JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-071
For business meeting on: March 11, 2022

Title
CEQA Actions: New Projects and Fees for Expedited Review

Rules, Forms, Standards, or Statutes Affected
Adopt rule 3.2240; and amend rules 3.2200, 3.2220-3.2223, 8.700, 8.702, 8.703, and 8.705

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Agenda Item Type
Action Required

Effective Date
March 11, 2022

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January 31, 2022

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Executive Summary

As mandated by the Legislature, the Judicial Council previously adopted rules and established procedures to implement a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act (CEQA) challenging certain projects that qualified for such streamlined procedures. The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending several rules to implement recent legislation requiring inclusion of additional projects for streamlined review. The committees also recommend the adoption of a new rule and the amendment of an existing rule to implement statutory provisions requiring that, for two projects, the council, by rule of court, establish fees to be paid by project applicants to the courts for the additional costs of streamlined CEQA review.

Recommendation

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council, effective March 11, 2022:

1. Adopt rule 3.2240 of the California Rules of Court to implement statutory provisions requiring that project applicants pay trial court costs in cases concerning certain streamlined CEQA projects and to provide that costs paid under the rule are not recoverable.

2. Amend rules 3.2200, 3.2220, 3.2223, 8.700, 8.702, 8.703, and 8.705 to add and define the new term "streamlined CEQA project" and add provisions regarding new projects that qualify for expedited procedures.

3. Amend rules 3.2221 and 8.702 to remove references to a 270-day time limit for expedited CEQA review and replace them with general references to the "statutorily prescribed time."

4. Amend rule 8.705 to implement statutory provisions requiring that project applicants pay appellate court costs in cases concerning certain streamlined CEQA projects and to provide that costs paid under the rule are not recoverable.

5. Amend the titles of Chapter 2 of Division 22 of Title 3 and Chapter 1 of Division 3 of Title 8 of the California Rules of Court to refer to "streamlined CEQA projects" rather than listing the statutes that provide for expedited procedures.

The text of the amended rules is attached at pages 12–19.

Relevant Previous Council Action

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to "environmental leadership projects." AB 900 required that challenges to such projects be brought directly to the Court of Appeal and that project applicants seeking certification of a project agree to pay the costs of the Court of Appeal in an amount determined by Judicial Council rule. (Public Resources Code, §§ 21183(f), 21185.[1]) To implement AB 900, the council adopted rule 8.497. Subsequently, the statutory provision requiring that a petition for writ relief be filed only in the Court of Appeal was ruled unconstitutional by the Superior Court of Alameda County; this ruling was not challenged on appeal.

In 2013, the Legislature again addressed expedited CEQA review by the courts in Senate Bill 743 (Stats. 2013, ch. 386). SB 743 eliminated the provision requiring that a CEQA challenge to a leadership project be brought directly in the Court of Appeal and instead required the Judicial Council to adopt rules requiring that actions or proceedings, including any appeals, be resolved within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Resources Code, § 21185). The Legislature did not identify specific time frames for resolution in the trial court or the Court of Appeal, specifying only a total period of 270 days for completion of the proceedings. (§§ 21185 and 21168.6.6.) SB 743 also provided an expedited review process

[1] All further statutory references are to the Public Resources Code unless otherwise noted.

for projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento (SB 743, § 7; adding § 21168.6.6).[2]

In 2014, the Judicial Council adopted rules 3.2220–3.2231 and 8.700–8.705[3] to implement SB 743.[4] In developing those rules, the committees determined, among other things, that there was a distinction made in the Legislature's delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided that for the Sacramento arena cases the expedited procedures to be established by the Judicial Council will apply "[n]otwithstanding any other law." (§ 21168.6.6(c).) There was no similar provision in the statutes regarding environmental leadership cases. (§ 21185.)

One particular challenge in meeting the 270-day time period for completing review of these cases in the courts was the time for service of a petition. The Public Resources Code provides that a party may take up to 10 business days after filing its petition to serve the respondent public agency and another 20 business days after that to serve any real party in interest. (§§ 21167.6(a), 21167.6.5(a).) Because SB 743 authorized rules of court in Sacramento arena cases "[n]otwithstanding any other law," the council adopted rules mandating that service on all named parties be completed within three court days, rather than over a two- to four-week period. (Rule 3.2236.) The service rule for environmental leadership cases included an incentive for earlier service rather than a mandate. (See rule 3.2222(d).)

In 2015, Senate Bill 836 added provisions similar to those enacted by SB 743, requiring that the Judicial Council adopt rules to apply the expedited review procedures for resolution of CEQA challenges to "capitol building annex projects." SB 836 required review within 270 days from the date of certification of the administrative record. (§ 21189.51.) Effective July 2016, the council amended the rules to include capitol building annex projects.

In an effort to avoid constitutional concerns regarding the enactments, all of the legislation included language to the effect that the expedited time frames are "to the extent feasible."

[2] SB 743 retained the requirement that the project applicant in environmental leadership cases pay for Court of Appeal costs, and did not add a similar provision in the Sacramento arena cases or provide for payment of trial court costs in either category.

[3] The existing rule providing for payment of costs to the Court of Appeal was at that time renumbered as rule 8.705.

[4] The 2014 report to the Judicial Council is available at www.courts.ca.gov/documents/jc-20140425-itemM.pdf.

Analysis/Rationale

New projects eligible for expedited review

In four recent bills,[5] the Legislature expanded the projects for which streamlined administrative approval and CEQA expedited review are available:

- Assembly Bill 734 (Stats. 2018, ch. 959)[6] added the "Oakland Sports and Mixed-Use Project," comprising projects developed by the Oakland Athletics in a certain area in Oakland, including a baseball park and adjacent residential, retail, commercial, cultural, entertainment, and recreational uses (Oakland ballpark project). (See § 21168.6.7.)

- Assembly Bill 987 (Stats. 2018, ch. 961)[7] added projects located in Inglewood, California, comprising an NBA arena plus related parking and access infrastructure; office space; a sports medicine clinic; retail, restaurant, and community spaces; and a hotel (Inglewood arena project). (See § 21168.6.8.)

- Assembly Bill 1826 (Stats. 2018, ch. 40)[8] expanded the statutes providing expedited review of the capitol building annex project to include work related to that project, such as parking or visitor facilities, as well as a new state office building close to the capitol (expanded capitol annex project). (See §§ 21189.50–21189.53 and Gov. Code, § 9125.)

- Assembly Bill 2731 (Stats. 2020, ch. 291)[9] added transit-oriented development projects related to the redevelopment of Old Town Center in San Diego (Old Town Center project). (See §§ 21189.70 et seq.)

The amended rules implement the new legislation by adding these projects to the list of projects to which the existing rules for expedited CEQA review apply. The rules also include new fees

[5] An invitation to comment on proposed rule amendments to implement two more statutes will be circulated in Spring 2022. Senate Bill 7 (Stats 2021, ch. 19) reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which was repealed by its own terms January 1, 2021. It provides for certification of certain large projects that would replace old facilities with new ones that reduce pollution and generate jobs, including residential, retail, commercial, sports, cultural, entertainment, and recreational-use projects (environmental leadership projects). (See §§ 21178 et seq.) Senate Bill 44 (Stats 2021, ch. 633) adds sustainable public transit projects in Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games (environmental leadership transit projects). (See § 21168.6.9.)

[6] Assembly Bill 734 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734.

[7] Assembly Bill 987 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987.

[8] Assembly Bill 1826 may be viewed at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1826.

[9] Assembly Bill 2731 may be viewed at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731.

for expedited review, in both the trial and appellate courts, of challenges to Oakland ballpark and Inglewood arena projects, as required by those statutes.

Scope of rules to be amended

The new statutes regarding the Oakland ballpark project, the Inglewood arena project, the expanded capitol annex project, and the Old Town Center project include similar provisions regarding expedited review:

> Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(Pub. Resources Code, § 21168.6.7(c) (Oakland); see also §§21168.6.8(f) (Inglewood), 21189.51 (expanded capitol annex; within 270 days of certification of the record of proceedings), 21189.70.3 (Old Town Center; within 270 business days of the filing of the certified record).)

Although rules referenced in the statutes are trial court rules only, this proposal amends both trial court and appellate rules. The statutes state that any action or proceeding relating to the environmental impact report, "including any potential appeals therefrom," must be completed within the specified number of days, "to the extent feasible." Thus, it appears that the provisions are intended to encompass appeals as well as trial court proceedings.[10]

Time for expedited review

The current trial court and appellate rules for expedited CEQA review include references to a 270-day time limit for completing court proceedings. Both rule 3.2221(b) regarding stipulated extensions of time in the trial court, and rule 8.702(f)(4) regarding stipulated extensions of time to file a brief in the Court of Appeal, state: "If the parties stipulate to extend the time …, they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days." When these rules were adopted in 2014, as discussed above, the statutes to which the rules applied (sections 21168.6.6(c)–(d), 21185, and 21189.51) required that the actions or

[10] The amended rules recommended by the committees do not include the rules directed solely to the Sacramento arena projects, even though those rules (rules 3.2235–3.2237) are included in the rules cited in the statutes. As noted above, those rules were adopted only for cases involving Sacramento arena projects because of the provision in that statute that the expedited procedures would apply "notwithstanding any other law." Although a similar phrase is included in AB 987 (the Inglewood arena statute) and AB 2731 (the Old Town Center San Diego statute), there is no such provision in AB 734 (the Oakland ballpark statute). Because all three statutes use similar provisions regarding expedited review and direct that the same rules apply, it appears the Legislature intended that review for all three projects be the same. Since the mandatory service rules could not be applied to Oakland ballpark cases, they have not been applied to Inglewood arena or Old Town Center cases. And because the council had previously concluded that the special service rules should not be amended to apply to the original capitol annex project cases, the committees did not consider applying them to cases under the expanded capitol annex statute, AB 1875.

proceedings, including any appeals, be resolved, to the extent feasible, within 270 days of certification of the record or the filing of the certified record. However, the statute governing Old Town Center projects contains a different time limit—within *270 business days* of the filing of the certified record. To accommodate different time periods under the statutes and to avoid confusion, the committees recommend replacing references in the provisions regarding stipulations to “270 days” with the “statutorily prescribed” time. (See amended rules 3.2221(b), 8.702(f).)

New fees for expedited review

The Oakland ballpark statute[11] and the Inglewood arena statute[12] include nearly identical provisions requiring that, before the Governor certifies a project for streamlining (including the expedited court review), the project applicant must agree to pay for “any additional costs incurred by the courts in hearing and deciding any case” subject to the statutes. The statutes provide that the costs be determined by the council.

These provisions (set out in the footnotes) are similar to the provision for costs in former section 21182(f)[13] of the 2011 environmental leadership act, AB 900. The primary difference is that the earlier provision provides for payment of “the costs of the Court of Appeal . . . in hearing and deciding” the expedited case, while the new laws provide for payment of “any additional costs” to the trial court as well as the appellate court.

For cases brought under the Oakland ballpark and Inglewood arena statutes, the committees recommend fee amounts of $120,000 at the trial court level, to be paid by the project developer within 10 days of the filing of the petition, and $140,000 at the appellate level, to be paid within 10 days of the filing of a notice of appeal. As discussed below, in developing these proposed amounts, the committees looked to the former fee for streamlined environmental leadership cases, the experiences in cases that have been litigated under those rules, and the provision in the new ballpark and arena statutes that the amount is for “additional” costs incurred by the courts in providing expedited review.

[11] Section 21168.6.7(d)(6) (Oakland ballpark): “The project applicant agrees to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.”

[12] Section 21168.6.8(b)(6) (Inglewood arena): “The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.”

[13] Section 21183(f) (environmental leadership): “The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.”

Court time spent on prior environmental leadership cases

The environmental leadership rule originally adopted by the council in 2012[14] provides for payment of a fee of $100,000 by the project developer at the time a notice of appeal is filed, as well as payment of the costs of any special master or contract personnel retained to work on the case. As stated in the report to the council on the original rule, that $100,000 amount was determined as follows:

> This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys, and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in the act's expedited review procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:
>
> - 108 hours by the justice assigned to prepare a draft decision;
> - 10 hours by each of the other two justices on the panel;
> - 230 hours by research attorneys; and
> - 31 hours by judicial assistants.
>
> Additional amounts for other staff time, benefits, and overhead were also included in calculating the total fee.

(Judicial Council rep., p. 8.)[15]

It turns out that the estimates made in 2012 fell far short of reality for the work necessary for an appellate court to complete the expedited process. In late 2016, the Judicial Council submitted a legislatively required report on how AB 900 (the environmental leadership statute) had fared in the courts and the impact it had on judicial administration. At that time, a single case had been tried and appealed under the environmental leadership project rules, a challenge to the Event Center and Mixed-Use Development at Mission Bay Blocks 29–32 (the Warriors' Mission Bay project). The details of the timing of that case, in which the Court of Appeal decision was issued 327 days after the case was initially filed,[16] are set out in a report to the Legislature. After an initial delay of 64 days to litigate whether the case should be moved from Sacramento to San

[14] See rule 8.705. Originally adopted as rule 8.497, the rule has been renumbered since but is otherwise unchanged.

[15] Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3* (Apr. 11, 2012), p. 8, www.courts.ca.gov/documents/jc-20120424-itemA1.pdf.

[16] At the time of the report, oral argument had not yet been held. However, it was held shortly thereafter, and the Court of Appeal issued its opinion on November 29, 2016. Work on the case was not completed within 270 days for several reasons, but primarily because of time expended on petitioner's efforts at the trial court and Third Appellate District of the Court of Appeal to keep the case in Sacramento (where initially filed) rather than in San Francisco (where it was ultimately decided). Per the case dockets in Appendix C to the 2012 council report, 64 days elapsed between the time of filing and the time when the case was eventually received in the Superior Court of San Francisco County. The court time expended in those 64 days by the Superior Court of Sacramento County and the Third Appellate District of the Court of Appeal was not taken into consideration in developing the amount of the new fee.

Francisco, the courts moved quite expeditiously, consistent with the expedited procedures. The report to the Legislature describes the work entailed as follows:

> The Mission Bay project CEQA case is extremely large and complex. The administrative record filed in both the trial court and the Court of Appeal comprises 56 volumes—more than 168,000 pages. The joint appendix filed in the Court of Appeal is 1,514 pages in length. The petitioners' petition for writ of mandate filed in the trial court included three separate causes of action raising multiple issues regarding the approval of the Mission Bay project. The petitioners' brief filed in the Court of Appeal, First Appellate District also raised multiple issues. Many of the issues raised in this case involve highly technical questions that require specialized expertise to evaluate.

(Judicial Council of Cal., *Jobs and Economic Improvement Through Environmental Leadership Act: Report to the Legislature Under Assembly Bill 900, Public Resources Code Section 21189.2* (Dec. 1, 2016), p. 6.)

The time spent to adjudicate these complex issues was estimated as follows:

- The CEQA judge at the Superior Court of San Francisco County spent 5 hours a day on the case (he could not spend full time because of other commitments at the court), as well as 15 hours each weekend throughout the time the case was at the trial court. This equals approximately 740 hours (the equivalent of 92 workdays) of time on the case. In addition, the equivalent of one full-time research attorney worked on the case throughout the time it was in the trial court (91 workdays), resulting in well over 700 hours of research attorney time.

- At the Court of Appeal, First Appellate District, the Mission Bay case took precedence over all other cases assigned to the division handling this case, including juvenile dependency cases. One appellate justice and two research attorneys (rather than the usual single attorney) worked on this case, essentially on a full-time basis, for a total of three months or approximately 60 workdays each. The more than 900 hours (or 120 workdays) of research time at the Court of Appeal is also significantly more than the 230 hours (or 29 workdays) originally estimated in establishing the $100,000 fee in the leadership cases.

Since 2016, a second project certified under the environmental leadership statute has been involved in litigation—the Sunset Boulevard Project, a major mixed-use construction project in Los Angeles. This litigation, filed in the Superior Court of Los Angeles County and appealed to the Second Appellate District of the Court of Appeal, was similarly large and complex, with four separate complaints asserting CEQA violations, two of which went up on appeal.[17] The trial court judge, an experienced CEQA judge, spent hundreds of hours on the case but, because of

[17] *L.A. Conservancy v. City of L.A.*; *Fix the City, Inc. v. City of Los Angeles* (Mar. 23, 2018, B284093) [nonpub. opn.].

the complexity of the case and her need to spend time on other matters, the judgment took 230 days to issue. The Court of Appeal decision took a similar amount of time. The trial court judge reported that if she had been able to work on the case full time, she may have been able to have the judgment issued within the desired timeline.

Development of new fee amounts

As described above, AB 734 (the Oakland ballpark project) and AB 987 (the Inglewood arena project) require the project applicants to pay any "additional" court costs ("as provided in the rules of court adopted by the Judicial Council") to adjudicate CEQA challenges brought against the project within 270 days. Given the typical scope of CEQA cases that qualify for expedited procedures and the court resources used in the Mission Bay and Sunset Boulevard cases, the committees concluded that the only possible way for courts to comply with the statutory timeline would be to take the case out of normal processing and assign personnel to it full time. Accounting for weekends and court holidays, 270 days is equivalent to approximately 182 workdays. Splitting this time equally between the trial and appellate courts provides each court with roughly 91 workdays to hear and decide the case.

Indeed, the trial court judge in the Mission Bay case estimated that he spent the equivalent of 92 workdays on the case and was assisted by two research attorneys who together spent a similar amount of time. Similarly, the trial court judge in Sunset Boulevard estimated that she may have been able to meet the expedited timeline if she had worked on the case full time. Appellate review of the Mission Bay case took a comparable amount of time. One appellate court justice and two research attorneys worked on that case for roughly 60 workdays each, or 180 workdays total. One appellate court justice and one research attorney spending 91 workdays on a case would also amount to approximately 180 workdays. The only data with respect to the time for appellate review in the Sunset Boulevard case is from the docket—a decision was filed 234 days after the notice of appeal was filed.

Accordingly, the cost of a judicial officer and a research attorney to work full time for 91 workdays at each court level appears to be a reasonable estimate for "additional costs" to adjudicate an expedited CEQA challenge. Such an estimate does not include other appellate court justice time, staff time, or overhead, all of which were factored into the calculation for the fee required in current rule 8.705, which aimed to cover *all* appellate court costs for environmental leadership projects.[18] The estimates[19] are as follows:

[18] Inclusion of other staff time and overheard may be appropriate when determining the fee for projects brought under SB 7 (future environmental leadership projects) and SB 44 (environmental leadership transit projects), both of which require the project applicant to agree "to pay the costs of the trial court and the court of appeal in hearing and deciding" any challenge to the project under CEQA.

[19] These estimates are based solely on salary compensation, such as would be paid to an assigned judge or a retired annuitant research attorney, and do not include judicial officer or attorney benefits such as health care or retirement.

- In the trial court, the cost of a judge for 91 days and one research attorney for 91 days would be approximately $120,000.
- In the appellate court, the cost of one appellate justice for 91 days and one research attorney for 91 days would be approximately $140,000.

The committees thus recommend that the above amounts be charged for the expedited review by the trial court and the Court of Appeal, respectively. (See proposed rules 3.2240 and 8.705.) As permitted by the statutes, the proposed rules also allow for costs for any special master required for the matter to be charged directly to the project developer, as is currently provided in the environmental leadership cases.

Other amendments

At the time it was circulated in 2012, a couple of comments received on the proposal for the $100,000 fee for expedited CEQA review by the Court of Appeal in environmental leadership cases suggested that the rule should clarify that this is not a recoverable cost. The Appellate Advisory Committee declined to include this provision at the time,[20] but noted that, if this issue was not addressed by the Legislature, the committee would consider the possibility of circulating a new proposal regarding this issue in the future. The committees included a specific question on this issue in the invitation to comment and now recommend that the rules provide that any fee or cost paid under the rule is not a recoverable cost. (See rules 3.2240(4) and 8.705(5).)

To reduce unnecessary complexity, the committees also recommend amending the titles of two chapters of the rules (Chapter 2 of Division 22 of Title 3 and Chapter 1 of Division 3 of Title 8) to refer to "streamlined CEQA projects" in place of the growing list of Public Resources Code sections under which CEQA review may be streamlined.

Policy implications

The committees recommend the new and amended rules to implement legislation and to ensure that the rules conform to law. The policy choices have been made by the Legislature.

Comments

The proposal circulated for public comment from December 20, 2021, until January 14, 2022. Circulation was expedited because staff learned late last year that litigation under AB 734, the Oakland ballpark project, could be filed as early as March 2022. The committees received no comments on the proposal.

Alternatives considered

Because the new rules and the establishment of fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

[20] The committee noted in its report to the council at that time that such a provision had not been included in the rule as circulated and was a sufficiently substantive change that the committee could not recommend it without further circulation.

The committees considered a different method of determining the costs to be paid: require the posting of a $100,000 deposit, calculate the court's actual costs for hearing and deciding that particular matter at the conclusion of the case, and require payment of actual costs at the end of the case. The committees ultimately decided against this approach, however, because of the administrative burden associated with calculating and collecting these costs in each case.

Fiscal and Operational Impacts

Implementing the new legislation requiring expedited review of CEQA challenges to new project types will certainly generate costs and operational impacts for both the trial court and the Court of Appeal in which the proceedings governed by these statutes are held. In particular, the legislation requires that courts prioritize these cases and devote considerable concentrated resources to resolve them, to the extent feasible, within the prescribed time. The primary operational impact is expected to be the additional time that other cases will have to wait while these cases move to the front of the line. The committees do not anticipate that this rule proposal will result in additional costs to other courts.

Attachments and Links

1. Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705, at pages 12–19
2. Link A: Assembly Bill 734, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734*
3. Link B: Assembly Bill 987, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987*
4. Link C: Assembly Bill 1826, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987*
5. Link D: Assembly Bill 2731, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731*

Rule 3.2200. Application

Except as otherwise provided in chapter 2 of the rules in this division, which govern actions under Public Resources Code sections 21168.6.6–21168.6.8, 21178–21189.3, ~~and~~ 21189.50–21189.57, and 21189.70–21189.70.10, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as stated in division 13 of the Public Resources Code.

Chapter 2. California Environmental Quality Act Proceedings ~~Under Public Resources Code Sections 21168.6, 21178-21189.3, and 21189.50-21189.57~~ Involving Streamlined CEQA Projects

Article 1. General Provisions

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

(1) A "streamlined CEQA project" means any project within the definitions stated in (2) through (7).

~~(1)~~(2) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

~~(2)~~(3) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(4) An "Oakland sports and mixed-use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(5) An "Inglewood arena project" means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

~~(3)~~(6) An "expanded capitol building annex project" means a state capitol building annex project, annex project–related work, or state office building project as defined by Public Resources Code section 21189.50.

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(7) An "Old Town Center transit and transportation facilities project" or "Old Town Center project" means a project as defined in Public Resources Code section 21189.70.

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for ~~the Sacramento arena project, a leadership project, or a capitol building annex project~~ a streamlined CEQA project. Except as otherwise provided in Public Resources Code sections 21168.6.6–21168.6.8, 21178–21189.3, ~~and~~ 21189.50–21189.57, and 21189.70–21189.70.10 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) Complex case rules

* * *

Rule 3.2221. Time

(a) Extensions of time

* * *

(b) Extensions of time by parties

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the statutorily prescribed time for resolving the action may be extended ~~beyond 270 days~~ by the number of days by which the performance of the act has been stipulated to be extended, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6~~(c)–(d)~~–21168.6.8, 21185, ~~and~~ 21189.51, and 21189.70.3. Any such stipulation must be approved by the court.

(c) Sanctions for failure to comply with rules

If a party fails to comply with any time requirements provided in these rules or ordered by the court, the court may issue an order to show cause as to why one of the following sanctions should not be imposed:

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(1)–(2) * * *

(3) If the failure to comply is by respondent or a real party in interest, removal of the action from the expedited procedures provided under Public Resources Code sections 21168.6.6~~(c) (d),~~21168.6.8, 21185, ~~and~~ 21189.51, and 21189.70.3, and these rules; or

(4) * * *

Rule 3.2222. Filing and service

(a)–(c) * * *

(d) Service of petition in action regarding ~~leadership project and capitol building annex project~~ streamlined CEQA project other than the Sacramento arena project

If the petition or complaint in an action governed by these rules and relating to a streamlined CEQA project other than the Sacramento arena project ~~leadership project or a capitol building annex project~~ is not personally served on any respondent public agency, any real party in interest, and the Attorney General within three court days following filing of the petition, the time for filing petitioner's briefs on the merits provided in rule 3.2227(a) and rule 8.702~~(e)~~(f) will be decreased by one day for every additional two court days in which service is not completed, unless otherwise ordered by the court for good cause shown.

(e) * * *

Rule 3.2223. Petition

In addition to any other applicable requirements, the petition must:

(1) On the first page, directly below the case number, indicate that the matter is ~~either a "Sacramento Arena CEQA Challenge," or an "Environmental Leadership CEQA Challenge," or a "Capitol Building Annex Project"~~ a "Streamlined CEQA Project";

(2) State one of the following:

(A) The proponent of the project at issue provided notice to the lead agency that it was proceeding under Public Resources Code section 21168.6.6, 21168.6.7, or 21168.6.8 (whichever is applicable) and is subject to this rule; or

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(B) The project at issue was certified by the Governor as a leadership project under Public Resources Code sections 21182–21184 and is subject to this rule; or

(C) The project at issue is an expanded capitol building annex project as defined by Public Resources Code section 21189.50 and is subject to this rule; or

(D) The project at issue is an Old Town Center project as defined by Public Resources Code section 21189.70 and is subject to this rule;

(3) If a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must, if the matter goes to the Court of Appeal, make the payments required by ~~Public Resources Code section 21183(f)~~ rule 8.705; ~~and~~

(4) If an Oakland ballpark or Inglewood arena project, provide notice that the person or entity that applied for certification of the project as an Oakland ballpark or Inglewood arena project must make the payments required by rule 3.2240 and, if the matter goes to the Court of Appeal, the payments required by rule 8.705; and

~~(4)~~(5) * * *

Rule 3.2240. Trial Court Costs in Oakland Ballpark and Inglewood Arena Projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7 and 21168.6.8 regarding payment of trial court costs with respect to cases concerning certain streamlined CEQA projects:

(1) Within 10 days after service of the petition or complaint in a case concerning an Oakland ballpark project or an Inglewood arena project, the person or entity that applied for certification of the project as a streamlined CEQA project must pay a fee of $120,000 to the court.

(2) If the court incurs the costs of any special master appointed by the court in the case or of any contract personnel retained by the court to work on the case, the person or entity that applied for certification of the project must also pay, within 10 days of being ordered by the court, those incurred or estimated costs.

(3) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(4) Any fee or cost paid under this rule is not recoverable.

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Chapter 1. Review of California Environmental Quality Act Cases ~~Under Public Resources Code Sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57~~ Involving Streamlined CEQA Projects

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

(1) A “streamlined CEQA project” means any project within the definitions stated in (2) through (7).

~~(1)~~(2) An “environmental leadership development project” or “leadership project” means a project certified by the Governor under Public Resources Code sections 21182–21184.

~~(2)~~(3) The “Sacramento entertainment and sports center project” or “Sacramento arena project” means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(4) An “Oakland sports and mixed-use project” or “Oakland ballpark project” means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(5) An “Inglewood arena project” means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

~~(3)~~(6) An “expanded capitol building annex project” means a state capitol building annex project, annex project–related work, or state office building project as defined by Public Resources Code section 21189.50.

(7) An “Old Town Center transit and transportation facilities project” or “Old Town Center project” means a project as defined in Public Resources Code section 21189.70.

(b) Proceedings governed

The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the granting of any project approvals for ~~an~~

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~~environmental leadership development project, the Sacramento arena project, or a capitol building annex~~ a streamlined CEQA project.

Rule 8.702. Appeals

(a) * * *

(b) Notice of appeal

(1) * * *

(2) *Contents of notice of appeal*

The notice of appeal must:

(A) State that the superior court judgment or order being appealed is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to ~~the Sacramento arena project, a leadership project, or a capitol building annex~~ a streamlined CEQA project; and

(C) If the judgment or order being appealed pertains to a leadership project, an Oakland ballpark project, or an Inglewood arena project, provide notice that the person or entity that applied for certification or approval of the project as ~~a leadership~~ such a project must make the payments required by rule 8.705.

(c)–(e) * * *

(f) Briefing

(1)–(3) * * *

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the statutorily prescribed time for resolving the action may be extended ~~beyond 270 days~~ by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6~~(c)–(d)~~ 21168.6.8, 21185, ~~and~~ 21189.51, and 21189.70.3 for the duration of the stipulated extension.

(5) * * *

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(g) * * *

Advisory Committee Comment

Subdivision (b). It is very important to note that the time period to file a notice of appeal under this rule is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena project, and in a case regarding ~~a leadership project or capitol building annex~~ any other streamlined CEQA project, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

Rule 8.703. Writ proceedings

(a) * * *

(b) Petition

(1) * * *

(2) *Contents of petition*

In addition to any other applicable requirements, the petition must:

(A) State that the superior court judgment or order being challenged is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to ~~the Sacramento arena project, a leadership project, or a capitol building annex~~ a streamlined CEQA project; and

(C) If the judgment or order pertains to a leadership project, an Oakland ballpark project, or an Inglewood arena project, provide notice that the person or entity that applied for certification of the project as ~~a leadership~~ such a project must make the payments required by rule 8.705.

Rule 8.705. Court of Appeal costs in ~~leadership~~ certain streamlined CEQA projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8, and 21183 regarding payment of the Court of Appeal's costs with respect to cases concerning leadership, Oakland ballpark, and Inglewood arena projects:

(1) Within 10 days after service of the notice of appeal or petition in a case concerning a leadership project, the person ~~who~~ or entity that applied for certification of the project as a leadership project must pay a fee of $100,000 to the Court of Appeal.

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(2) Within 10 days after service of the notice of appeal or petition in a case concerning an Oakland ballpark project or Inglewood arena project, the person or entity that applied for certification of the project as an Oakland ballpark project or Inglewood arena project must pay a fee of $140,000 to the Court of Appeal.

~~(2)~~(3) If the Court of Appeal incurs the costs of any special master appointed by the Court of Appeal in the case or of any contract personnel retained by the Court of Appeal to work on the case, the person ~~who~~ or entity that applied for certification of the project as a leadership project, an Oakland ballpark project, or an Inglewood arena project must also pay, within 10 days of being ordered by the court, those incurred or estimated costs.

~~(3)~~(4) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(5) Any fee or cost paid under this rule is not a recoverable cost.

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INVITATION TO COMMENT

SPR22-__

Title
Rules and Forms: ADA-Compliant Language

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested
Review and submit comments by May 13, 2022

Proposed Effective Date
January 1, 2023

Contact
Christy Simons, 415-865-7694
chsimons@ix.netcom.com

Executive Summary and Origin

The Appellate Advisory Committee proposes updating language in several rules and a form to reflect guidelines for referring to persons with disabilities consistent with the Americans with Disabilities Act and terminology changes in California statutes. The proposal is based on a suggestion from a county bar association.

Background

In 1990, the federal government passed the Americans with Disabilities Act (ADA)[1] which prohibits discrimination against individuals with disabilities in all areas of public life. The ADA National Network ("ADANN") is a federally funded network of ten regional centers that provide information, guidance, and training on implementing the ADA.[2] The ADANN has published Guidelines for Writing About People With Disabilities (Guidelines),[3] which encourages the use of language consistent with the principles of the ADA including "portraying individuals with disabilities in a respectful and balanced way by using language that is accurate, neutral and objective."

According to the Guidelines, generally, the person should be referred to first and the disability second. (Guidelines.) "People with disabilities are, first and foremost, people. Labeling a person equates the person with a condition and can be disrespectful and dehumanizing. A person isn't a

[1] 42 U.S.C. §§ 12101 et seq.
[2] See https://adata.org/national-network.
[3] The Guidelines for Writing About People With Disabilities may be accessed at: https://adata.org/factsheet/ADANN-writing.

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

disability, condition or diagnosis; a person *has* a disability, condition or diagnosis. This is called Person-First Language." (*Ibid*.) For example, instead of writing "he is mentally ill," write "he has a mental health condition;" instead of "the disabled," write "people with disabilities." (Snow, To Ensure Inclusion, Freedom, And Respect For All, It's Time To Embrace People First Language (2009) disabilityisnatural.com, <http://www.inclusioncollaborative.org/docs/Person-First-Language-Article_Kathie_Snow.pdf>.)

Over time, the California Legislature has updated its codes to remove "offensive or stigmatizing language referring to mental health disorders." (Assem. Jud. Comm., Analysis of Assem. Bill no. 46 (2019-2020 Reg. Sess.) as amended April 18, 2019, p. 1.) In 2019, the Legislature replaced terms used in the Penal Code to describe mental health conditions and individuals with mental health conditions. (See Sen. Rules Comm., Off. Of Sen. Floor Analyses, Analysis of Assem. Bill no. 46 (2019-2020 Reg. Sess.) as amended April 24, 2019, p. 1.) As of January 1, 2020, references to a person as a Mentally Disordered Offender (MDO) (see former Penal Code section 2960 et seq.) were changed to Offender with a Mental Health Disorder (OMHD). (Pen. Code, § 2962, subd. (d)(3), (eff. Jan. 1, 2020); Stats. 2019, ch. 9, sec. 7.) Also, the phrase "a person who is incompetent as a result of a mental disorder, but is also developmentally disabled," was changed to "a person who is incompetent as a result of a mental disorder, but also has a developmental disability." (Former Pen. Code, § 1367, subd. (b); Pen. Code, § 1367, subd. (b), (eff. Jan. 1, 2020); Stats.2019, ch. 9, sec. 4.) In 2012, references to "a mentally retarded person" were replaced with "a person with an intellectual disability." (Pen. Code, § 2962, subd. (a)(2) (Stats. 2012, Chap. 448, Sec. 43; Welf. & Inst. Code, § 6513 (Stats. 2012, Ch. 457, Sec. 55).

Rule 8.482, Appeal from judgment authorizing conservator to consent to sterilization of conservatee, was adopted in 2005 as rule 39.1. It was amended and renumbered as rule 8.482 in 2007. It was amended effective January 1, 2016, as part of a rules modernization project. The amendments have no bearing on this proposal.

Rule 8.483, Appeal from an order of civil commitment, was adopted, and form APP-060, Appeal from Order of Civil Commitment, was approved for optional use effective January 1, 2020, to provide guidance to litigants and the courts on appeals in civil commitment cases. The rule and form have not been modified since their effective date.

Rule 8.631, Applications to file overlength briefs in appeals from a judgment of death, was adopted in 2008. It has not previously been amended.

The Proposal

The proposal would remove outdated and disfavored terms in several rules and a form and replace them with language that reflects ADA guidelines and recent statutory amendments. Improving the language of these rules and form is also consistent with the goals of the Judicial

Council's Strategic Plan for California's Judicial Branch, specifically the goals of Access, Fairness, and Diversity (goal I) and Quality of Justice and Service to the Public (goal IV).[4]

Rule 8.482, which governs appeals from a judgment authorizing a conservator to consent to sterilization of a conservatee, contains the term "developmentally disabled adult conservatee." This would be replaced with "adult conservatee with a developmental disability."

Rule 8.483, regarding appeals from an order of civil commitment, contains the term "mentally disordered offenders." This would be replaced with "offenders with mental health disorders." The rule also refers to "developmentally disabled persons," citing Welfare and Institutions Code section 6500. The committee proposes replacing this term with "dangerous persons with developmental disabilities" to update the language and track the statutory commitment criteria. (See Welf. & Inst. Code, § 6500(b)(1).) The same changes would be made to form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*.

An advisory committee comment to rule 8.631, which addresses applications to file overlength briefs in appeals from a judgment of death, includes "whether the defendant is mentally retarded" as an example of unusual, factually intensive, or legally complex hearings. The committee proposes replacing this language with "whether the defendant has an intellectual disability."[5]

Alternatives Considered

The committee did not consider other options, including taking no action, because the language in these rules and the form is outdated and inconsistent with the ADA, statutory language, and judicial branch goals.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal. The benefits of the proposal, including using respectful language in rules and forms, outweigh any potential cost.

[4] The Strategic Plan for California's Judicial Branch may be accessed at https://www.courts.ca.gov/3045.htm.

[5] As noted above, "intellectual disability" is the ADA-compliant term that replaced "mental retardation." (Stats. 2012, ch. 457, sec. 1 (2012).) A developmental disability is both broader, in that it includes other disabilities, such as autism spectrum disorders and epilepsy, and narrower, in that it must have begun before the person reached 18 years of age. (Welf. & Inst., § 4512(a)(1).)

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are there any other instances of language that should be updated in the appellate rules or forms?

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

- 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?

Attachments and Links

1. Cal. Rules of Court, rules 8.482, 8.483, and 8.631, at pages 5–7
2. Form APP-060, at page 8
3. Link A: Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap126.pdf
4. Link B: The Guidelines for Writing About People with Disabilities, https://adata.org/factsheet/ADANN-writing
5. Link C: Snow, To Ensure Inclusion, Freedom, and Respect for All, It's Time to Embrace People First Language (2009) disabilityisnatural.com, http://www.inclusioncollaborative.org/docs/Person-First-Language-Article_Kathie_Snow.pdf

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from judgments authorizing a conservator to consent to the sterilization of ~~a developmentally disabled~~ an adult conservatee with a developmental disability.

(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of ~~a developmentally disabled~~ an adult conservatee with a developmental disability is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c)–(i) * * *

Rule 8.483. Appeal from order of civil commitment

(a) Application and contents

(1) Application

Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (outpatient placement and revocation), and 2962 et seq. (~~mentally disordered~~ offenders with mental health disorders); Welfare and Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (~~developmentally disabled~~ dangerous persons with developmental disabilities), and 6600 et seq. (sexually violent predators); and former Welfare and Institutions Code section 6300 et seq. (mentally disordered sex offenders).

(2) * * *

(b)(e) * * *

Rule 8.631. Applications to file overlength briefs in appeals from a judgment of death

(a)(b) * * *

(c) Factors considered

The court will consider the following factors in determining whether good cause exists to grant an application to file a brief that exceeds the limit set by rule 8.630:

(1) The unusual length of the record. A party relying on this factor must specify the length of each of the following components of the record:

(A) The reporter's transcript;

(B) The clerk's transcript; and

(C) The portion of the clerk's transcript that is made up of juror questionnaires.

(2) The number of codefendants in the case and whether they were tried separately from the appellant;

(3) The number of homicide victims in the case and whether the homicides occurred in more than one incident;

(4) The number of other crimes in the case and whether they occurred in more than one incident;

(5) The number of rulings by the trial court on unusual, factually intensive, or legally complex motions that the party may assert are erroneous and prejudicial. A party relying on this factor must briefly describe the nature of these motions;

(6) The number of rulings on objections by the trial court that the party may assert are erroneous and prejudicial;

(7) The number and nature of unusual, factually intensive, or legally complex hearings held in the trial court that the party may assert raise issues on appeal; and

(8) Any other factor that is likely to contribute to an unusually high number of issues or unusually complex issues on appeal. A party relying on this factor must briefly specify those issues.

(d) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (c)(1)~~(A)~~. As in guideline 8 of the Supreme Court's Guidelines for Fixed Fee Appointments, juror questionnaires generally will not be taken into account in considering whether the length of the record is unusual unless these questionnaires are relevant to an issue on appeal. A record of 10,000 pages or less, excluding juror questionnaires, is not considered a record of unusual length; 70 percent of the records in capital appeals filed between 2001 and 2004 were 10,000 pages or less, excluding juror questionnaires.

Subdivision (c)~~(1)(E)~~(5). Examples of unusual, factually intensive, or legally complex motions include motions to change venue, admit scientific evidence, or determine competency.

Subdivisions (c)~~(1)(E)–(I)~~(5)(8). Because an application must be filed before briefing is completed, the issues identified in the application will be those that the party anticipates *may* be raised on appeal. If the party does not ultimately raise all of these issues on appeal, the party is expected to have reduced the length of the brief accordingly.

Subdivision (c)~~(1)(I)~~(7). Examples of unusual, factually intensive, or legally complex hearings include jury composition proceedings and hearings to determine the defendant's competency or sanity, whether the defendant ~~is mentally retarded~~ has an intellectual disability, and whether the defendant may represent himself or herself.

Subdivision (d)(1)(A)(ii). To allow the deadline for an application to file an overlength brief to be appropriately tied to the deadline for filing that brief, if counsel requests an extension of time to file a brief, the court will specify in its order regarding the request to extend the time to file the brief, when any application to file an overlength brief is due. Although the order will specify the deadline by which an application must be filed, counsel are encouraged to file such applications sooner, if possible.

Subdivision (d)(3). These requirements apply to applications filed under either (d)(1) or (d)(2).

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME:	
FIRM NAME:	
STREET ADDRESS:	
CITY: STATE: ZIP CODE:	
TELEPHONE NO.: FAX NO.:	
EMAIL ADDRESS:	
ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
CASE NAME:	
DEFENDANT/RESPONDENT:	
NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS	CASE NUMBER:

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

1. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment or conservatorship made by the superior court.

   NAME of Defendant/Respondent:
   DATE of the order or judgment:

2. This appeal is (*check one*):
   a. ☐ after a jury or court trial.
   b. ☐ after a contested hearing.
   c. ☐ after an admission, stipulation, or submission.
   d. ☐ other (*specify*):

3. Defendant/Respondent is currently being held under:
   - ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
   - ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
   - ☐ Penal Code, § 1600 et seq. (return to confinement)
   - ☐ Penal Code, § 2962 et seq. (offenders with mental health disorders)
   - ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
   - ☐ Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)
   - ☐ Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)
   - ☐ Former Welfare & Institutions Code, § 6300 et seq. (MDSO)
   - ☐ Welfare & Institutions Code, § 6500 et seq. (dangerous persons with developmental disabilities)
   - ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
   - ☐ Other *(specify):* ______________________

4. ☐ Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent:
   ☐ was ☐ was not represented by an appointed attorney in the superior court.

5. Defendant/Respondent's mailing address is ☐ same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.
   ☐ as follows:

Date:

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT/RESPONDENT OR ATTORNEY)

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INVITATION TO COMMENT

SPR-__

Title
Juvenile Law: Transfer of Jurisdiction to Criminal Court

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 5.766, 5.768, 5.770, and 8.604; revise form JV-710

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Action Requested
Review and submit comments by May 13, 2022

Proposed Effective Date
January 1, 2023

Contact
Christy Simons, 415-865-7694 |
christy.simons@jud.ca.gov

Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary and Origin

In 2018 the legislature passed Senate Bill 1391 (Lara; Stats. 2018, ch. 1012) which amended Welfare and Institutions Code section 707 to provide that a child must be at least 16 years of age to be considered for transfer of jurisdiction to criminal court unless the individual for whom transfer is sought was 14 or 15 at the time of the offense, the offense is listed in section 707(b), and the individual was not apprehended until after the end of juvenile court jurisdiction. The Judicial Council took action to implement these age-related changes in the jurisdiction of the juvenile court in 2019, but revoked that action when a split of authority within the California Courts of Appeal arose as to whether these changes were enacted in a constitutional manner. That split was resolved by the California Supreme Court in 2021 in favor of the constitutionality of the legislation. Additionally, legislation was enacted in 2021 to provide an expedited review on the merits from an order granting a motion to transfer. The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose amending three rules of court and one form pertaining to the transfer-of-jurisdiction process and juvenile appeals to reflect these legislative changes to the transfer statutes.

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.

Background

On November 8, 2016, the people of the State of California enacted Proposition 57, the Public Safety and Rehabilitation Act of 2016, effective November 9, 2016. Proposition 57 amended existing law to require that the juvenile court consider a motion by the district attorney or other appropriate prosecuting officer to transfer the minor to the jurisdiction of the criminal court before a juvenile can be prosecuted in a criminal court. To that end, the proposition repealed Welfare and Institutions Code section 602(b),[1] which had provided that certain serious and violent felonies were to be prosecuted in criminal court, as well as section 707(d), which had authorized the district attorney to directly file an accusatory pleading involving certain minors in criminal court. In addition, the proposition eliminated a set of presumptions that applied in determining whether a case should be transferred and instead provided the court with broad discretion to determine whether the child should be transferred to a court of criminal jurisdiction, taking into account numerous factors and criteria.

SB 1391 further amended these provisions to limit the transfer of cases involving offenders ages 14 and 15 to those in which the alleged offender is not apprehended until after reaching adulthood and the offense is one listed in section 707(b). On February 25, 2021, the California Supreme Court resolved a split of opinion within the Courts of Appeal and upheld the constitutionality of SB 1391 in *O.G. v. Superior Court*, 11 Cal.5th 82, making clear that the limitations on the age of youth who could be transferred to criminal court jurisdiction enacted by SB 1391 were a permissible revision to the provisions in Proposition 57.

In 2021, the Legislature enacted section 801 to provide a right to an immediate appeal for youth subject to an order for transfer of jurisdiction from juvenile court to criminal court provided that the notice of appeal is filed within 30 days of the transfer order.[2] That legislation required the council to adopt rules of court to ensure that the youth is advised of the appellate rights, the record is promptly prepared and transmitted after a notice of appeal is filed, and adequate time requirements allow counsel and court personnel to comply with the objectives of the section.

Prior Circulation

The Family and Juvenile Law Advisory Committee circulated a proposal for comment in 2019 to implement the provisions of SB 1391. The Judicial Council adopted a revised version of that proposal on September 24, 2019, with an effective date of January 2, 2020. Subsequently, on September 30, 2019, the Court of Appeal, Second Appellate District, created a split of authority among the Courts of Appeal regarding the constitutionality of SB 1391, finding in *O.G. v. Superior Court* (2019) 40 Cal.App.5th 626, that the provisions of SB 1391 were not consistent with the voters' intent in enacting Prop. 57 and thus holding that the amendments to section 707 were an unconstitutional exercise of legislative authority.[3] On November 25, 2019, the Judicial Council revoked its approval of the prior proposal. The proposal circulated here includes the

[1] Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise specified.

[2] AB 624, Juveniles: transfer to court of criminal jurisdiction: appeals (Bauer-Kahan; Stats. 2021, ch. 195.)

[3] *O.G. v. Superior Court*, 40 Cal.App.5th 626 (2019).

changes approved by the council in 2019 with minor style revisions, as well as newly proposed changes to implement the section 801 appellate provisions.

The Proposal

The committees propose modifying the transfer rules and form to implement the new jurisdictional provisions of SB 1391. In addition, rules 5.770 and 8.604 would be amended to implement the appellate provisions of section 801.

Transfer rules 5.766, 5.768, and 5.770

The current rules of court governing the process for transfer of jurisdiction from juvenile to criminal court provide that transfer can occur when the subject of the petition is age 14 or 15 and is alleged to have committed an offense listed in section 707(b) or is 16 years of age or older and is alleged to have committed a felony. These rules would be amended to provide that a transfer petition may be considered only for those who were 14 or 15 years of age at the time of the offense when the individual who is the subject of the petition was apprehended after the end of juvenile court jurisdiction. In addition, the legislative changes to section 707 require that code references in the rules be updated to reflect the new structure of the statute. Finally, all three rules are proposed to be amended to use the term youth instead of child consistent with rule 5.502.

Transfer order form JV-710

Order to Transfer Juvenile to Criminal Court Jurisdiction (form JV-710), for optional use, would be revised to update item three to include the limitation on transferring individuals who were age 14 or 15 at the time of the offense to those situations in which apprehension of the subject of the petition occurred after the end of juvenile court jurisdiction, and to update item four to renumber the statutory reference from 707(a)(2) to 707(a)(3), consistent with the changes enacted by SB 1391. In addition, the form is proposed to be revised to use the term youth instead of child.

Amendments to rules 5.770 and 8.604 to implement new appellate rights

Section 801 provides youth subject to a transfer of jurisdiction order with the right to an immediate appeal if a notice of appeal is filed within 30 days of the transfer order, and requires that the juvenile court grant a stay of the criminal court proceedings upon request of the youth if an appeal is filed. In addition, it requires the court to advise the youth of their appellate rights, the steps and time for taking an appeal, and the right to appointed counsel. Finally, it requires that the court prepare the record and transmit it to the Court of Appeal in a timely manner so that the appeal can be heard expeditiously. The committees propose amending rule 5.770 to reflect these new requirements and provisions and rule 8.406 on the timing of juvenile appeals to reflect the different timing requirements for these appeals.

Alternatives Considered

The Family and Juvenile Law Advisory Committee considered moving the prior transfer proposal forward without recirculating it for comment, but determined that it would be preferable, in light of AB 624, to amend these rules once and at the same time to update the rules

to use the term “youth” consistent with the council’s current practice. The committees did not consider the alternative of proposing no rule amendments because both SB 1391 and AB 624 require the Judicial Council to adopt implementing rules.

Fiscal and Operational Impacts

The restrictions on the use of transfer to criminal court for juvenile offenders ages 14 and 15 will result in the filing of fewer transfer petitions for these youth and, thus, fewer hearings on those petitions. These impacts are the result of legislative changes. Similarly, the appellate rights in section 801 will likely result in more appeals being filed in the Courts of Appeal, also the result of the legislative change rather than the provisions of this proposal.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the proposed rules on appellate review of transfer orders specify what should be included in the record on appeal and if so, what should be specified?
- Do juvenile referees hear these motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge or can those provisions be removed from the rules?

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 four 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, rules 5.766, 5.768, 5.770, and 8.604, at pages 5–9
2. Form JV-710, at page 10
3. Link A: Senate Bill 1391, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1391*
4. Link B: Assembly Bill 624, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB624*

Rules 5.766, 5.768, 5.770, and 8.406 of the California Rules of Court would be amended, effective January 1, 2023, to read:

Rule 5.766. General provisions

(a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A ~~child~~ youth who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the ~~child~~ youth from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

(1) The ~~child~~ individual was 14 or 15 years ~~or older~~ of age at the time of the alleged offense listed in section 707(b) and was not apprehended before the end of juvenile court jurisdiction.

(2) The ~~child~~ youth was 16 years or older at the time of the alleged felony offense.

(b) * * *

(c) Prima facie showing

On the ~~child~~ youth's motion, the court must determine whether a prima facie showing has been made that the offense alleged is an offense that makes the ~~child~~ youth subject to transfer as set forth in subdivision (a).

(d) Time of transfer hearing—rules 5.774, 5.776

The transfer of jurisdiction hearing must be held and the court must rule on ~~the~~ the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the ~~child~~ youth's waiver of the statutory time period to commence the jurisdiction hearing, the jurisdiction hearing must begin within the time limits under rule 5.774.

Rule 5.768. Report of probation officer

(a) Contents of report (§ 707)

The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the ~~child~~ youth being considered. The report must include information relevant to the determination of whether the ~~child~~ youth should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court, including information regarding all of the criteria in section 707(a)~~(2)~~(3). The report

must also include any written or oral statement offered by the victim pursuant to section 656.2.

(b) Recommendation of probation officer (§§ 281, 707)

If the court, under section 281, orders the probation officer to include a recommendation, the probation officer must make a recommendation to the court as to whether the ~~child~~ youth should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court.

(c) Copies furnished

The probation officer's report on the behavioral patterns and social history of the ~~child~~ youth must be furnished to the ~~child~~ youth, the parent or guardian, and all counsel at least two court days before commencement of the hearing on the motion. A continuance of at least 24 hours must be granted on the request of any party who has not been furnished the probation officer's report in accordance with this rule.

Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707

(a) * * *

(b) Criteria to consider (§ 707)

Following receipt of the probation officer's report and any other relevant evidence, the court may order that the ~~child~~ youth be transferred to the jurisdiction of the criminal court if the court finds:

(1) The ~~child~~ youth was 16 years or older at the time of any alleged felony offense, or the ~~child~~ individual was 14 or 15 years of age at the time of an alleged felony offense listed in section 707(b) and was not apprehended prior to the end of juvenile court jurisdiction; and

(2) The ~~child~~ youth should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the criteria in section 707(a)~~(2)~~(3) as provided in that section. The court must document on the record the basis for its decision, detailing how it weighed the evidence and identifying the specific factors that persuaded the court to reach its decision.

(d) Procedure following findings

(1) If the court finds the ~~child~~ youth should be retained within the jurisdiction of the juvenile court, the court must proceed to jurisdiction hearing under rule 5.774.

(2) If the court finds the ~~child~~ youth should be transferred to the jurisdiction of the criminal court, the court must make orders under section 707.1 relating to bail and to the appropriate facility for the custody of the ~~child~~ youth, or release on own recognizance pending prosecution. The court must set a date for the ~~child~~ youth to appear in criminal court and dismiss the petition without prejudice upon the date of that appearance.

(3) When the court rules on the request to transfer the ~~child~~ youth to the jurisdiction of the criminal court, the court must advise all parties present ~~that~~ regarding appellate review of the order ~~must be by petition for extraordinary writ~~ as provided in subdivision (g) of this rule. The advisement may be given orally or in writing when the court makes the ruling. The advisement must include the time for filing the petition for extraordinary writ or the notice of appeal as set forth in subdivision (g) of this rule. The court must advise the youth of the right to appeal, of the necessary steps and time for taking an appeal, and of the right to the appointment of counsel if the youth is unable to retain counsel.

(e) Continuance ~~to seek~~ or stay pending review

(1) If the prosecuting attorney informs the court orally or in writing that a review of the court's decision not to transfer jurisdiction to the criminal court will be sought and requests a continuance of the jurisdiction hearing, the court must grant a continuance for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

(2) If the youth informs the court orally or in writing that a notice of appeal of the court's decision to transfer jurisdiction to the criminal court will be filed and requests a stay, the court must issue a stay of the criminal court proceedings until a final determination of the appeal. The court retains jurisdiction to modify or lift the stay upon request of the youth.

(f) Subsequent role of judicial officer

Unless the ~~child~~ youth objects, the judicial officer who has conducted a hearing on a motion to transfer jurisdiction may participate in any subsequent contested jurisdiction hearing relating to the same offense.

(g) Review of determination on a motion to transfer jurisdiction to criminal court

(1) Except as provided in (2), an ~~An~~ order granting or denying a motion to transfer jurisdiction of a ~~child~~ youth to the criminal court is not an appealable order. Appellate review of the order is by petition for extraordinary writ. A notice of intent to file a writ petition for review must be filed no later than 20 days after the order on the transfer motion. ~~Any petition for review of a judge's order to transfer jurisdiction of the child to the criminal court, or denying an application for rehearing of the referee's determination to transfer jurisdiction of the child to the criminal court, must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the transfer of jurisdiction order.~~

(2) An order granting a motion to transfer jurisdiction of a youth to the criminal court is an appealable order subject to immediate review if a notice of appeal is filed within 30 days of the order transferring jurisdiction or 30 days after the referee's order becomes final under rule 5.540(c) or after the denial of an application for rehearing of the referee's decision to transfer jurisdiction of the youth to the criminal court. If a notice of appeal is timely filed, the court must prepare and submit the record to the court of appeal within 15 court days.

(h) ***

Rule 8.406. Time to appeal

(a) Normal time

(2) In matters heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 60 days after the referee's order becomes final under rule 5.540(c).

(3) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee's order must be filed within 60 days after that order is served under rule 5.538(b)(3) or 30 days after entry of the order denying rehearing, whichever is later.

(A) Except as provided in (B) and (C), a notice of appeal must be filed within 30 days of the making of the order.

(B) If the matter is heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 30 days after the referee’s order becomes final under rule 5.540(c).

(C) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee’s order must be filed within 30 days after entry of the order denying rehearing.

(b)(d) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**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:	
ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION (Welfare and Institutions Code, § 707)	CASE NUMBER:

1. a. Date of hearing: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons present:
   ☐ Youth ☐ Youths attorney *(name):*
   ☐ Deputy District Attorney *(name):* ☐ Other:

2. ☐ The court has read and considered ☐ the petition and report of the probation officer ☐ other relevant evidence.

3. **THE COURT FINDS** *(check one)*
   Welfare and Institutions Code section 707
   a. ☐ The youth was 16 years old or older at the time of the alleged felony offense; or
   b. ☐ The individual was 14 or 15 years of age at the time of the alleged offense, the alleged offense is an offense listed in Welfare and Institutions Code section 707(b), and the individual was not apprehended before the end of juvenile court jurisdiction.

4. **AFTER CONSIDERING EACH OF THE TRANSFER OF JURISDICTION CRITERIA, THE COURT ALSO FINDS AND ORDERS:**
   The court has considered each of the criteria in section 707(a)(3) and has documented its findings on each of the criteria on the record, and based on those findings makes the following orders:
   a. ☐ The transfer motion is denied. The youth is retained under the jurisdiction of the juvenile court.
   The next hearing is on *(date):* at *(time):*
   for *(specify):*

   b. ☐ The transfer motion is granted. The prosecutor has shown by a preponderance of the evidence that the youth should be transferred to the jurisdiction of the criminal court.
   (1) ☐ The matter is referred to the District Attorney for prosecution under the general law.
   (2) ☐ The youth is ordered to appear in criminal court on *(date):* at *(time):*
   in Department:
   (3) ☐ The petition filed on *(date):* is dismissed without prejudice on the appearance date in (2).
   (4) ☐ The youth is to be detained in ☐ juvenile hall ☐ county jail (section 207.1).
   (5) ☐ Bail is set in the amount of: $
   (6) ☐ The youth is released ☐ on own recognizance ☐ to the custody of:

Date:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
JV-710 [Rev. January 1, 2023]

Welfare and Institutions Code, §§ 207.1, 389(c), 707, 781(d);
Cal. Rules of Court, rules 5.504, 5.770
www.courts.ca.gov