court.*

**DRAFT
Not approved by
the Judicial Council**

① Name of child: _____

② My relationship to the child, if any, is: _____

③ I object to the release of information and records relating to the child
name in item ①.

④ I do not want the juvenile court to release the records because *(describe
in detail, attach additional pages if necessary)*:

Fill in court name and street address:


Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Date: _____

Type or print your name

 _____
Sign your name

Warning: If you do not object, the court may release the child's case file.

Clerk stamps date here when form is filed.

The Court finds and orders:

1 The child is alive and the request is denied. The petitioner has not shown good cause for the release of the requested records.

a. Petitioner has not met the notice requirements of rule 5.552 subdivision(c)

b. Request for records is overbroad and records sought not sufficiently identified

c. Other:

2 The child is alive and the court sets a hearing on the request. Applicant has shown good cause for release of the juvenile case file, but the court must balance the interests of the applicant, the child, other parties to the juvenile court proceedings, and the public. Clerk to send notice under rule 5.552 of the California Rules of Court.

Date of hearing: _____

Time of hearing: _____

Location: _____

3 The child is alive and the court will conduct a review of the juvenile case file and any filed objections.

4 The child is deceased and the court sets a hearing on the request.

Date of hearing: _____

Time of hearing: _____

Location: _____

5 The child is deceased and the court will conduct a review of the juvenile case file and any filed objections.

6 Other:

DRAFT
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Date: _____



Judge (or Judicial Officer)

**Order After Judicial Review on
Petition for Access to
Juvenile Case File**

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

1 Name of petitioner: _____

The court finds and orders:

2 After a review of the juvenile case file and review of any filed objections and a noticed hearing, the court denies the request. Access is not in the child's best interests.

Reason(s) for denial:

a. The need for discovery does not outweigh the privacy rights of the child and the policy considerations favoring confidentiality of the juvenile case file

b. There are no releasable records responsive to petitioner's request.

c. Other:

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

3 After a review of the juvenile case file and review of any filed objections and a noticed hearing, the court grants the request. The applicant has shown by a preponderance of the evidence that access to records is necessary and that records have substantial relevance to the legitimate needs of the applicant. The court has balanced these need with the child's best interest. The court finds that the need for access outweighs the policy considerations favoring confidentiality of juvenile records.

a. The following records may be disclosed: w/redactions

b. The procedure for access is:

c. See attached.

4 This child is deceased, and the request is granted.

a. The court has read and considered the following:

Your name: _____

b. There is a presumption under Welfare and Institutions Code section 827(a)(2)(B) in favor of the release of the documents unless a statutory reason for confidentiality is shown to exist. The court has balanced only the interests of the child who is the subject of the juvenile case file and the interests of other children who may be named in the file with _____.

c. The following records may be accessed:

d. The procedure for providing access is:

e. Any information that relates to another child or could identify another child, except for information about the deceased, must be redacted.

f. See attached.

5 The child is deceased and the request is denied. The court finds by a preponderance of the evidence that access to the juvenile case file or of any portion of it is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the request.

Additional orders:

6 a. Petitioner may not give the information to anyone who is not specified in Welfare and Institutions Code section 827 or 827.10.

b. Petitioner may give the disclosed records listed in item 3a only to _____
 subject to protective order: _____

7 Disclosure subject to protection order (*list orders*): _____

8 Other: _____

9 See attached.

Date: _____



Judge (or Judicial Officer)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 6–8 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the county welfare department, district attorney, the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

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

2. This appeal is filed by

a. Appellant (name):

b. Address:

c. Phone number:

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

e. Appellant has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form JV-574 *Order after Judicial Review*, if available, is attached.

3. I request that the court appoint an attorney on appeal. I was was not represented by an appointed attorney in the superior court.

Date:

_____ ▶ _____
 TYPE OR PRINT NAME SIGNATURE OF APPELLANT ATTORNEY

4. Items 5 through 7 on the reverse are completed not completed.

CHILD'S NAME:	CASE NUMBER:
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5. Appellant is the

- a. child.
- b. mother.
- c. father.
- d. legal guardian.
- e. de facto parent.
- f. county welfare department.
- g. district attorney.
- h. child's tribe.
- i. other (state relationship to child or interest in the case):

6. This notice of appeal pertains to the following child or children (specify number of children included):

- a. Name of child: _____
Child's date of birth: _____
 - b. Name of child: _____
Child's date of birth: _____
 - c. Name of child: _____
Child's date of birth: _____
 - d. Name of child: _____
Child's date of birth: _____
- Continued in Attachment 7.

7. The order appealed from was made under Welfare and Institutions Code (check all that apply)

- a. **Section 305.5** (transfer to tribal court)
 Granting transfer to tribal court
- b. **Section 360** (declaration of dependency) Removal of custody from parent or guardian Other orders
 with review of section 300 jurisdictional findings
Dates of hearing (specify): _____
- c. **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
 Termination of parental rights Appointment of guardian Planned permanent living arrangement
Dates of hearing (specify): _____
- d. **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
Dates of hearing (specify): _____
- e. **Section 388** (request to change court order)
Dates of hearing (specify): _____
- f. Other appealable orders relating to dependency (specify): _____
Dates of hearing (specify): _____
- g. **Section 725** (declaration of wardship and other orders)
 with review of section 601 jurisdictional findings
 with review of section 602 jurisdictional findings
Dates of hearing (specify): _____
- h. Other appealable orders relating to wardship (specify): _____
Dates of hearing (specify): _____
- i. Other (specify): _____

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 (California Rules of Court, Rule 8.450)	CASE NUMBER:

NOTICE

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

If you are not the county welfare department, the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
 - a. parent (name):
 - b. legal guardian.
 - c. county welfare department.
 - d. child.
 - e. other (state relationship to child or interest in the case):
5. Child's name: _____ Child's date of birth: _____
6. a. On (date): _____ the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
 b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for (date, if known):
8. Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form *Order after Judicial Review* (form JV-574), if available, is attached.

Date: _____

SIGNATURE OF
 PETITIONER
 ATTORNEY

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

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

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:
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WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

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

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

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

SEE WELF. & INST. CODE, § 366.26(I); CAL. RULES OF COURT, RULES 8.450–8.452

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

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

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

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

SEE WELF. & INST. CODE, §§ 248–252; CAL. RULES OF COURT, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

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

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS (California Rules of Court, Rule 8.454)	CASE NUMBER:

NOTICE

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the county welfare department, the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Accessing the Juvenile Case File for Individuals not Entitled to Access for the Purpose of an Appeal or Writ* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
 - a. child's caretaker (specify dates in your care):
 - b. child.
 - c. county welfare department.
 - d. legal guardian.
 - e. other (state relationship to child or interest in the case):
5. Child's name: _____ Child's date of birth: _____
6. a. On (date): _____ the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
- b. On (date): _____ the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.
7. Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on *Order after Judicial Review* (form JV-574), if available, is attached.

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

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

Date:



(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER CHILD'S ATTORNEY)

The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition or, if it is to be filed on behalf of the child, by the child's attorney of record. See below for more information.

HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

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

SEE CAL. RULES OF COURT, RULES 8.454–8.456

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

- If you were present when the court granted or denied the **specific** placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the **specific** placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the **specific** placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition,
- **By the attorney of record, or**
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.454(e)(3).)