Family Law Issues Meeting

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NOVEMBER 7, 2016
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JUDICIAL COUNCIL OF CALIFORNIA
OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15-16, 2016

Title

Child Support: Child Support Commissioner and Family Law Facilitator Program Funding Allocation Joint Subcommittee Interim Report

Submitted by

AB 1058 Funding Allocation Joint Subcommittee
Hon. Irma Poole Asberry, Cochair
Hon. Mark A. Juhas, Cochair
Hon. Mark Ashton Cope, Cochair

Agenda Item Type

Information Only

Date of Report

October 27, 2016

Contact

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Executive Summary

At its meeting on April 17, 2015, the Judicial Council approved the recommendation from the Family and Juvenile Law Advisory Committee that the AB 1058 Funding Allocation Joint Subcommittee be established to reconsider the allocation methodology developed in 1997 for the AB 1058 Child Support Commissioner and Family Law Facilitator Program. The subcommittee, which included representatives from the Family and Juvenile Law Advisory Committee, the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and the California Department of Child Support Services was charged to reconsider the allocation methodology developed in 1997 and report back at the February 2016 Judicial Council meeting.

At the February 2016 meeting, the Judicial Council approved the subcommittee's recommendations, with modifications, to allocate funding using the historical funding methodology and to develop a workload-based funding methodology for implementation beginning in fiscal year 2018-2019. The Judicial Council additionally reconstituted the subcommittee and directed it to report back at the December 2016 council meeting on its

progress in developing a recommendation for the Judicial Council on a workload-based funding methodology. This report is to provide an update to the council on the subcommittee's progress.

Previous Council Action

At its meeting on April 17, 2015, the council approved the recommendation from the Family and Juvenile Law Advisory Committee that the AB 1058 Funding Allocation Joint Subcommittee be established to review the allocation methodology developed in 1997 for the AB 1058 Child Support Commissioner and Family Law Facilitator Program. After three open meetings, the subcommittee presented its recommendations and the separate recommendations of the Family and Juvenile Law Advisory Committee, the Trial Court Budget Advisory Committee, and the Workload Assessment Advisory Committee to the council at its February 26, 2016 meeting. At that meeting, the council approved the following:

- Adopt the recommendation of the subcommittee for revising the process of how funds are moved from one court to another during a fiscal year to maximize program resources;

- Reappoint the joint subcommittee for at least fiscal year 2016- 2017 to continue consideration of the allocation of the AB 1058 funds;

- Continue to allocate funding using the historical model for fiscal years 2016-2017 and 2017-2018. Develop a workload-based funding methodology to begin implementation in FY 2018-2019. Coordinate with the California Department of Child Support Services (DCSS) on their current review of funding allocations for local child support agencies;

- That the subcommittee continue its work to determine accurate and complete workload numbers to include in a funding methodology for both child support commissioners and family law facilitators;

- When developing a funding methodology, determine whether the family law facilitator methodology should use different underlying data than the child support commissioner methodology, and identify what data should be used, given that different factors drive commissioner and facilitator workloads;

- As part of the subcommittee's funding methodology determination, that a subject- matter-expert group be established comprising both child support commissioners and family law facilitators to provide input and expertise to the joint subcommittee; and

- That the subcommittee report back to the council at its December 2016 meeting after providing a report to the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and the Family and Juvenile Law Advisory Committee to ensure statewide input.

Subcommittee process

The new AB 1058 Funding Allocation Joint Subcommittee began its work with an initial meeting on June 30, 2016. This meeting served to orient members to the history of AB 1058 funding and the prior work of the subcommittee as well as to discuss next steps. The subcommittee's two subsequent meetings were both open meetings. No public comments were received for either meeting, although members of the public did call into the listen-only line. At its August 8, 2016 meeting staff from the Office of Court Research who support the Workload Assessment Advisory Committee presented information on the Resource Assessment Study (RAS). At its September 22, 2016 meeting, Ms. Alisha Griffin, Director of DCSS, presented on the funding methodology review process for the local child support agencies. Ms. Griffin explained that DCSS created an internal committee, the Budget Allocation Methodology Committee, to investigate various factors for possible inclusion in the final methodology. Two models are currently being reviewed, one model which mathematically merges several factors and apportions funds based on each county's part of the whole and a second model which mathematically establishes a base and modifies up or down based on additional factors. DCSS expects to develop a consensus on the base components of a funding methodology within the next few months. DCSS additionally plans on requesting additional funding from the legislature in the fall of 2017, which would allow any increases to be implemented in the 2018-2019 fiscal year.

Subject Matter Expert groups

Pursuant to the council's directive, two subject matter expert (SME) groups were formed, one comprised of child support commissioners (CSCs) and another comprised of family law facilitators (FLFs) to provide input and expertise to the joint subcommittee. The membership for the CSC group was selected by the California Court Commissioner Association and the membership for the FLF group was selected by California Family Law Facilitator Association. There are nine CSC members and seven FLF members, representing courts of various sizes both in population and geography throughout the state. The chairperson for the CSC SME group and the chairperson FLF SME group are also members of the joint subcommittee. These chairpersons facilitate communication and instructions from the joint subcommittee to the SME groups and update the joint subcommittee on the information gathered by the SME groups.
The CSC SME group has held five conference calls and the FLF SME group has held seven conference calls with additional calls scheduled. Each group developed an exploratory survey which was distributed to all CSCs and FLFs throughout the state in an attempt to identify unique factors that may impact workload. The surveys were not intended to measure workload, but rather were to uncover possible variables worth further consideration. The SME groups used the information obtained from the surveys to conduct focus groups at AB 1058 Child Support Training Conference. The SME groups continue to meet as needed to serve as a vehicle for further input from CSCs and FLFs to the subcommittee.

In addition to identifying unique factors in the child support program that impact workload, the joint subcommittee has also instructed the SME groups to identify best practices that can create

efficiency within the program. These innovative practices could then be replicated in other courts to ensure that the program goals could continue to be met even if a court receives a different funding allocation.

Additional statewide input

The AB 1058 Child Support Training Conference in Los Angeles on August 30, 2016 provided additional opportunity for statewide input from CSCs and, FLFs. The conference included a plenary session dedicated to the issue of the funding allocation methodology. The panelists provided information about the history of AB1058 funding, updates about the joint subcommittee meetings, an overview of RAS and the Workload-based Allocation and Funding Methodology (WAFM) and the work of the SME groups, including the preliminary results of the surveys distributed to their respective constituencies.

After the plenary session, each SME group held a focus group session, at which the attending CSCs and FLFs had an opportunity to provide more in-depth input about factors affecting workload as well as to ask questions about the funding allocation methodology review process. Subcommittee members who attended the conference provided information about the focus group discussions at the subcommittee meeting on September 22, 2016.

Next Steps

The subcommittee will continue to work on its development of a workload-based funding methodology for the AB 1058 program in coordination with the DCSS funding methodology review process, consistent with the directives of the council. It is anticipated that the subcommittee will have a recommendation on a new funding methodology for consideration by the council at its December 2017 meeting to provide adequate time for implementation of the new methodology for the 2018-2019 fiscal year.

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 30, 2016

SENATE BILL No. 917

Introduced by Senator Jackson

January 27, 2016

An act to add Section 219 to the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 917, as amended, Jackson. Family law: court orders.

Existing law authorizes a court to issue orders relating to matters under the Family Code, including, among others, restraining orders and orders for child support.

This bill would require a court, beginning July 1, 2017, *unless a shorter time period is provided by another statute,* within two court days after the conclusion of a hearing conducted pursuant to the Family Code, to make available to each party who is present at the hearing a *written,* detailed, official order setting forth the basic terms of any orders that were made in open court during the hearing. *The bill would authorize the official order to be provided electronically and would require, to the extent practicable, the order to be provided to all parties present at the hearing before they leave the court that day.* The bill would also require the Judicial Council, on or before ~~January 1, 2018,~~ *July 1, 2017,* to adopt a rule of court and any forms necessary to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 219 is added to the Family Code, to read:

219. (a) ~~Beginning~~ *Unless a shorter time period is provided by another statute, beginning* July 1, 2017, within two court days after the conclusion of a hearing conducted pursuant to this code, the court shall make available to each party who is present at the hearing a *written,* detailed, official order setting forth the basic terms of any orders that were made in open court during the ~~hearing.~~ *hearing. The order may be made available electronically. To the extent practicable, the court shall provide the order, in writing, to each party present at the hearing prior to the party leaving the court that day.*

(b) This section does not require the court to prepare or provide a judgment of dissolution, legal separation, nullity, or parentage.

(c) This section is not intended to impact the law governing statements of decisions.

(d) This section does not preclude the court from requiring the parties or counsel to prepare an order, or accepting proposed orders or stipulations for orders from the parties or counsel at the time of the hearing. The court may, after providing the order described in subdivision (a), permit parties or counsel to submit more detailed orders after the hearing.

(e) On or before ~~January 1, 2018,~~ *July 1, 2017,* the Judicial Council shall adopt a rule of court and any forms necessary to implement this section.

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State of California

FAMILY CODE

Section 3011

3011. In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent or any other person seeking custody against any of the following:

(1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to considering allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any

order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

(Amended by Stats. 2012, Ch. 258, Sec. 1. (AB 2365) Effective January 1, 2013.)

State of California

FAMILY CODE

Section 3044

3044. (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.

(6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.

(7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.

(Amended by Stats. 2003, Ch. 243, Sec. 1. Effective January 1, 2004.)

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Appellate Procedure: Privacy in Appellate Opinions

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 1.201, 8.41, 8.90; amend rule 1.20; revise form MC-120

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
October 18, 2016

Contact
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Executive Summary

The Appellate Advisory Committee recommends adopting a new rule to provide guidance on the use of protective nondisclosure of names in appellate court opinions to protect the privacy of specific categories of individuals. To better highlight existing requirements for protecting the privacy of social security and financial account numbers in filed documents, the committee also proposes moving these existing requirements to a new rule and cross-referencing the requirements in the appellate rules. This proposal is based on concerns about privacy protection raised by appellate justices and individuals whose identity or personal information has been revealed in appellate opinions.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rule 1.20 (Filing) to move the requirements for protecting the privacy of social security and financial account numbers in filed documents from subdivision (b) of this rule to new rule 1.201;

2. Adopt California Rules of Court, rule 1.201 (Protection of privacy), to contain the content of former rule 1.20(b);

3. Adopt rule 8.41 to cross-reference in the appellate rules the existing requirements for protecting the privacy of social security and financial account numbers in filed documents;

4. Adopt rule 8.90 (Privacy in opinions) to provide guidance on the use of names in appellate court opinions, and place this rule in new article 7 (Privacy), within title 8, division 1, chapter 1, of the California Rules of Court; and

5. Revise *Confidential Reference List of Identifiers* (form MC-120), making a technical change to replace a reference to current rule 1.20(b) with a reference to new rule 1.201.

The text of the adopted and amended rules and the revised form is attached at pages 9–14.

Previous Council Action

Rule 8.401

The Judicial Council adopted a general rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. That rule was amended effective July 1, 1981, to provide for confidentiality of the record and briefs in these proceedings. Rule 39 was further amended effective January 1, 1997, to provide that all information in the appellate file in such cases is confidential. On January 1, 2005, all rules relating to juvenile appeals were repealed and replaced with new rules. Rule 37, adopted at that time, specified the general procedures in juvenile appeals and included a provision regarding confidentiality that addressed the use of initials to refer to parties in appellate proceedings in juvenile cases. Effective January 1, 2007, this rule was renumbered as rule 8.400. Effective July 1, 2010, the provisions relating to confidentiality of juvenile appellate proceedings were moved into a separate rule, rule 8.401. Effective January 1, 2012, rule 8.401 was amended to require the use of a juvenile's first name and last initial or just initials in published opinions; permit the use of either the juvenile's first name and last initial or just the juvenile's initials in unpublished opinions and in court orders; and provide that if the use of the name of a juvenile's relative would defeat anonymity for the juvenile, the relative's first name and last initial or just initials must be used.

Rule 1.20 and form MC-120

The Judicial Council adopted rule 1.20, effective January 1, 2007, to specify the effective date of filing of documents. The rule was amended effective January 1, 2008, to require parties and their attorneys to exclude or redact social security and financial account numbers from documents presented for public filing.

Also effective January 1, 2008, the Judicial Council adopted *Confidential Reference List of Identifiers* (form MC-120) to enable parties, if they obtain a court order, to file a confidential list of the redacted account numbers and corresponding references to be used to refer to those account numbers in publicly filed documents.

Rationale for Recommendation

Privacy concerns in electronic era

In the past, unless someone was a subscriber to a service such as Westlaw or Lexis, appellate opinions could be accessed only on a case-by-case basis, in paper format. For unpublished opinions, access to the opinions was limited to the courthouse. Because accessing paper records is difficult and time-consuming, even though these opinions are public, information from the opinions was not generally extracted, disseminated, or used by those not involved in the case, except in high-profile cases. The U.S. Supreme Court referred to the difficulty in gathering information from paper files as "practical obscurity" (*United States Department of Justice* v. *Reporters Committee for Freedom of the Press* (1989) 489 U.S. 749, 762, 780).[1] The practical obscurity of paper-based opinions created a de facto protection for the privacy of information contained in these opinions, and as a result, concerns about the privacy of information in these opinions arose infrequently in the past.

Times have changed, and both published and unpublished appellate opinions and information contained in these opinions are now readily accessible and searchable on the Internet via Google and other search engines. The California Courts website is a source for these opinions. All opinions are posted to the Opinions page of this website, published opinions for 120 days and unpublished opinions for 60 days. After the 120 or 60 days, published and unpublished opinions remain available on the website through the Search Case Information tool. During the time the opinions are posted to the Opinions section, Google and other search engines search and index the opinions, making them widely available on the Internet with no time limit. Once indexed in this way, appellate opinions will show up in Internet search results when, for example, a searcher enters the name of a person and that person's name is included in an appellate opinion.

The new electronic searchability of appellate opinions has brought to the fore privacy concerns about information in these opinions. Judicial Council staff regularly receive requests to remove appellate opinions and identifying information in appellate opinions from the Internet. The requests range from victims and witnesses in criminal, family law, domestic violence, and other sensitive cases to criminal defendants who have served their sentences and are now having trouble finding employment and getting their lives back on track. The committee has noted the disincentive to participate as either a victim or a witness in court proceedings such as domestic violence or other sensitive cases if that information will forever be available and linked to that person's name on the Internet.

Existing privacy protection rules

As noted above, rule 8.401 protects the anonymity of juveniles involved in juvenile court proceedings in the appellate courts. Concerning appellate opinions, the rule provides as follows:

[1] In this case, the court recognized a privacy interest in information that is publicly available through other means, such as in paper court files, but is "practically obscure."

> In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.

(Cal. Rules of Court, rule 8.401(a)(2).)[2]

Rule 1.20, which is applicable to all courts, contains provisions designed to protect the privacy of social security numbers and financial account numbers. Subdivision (b) of this rule generally requires parties and attorneys to leave out or redact these numbers from all filings.

Effective January 1, 2016, new rules governing public access to electronic appellate court records, rule 8.80 et seq., took effect. The stated intent of these rules is "to provide the public with reasonable access to appellate court records that are maintained in electronic form, while protecting privacy interests" (rule 8.80). Rule 8.83 identifies which electronic appellate court records may be made available remotely and which are to be made accessible only at the courthouse because they raise greater privacy concerns. In recognition that opinions, calendars, and dockets were already being made available on the California Courts website, this rule provides that these materials will be available remotely in all cases. With respect to other types of records, this rule provides for remote access to records only in civil cases, with certain exceptions. Records in the following types of cases are to be made available only at the courthouse:

(A) Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;
(B) Juvenile court proceedings;
(C) Guardianship or conservatorship proceedings;
(D) Mental health proceedings;
(E) Criminal proceedings;
(F) Civil harassment proceedings under Code of Civil Procedure section 527.6;
(G) Workplace violence prevention proceedings under code of Civil Procedure section 527.8;
(H) Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;

[2] The *California Style Manual* also addresses protective nondisclosure of the identity of juveniles and victims of sex crimes in appellate opinions. Section 5:9, part of the chapter on editorial policies followed in official reports, provides in relevant part: "The Supreme Court has issued the following policy statement to all appellate courts: 'To prevent the publication of damaging disclosures concerning living victims of sex crimes and minors innocently involved in appellate court proceedings it is requested that the names of these persons be omitted from all appellate court opinions whenever their best interests would be served by anonymity.' "

(I) Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and
(J) Proceedings to compromise the claims of a minor or a person with a disability.

(Cal. Rules of Court, rule 8.83(c)(2).)

Rule 8.83(d) allows an appellate court to permit remote electronic access to additional records in an individual case under extraordinary circumstances, but it lists information that must be redacted from these records when remote access is permitted, specifically:

> "[D]river's license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information."

(Cal. Rules of Court, rule 8.83(d)(2).)

Proposal

The recommendations to the council are designed to build on and further emphasize the existing privacy protection rules.

Rules 1.20, 1.201, and 8.41. As noted above, current rule 1.20(b) requires redacting or excluding social security and financial account numbers in filed documents. The committee is concerned, however, that many people may be unaware of these privacy protection requirements because they are contained in a rule entitled "Filing" and in a chapter entitled "Service and Filing."

The committee recommends moving the content of rule 1.20(b)—with minor, nonsubstantive changes—to new rule 1.201. The new rule is entitled "Protection of privacy," which should make the requirements easier for rule users to locate. In addition, it would be moved to chapter 7, Form and Format of Papers, where users would be more likely to notice the requirements for redacting this information from papers. The committee also recommends adopting proposed new rule 8.41 to cross-reference rule 1.201 to make its provisions more apparent to those filing documents in appellate courts.

Rule 8.90. Proposed new rule 8.90 is designed to protect the identity of certain categories of individuals when they are parties or referred to in appellate opinions and to confirm that a reviewing court has discretion to refer to these individuals by first name and last initial or initials only. The rule lists categories of individuals in proceedings in which new rule 8.83 limits electronic access to records. As noted above, rule 8.83 does not permit remote electronic access to records (other than records such as opinions, calendars, dockets, and indexes) in criminal cases, juvenile court cases, family law cases, mental health proceedings, and other specified proceedings. Public access to these electronic appellate court records is available at the courthouse only. (Cal. Rules of Court, rule 8.83(c)(2).) The advisory committee believes that the

same privacy considerations that limit remote access to records in these proceedings support providing privacy protections to specified categories of individuals in these proceedings when they are referred to in appellate court opinions. Proposed new rule 8.90(b) would therefore encourage the reviewing court to consider referring by first name and last initial or initials only to the individuals whose privacy interests are at risk in these proceedings, such as victims in criminal cases, protected parties in protective order proceedings, and patients in mental health proceedings. Proposed new rule 8.90(b) also articulates a reviewing court's discretion to extend this privacy protection to other individuals not specifically listed.

Form MC-120. This proposal requires that a technical change be made to the form that filers use to file a confidential reference list of identifiers for each redacted identifier. Form MC-120 would be revised to replace the reference to rule 1.20(b) with a reference to new rule 1.201.

Comments, Alternatives Considered, and Policy Implications

The proposal to adopt new rules 1.201, 8.41, and 8.90; amend rule 1.20; and revise form MC-120 was circulated for public comment between April 15 and June 14, 2016, as part of the regular spring comment cycle. Ten individuals or organizations submitted comments on the proposal. All commentators expressed support for improving privacy protections and either agreed with the proposal or agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 15–40.

The committee also received internal comments from the Family and Juvenile Law Advisory Committee. The main comments and the committee responses to these comments are discussed below.

Rule 8.90

Discretionary or mandatory protective nondisclosure

Three commentators suggested that proposed new rule 8.90's protective nondisclosure of names should be mandatory rather than discretionary. One suggested giving the court discretion to make an exception or establishing a rebuttable presumption that protective nondisclosure would apply.

The committee is not recommending at this time that the use of protective nondisclosure be made mandatory. Making it mandatory would be an important substantive change to the proposal, and thus is not something that the committee could recommend for adoption without another circulation for public comment. The committee's view is that addressing these privacy concerns now is important and that the committee can revisit the issue to determine if stronger measures are needed. The committee acknowledged that, as circulated, the rule merely highlighted the court's pre-existing discretion to anonymize individuals referenced in appellate court opinions. To better express the intent of the rule, the committee modified the proposed language from "it is within the discretion of the reviewing court" to "the reviewing court should consider" protective nondisclosure in the specified circumstances. Further, the committee expressed the belief that publicity about the rule and education and training in drafting opinions to eliminate unnecessary

use of names will significantly reduce the use of names in cases where such use would affect privacy interests.

Harmonizing proposal with rule 8.401

Two commentators and the Family and Juvenile Law Advisory Committee expressed concerns about a potential inconsistency between proposed rule 8.90 and rule 8.401, which *requires* that the names of juveniles be anonymized in juvenile court proceedings. Although proposed rule 8.90(a) states that the rule provides guidance on the use of names in appellate court opinions and that other more specific laws are controlling (which was intended to address the fact that rule 8.401 is stricter), in light of these comments, the committee decided to modify the proposed rule. To clarify that juveniles in juvenile court proceedings are differently situated, the committee deleted from proposed rule 8.90(b) "juveniles in juvenile court proceedings" as a category of protected persons that the reviewing court should consider for protective nondisclosure, and instead added in proposed rule 8.90(a), that "[r]eference to juveniles in juvenile court proceedings is governed by rule 8.401(a)."

Additional categories of protected persons

Two other commentators suggested that new categories of protected persons be added to proposed rule 8.90(b): nonprotected parties in protective order proceedings and civil jurors. The committee discussed the situation in which persons' identities are revealed in appellate opinions by virtue of their relationship to someone else who is named, such as children or a spouse or partner of an alleged abuser in domestic violence restraining order proceedings. To address this type of situation, the committee added to proposed rule 8.90(b) the category of "[p]ersons in other circumstances in which use of that person's full name would defeat the objective of anonymity" for someone else. With respect to civil jurors, the committee decided that this category is adequately encompassed by the rule 8.90(b)(10) catch-all provision of "[p]ersons in other circumstances in which personal privacy interests support not using the person's name."

Other considerations

The invitation to comment also specifically asked whether form MC-120 or a similar form to be filed in appellate courts is necessary. Two of three responses to this question were negative, and the committee concluded that to pursue developing such a form or modifying it for appellate purposes was unnecessary.

Several commentators, including the Family and Juvenile Law Advisory Committee, urged the consideration of additional privacy protections such as a process by which a person already named in an appellate opinion could petition the court to mask his or her name, procedures for persons to request privacy protection, and technological solutions. The committee plans to continue its discussion of these and other possible actions to further address privacy concerns in appellate opinions.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require judicial, court staff, and attorney training in expanding the use of first names and initials, initials only, or an individual's status (such as "daycare provider"), instead of a victim's or witness's name, when writing briefs and appellate opinions.

Attachments and Links

1. Cal. Rules of Court, rules 1.20, 1.201, 8.41, and 8.90, at pages 9-13
2. Form MC-120, at page 14
3. Chart of comments, at pages 15-40

Rules 1.201, 8.41, and 8.90 of the California Rules of Court are adopted and rule 1.20 is amended, effective January 1, 2017, to read:

Title 1. Rules Applicable to All Courts

Chapter 3. Service and Filing

Rule 1.20. Effective Date of Filing

~~(a) Effective date of filing~~

Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.

~~(b) Protection of privacy~~

~~(1) *Scope*~~

~~The requirements of this subdivision that parties or their attorneys must not include, or must redact, certain identifiers from documents or records filed with the court do not apply to documents or records that by court order or operation of law are filed in their entirety either confidentially or under seal.~~

~~(2) *Exclusion or redaction of identifiers*~~

~~To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:~~

~~(A) Social security numbers. If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used.~~

~~(B) Financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.~~

~~(3) *Responsibility of the filer*~~

~~The responsibility for excluding or redacting identifiers identified in (b)(2) from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.~~

~~(4) *Confidential reference list*~~

~~If the court orders on a showing of good cause, a party filing a document containing identifiers listed in (b)(2) may file, along with the redacted document that will be placed in the public file, a reference list. The reference list is confidential. A party filing a confidential reference list must use *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The confidential list must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.~~

Chapter 7. Form and Format of Papers

Rule 1.201. Protection of privacy

(a) Exclusion or redaction of identifiers

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:

(1) Social security numbers. If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used.

(2) Financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.

(b) Responsibility of the filer

The responsibility for excluding or redacting identifiers identified in (a) from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.

(c) Confidential reference list

If the court orders on a showing of good cause, a party filing a document

containing identifiers listed in (a) may file, along with the redacted document that will be placed in the public file, a reference list. The reference list is confidential. A party filing a confidential reference list must use *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The confidential list must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.

(d) Scope

The requirements of this rule do not apply to documents or records that by court order or operation of law are filed in their entirety either confidentially or under seal.

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 1. General Provisions

Article 2. Service, Filing, Filing Fees, Form, and ~~Number of Documents~~ Privacy

Rule 8.41. Protection of privacy in documents and records

The provisions on protection of privacy in rule 1.201 apply to documents and records under these rules.

Article 7. Privacy

Rule 8.90. Privacy in opinions

(a) Application

(1) This rule provides guidance on the use of names in appellate court opinions.

(2) Reference to juveniles in juvenile court proceedings is governed by rule 8.401(a).

(3) Where other laws establish specific privacy-protection requirements that differ from the provisions in this rule, those specific requirements supersede the provisions in this rule.

(b) Persons protected

To protect personal privacy interests, in all opinions, the reviewing court should consider referring to the following people by first name and last initial or, if the first name is unusual or other circumstances would defeat the objective of anonymity, by initials only:

(1) Children in all proceedings under the Family Code and protected persons in domestic violence–prevention proceedings;

(2) Wards in guardianship proceedings and conservatees in conservatorship proceedings;

(3) Patients in mental health proceedings;

(4) Victims in criminal proceedings;

(5) Protected persons in civil harassment proceedings under Code of Civil Procedure section 527.6;

(6) Protected persons in workplace violence–prevention proceedings under Code of Civil Procedure section 527.8;

(7) Protected persons in private postsecondary school violence–prevention proceedings under Code of Civil Procedure section 527.85;

(8) Protected persons in elder or dependent adult abuse–prevention proceedings under Welfare and Institutions Code section 15657.03;

(9) Minors or persons with disabilities in proceedings to compromise the claims of a minor or a person with a disability;

(10) Persons in other circumstances in which personal privacy interests support not using the person's name; and

(11) Persons in other circumstances in which use of that person's full name would defeat the objective of anonymity for a person identified in (1)–(10).

Advisory Committee Comment

Subdivision (b)(1)–(9) lists people in proceedings under rule 8.83 for which remote electronic access to records—except dockets or registers of actions, calendars, opinions, and certain Supreme Court records—may not be provided. If the court maintains these records in electronic form, electronic access must be provided at the courthouse only, to the extent it is feasible to do so. (Cal. Rules of Court, rule 8.83(c).) Subdivision (b)(1)–(9) recognize the privacy considerations of certain persons subject to the proceedings listed in rule 8.83(c). Subdivision (b)(10) recognizes people in circumstances other than the listed proceedings, such as witnesses, in which the court should consider referring to a person by first name and last initial, or, if the first name is unusual or other circumstances would defeat the objective of protecting personal privacy interests, by initials. Subdivision (b)(11) recognizes people in circumstances other than the listed proceedings, such as relatives, in which the court should consider referring to a person by first name and last initial or by initials if the use of that person's full name would identify another person whose personal privacy interests support remaining anonymous.

CONFIDENTIAL

MC-120

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 2016-08-08
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
CONFIDENTIAL REFERENCE LIST OF IDENTIFIERS ☐ _____ **AMENDED**	CASE NUMBER:

TO COURT CLERK: THIS LIST IS CONFIDENTIAL

INSTRUCTIONS FOR FILER

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, social security numbers and financial account numbers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court. (Cal. Rules of Court, rule 1.201.) If the court orders on a showing of good cause, a party may file, along with the redacted pleading or paper that will be placed in the public file, this *Confidential Reference List of Identifiers*. The list must identify each identifier that has been redacted from the pleading or paper in the public file and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references included in the list will be understood to refer to the corresponding complete identifier. Additional pages may be attached to this form as necessary.

REFERENCE LIST

	COMPLETE IDENTIFIER *Use this column to list the social security and financial account numbers that have been redacted from the document that is to be placed in the public file.*	CORRESPONDING REFERENCE *Use this column to list the reference or abbreviation that will refer to the corresponding complete identifier.*	LOCATION *Use this column to identify the document or documents where the reference appears in place of the identifier.*
1.			
2.			
3.			
4.			
5.			
6.			

☐ Additional pages are attached. Number of pages attached: _____

Form Adopted for Mandatory Use
Judicial Council of California
MC-120 [Rev. January 1, 2017]

CONFIDENTIAL REFERENCE LIST OF IDENTIFIERS

Cal. Rules of Court, rule 1.201
www.courts.ca.gov

SPR16-02
Appellate and Trial Court Procedure: Privacy in Documents (adopt rules 1.201, 8.41, and 8.90; amend rule 1.20; revise form MC-120)

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

	Commentator	Position	Comment	Committee Response
1.	Tülin D. Açikalin, Partner, ADZ Law LLP	AM	I am writing to express support for the proposed rule to protect the privacy of various categories of vulnerable populations in court proceedings. I appreciate the thoughtfulness of the rule and the work that went into crafting it. I do not believe the rule goes far enough. I request that you consider ***requiring*** courts to only use initials or first names in any documents published electronically and placed on a court website. Without making such privacy protocols mandatory the protection offered by this otherwise good rule is gossamer. As was famously said in the movie the Social Network, "The Internet's not written in pencil. . .[I]t's written in ink." The unintended consequence of the court's public courtesy of making appellate opinions available online is that the humiliating personal details of victims and children's lives are forever laid bare on the internet for the entire voyeuristic world to see. The Court is going beyond what is required by law or rule in granting easy, electronic access to appellate opinions. With the advent of Google and other robot data aggregators, all one need do is know a name and type it in to Google.	The committee appreciates the comments and notes the agreement with the proposal if modified. Making the use of initials or first names mandatory would be a major substantive change to the proposal that was circulated for public comment. Under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without first being circulated for comment. However, in response to this and other comments, the committee did modify the language of proposed rule 8.90 to provide that "the reviewing court should consider" using protective nondisclosure, rather than "it is within the discretion of the reviewing court" to do so. The committee believes that adopting this modified proposal, combined with publicity about the rule and training in drafting opinions to eliminate the unnecessary use of names or to anonymize names where appropriate, will have a significant effect in reducing the use of names where doing so would affect privacy interests. The committee intends to monitor the effectiveness of any new rules and will consider possible amendments in future rules cycles.

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	Commentator	Position	Comment	Committee Response
			It is admirable that the judicial branch for being so transparent, open, and technologically advanced. However, the unintended consequences to victims of domestic violence, sexual assault, and their minor children are devastating. The case of *Altafulla v. Ervin* (2015) is a perfect example of why appellate courts must be ***required*** to anonymize victims. Read that opinion. This poor woman's personal life is instantly available to her children, their peers, her neighbors, her gardener, her employer, potential employers, etc. The electronic publication of the opinion defeats the very purpose of the restraining order she fought so hard to obtain. Unless the Judicial Council promulgates and implements a mandatory rule, it should immediately remove from its website all appellate cases with the vulnerable populations identified in the rule. Furthermore, any case that does not comply with the rule should be immediately removed from the Judicial Council website. There is no law or rule that requires the Judicial Council to post these opinions on its website. That is a courtesy to the	The committee is considering options for improving the privacy protection of those whose names appear in already-published opinions on the appellate courts webpages.

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	Commentator	Position	Comment	Committee Response
			public, a courtesy that these families do not appreciate. To do otherwise demonstrates that the Judicial Council places more importance on public access to private details than on victim privacy. I am sure this is not the case. Leaving the rule optional for the 80+ appellate court justices, their legal interns, and staff attorneys to recognize the appropriate time to use initials is not likely to be effective. They are all bright, hardworking people with the best of intentions. However, how many of them were victim rights, privacy experts, or legal aid attorneys who bring the victim's view to the bench? Not many. The issue may simply be overlooked because they do not consider that the opinion will end up the first result in a Google search. Or do not consider the downstream consequences upon the individual lives of the subjects of their opinion. I recognize that my comment are late and hope that you consider them nonetheless. I thank you for your tireless work to continue to improve the judicial branch.	As noted above, the committee cannot recommend adoption of a rule making the use of initials or first names mandatory at this time; any such proposal must first be circulated for public comment. The committee believes that adopting the proposal with the modifications described above, combined with publicity about the rule and training in drafting opinions to eliminate unnecessary use of names or anonymize names where appropriate will have a significant effect in reducing the use of names where doing so would affect privacy interests.

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	Commentator	Position	Comment	Committee Response
2.	California Attorney General's Office Janill L. Richards, Principal Deputy Solicitor General, Health, Education and Welfare (HEW) Section, Civil Division	AM	Among other things, the Appellate Advisory Committee proposes a new rule, rule 8.41, which would highlight for appellate practitioners existing requirements for protecting the privacy of social security and financial account numbers in filed documents. HEW agrees that this additional emphasis makes sense. The proposed rule changes do not appear to address, however, how any failure to redact that may have already occurred in the superior court should be handled on appeal. If, for example, unredacted pleadings that were filed in superior court are designated as part of the appellate record, would the party designating that pleading be under any obligation to redact the document? Would the clerk be under a similar duty when preparing a Clerk's Transcript, or the compiling party when proceeding by way of appendix? Clarifying that there is a continuing duty to guard against privacy breaches may be in order.	The committee appreciates the comment, and notes the commenter's agreement with the proposal if modified. The committee notes that, with respect to social security numbers and financial account numbers, proposed rule 1.201, subdivision (b), provides that it is the responsibility of the filing parties and their attorneys, and not court clerks, to exclude or redact the specified identifiers. Proposed rule 8.41 makes explicit that the privacy protections in proposed rule 1.201 apply to documents and records in appellate proceedings. Also, rule 8.83(d), which addresses remote access to electronic appellate court records in the types of cases covered by proposed rule 8.90, provides that, if the court allows any remote access to these records, certain information must be redacted in the electronic version and that "[t]he court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access." Clarifying a continuing duty to guard against other types of privacy breaches in the appellate record is beyond the scope of the current proposal. Under rule 10.22, the committee cannot recommend adoption of such a rule at this time; any such proposal must first be circulated for public comment. The committee will retain this suggestion for future consideration.
3.	California Attorney General's Office	AM	The Attorney General's Office (AGO) applauds these privacy protection efforts in court opinions and appreciates the opportunity	The committee thanks the commenter for this feedback, and notes the agreement with the proposal if modified.

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	Commentator	Position	Comment	Committee Response
	Justin Erlich, Special Assistant Attorney General		to respond to the Appellate Advisory Committee's Invitation to Comment on *Appellate and Trial Court Procedure: Privacy and Documents.* California has explicitly enshrined an inalienable right to privacy in its Constitution. As the world becomes increasingly digitized, this right becomes ever more important. The balancing of the individual right to privacy with the public right to information is an important national policy debate. California has been a leader in both privacy protection and open data and a new privacy rule for appellate court opinions provides an opportunity to continue that leadership. Appellate opinions often contain a wealth of private and sensitive information that may put named individuals, especially victims, at risk. The AGO respectfully submits this comment to express support for the thrust of the rule changes, while also encouraging the Appellate Advisory Committee to go beyond a discretionary rule and institute a more robust anonymity default. **Recommendation on Proposed Rule 8.90 - Privacy in opinions**	

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	Commentator	Position	Comment	Committee Response
			The AGO is supportive of the rule in that it encourages the use of additional privacy protections, but believes it should more strongly dictate the use of pseudonyms. Accordingly, the AGO recommends that the use of **anonymization should be mandatory for the circumstances listed in rule 8.90(b)(1)-(10)**, with an exception clause provided that would allow the judge to publish full names when she deems it necessary to the public interest. In the alternative, the AGO suggests that the language of rule 8.90(b) should be altered to establish a rebuttable presumption that names should be anonymized for the circumstances listed in rule 8.90(b)(l)-(10). Finally, as rule 8.90(b)(l)-(10) does not address witnesses, the AGO recommends adding the phrase "such as witnesses" to the Advisory Committee Comment discussing rule 8.90(b)(l 1). **ANALYSIS** **Courts' Obligation to Protect Privacy Interests in Court Records**	Please see response to the comment of Ms. Acikalin, above. The committee appreciates this suggestion and has added a reference to witnesses to the advisory committee comment.

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	Commentator	Position	Comment	Committee Response
			Existing law provides Californians with a right of privacy and regulates the dissemination of personal information held by government agencies.[1] Existing law also exempts courts from the provisions of the California Public Records Act and permits a court to seal records and redact information from them.[2] Courts arguably have a stake in preserving the privacy of individuals listed in court documents.[3] Current rule 8.83 provides privacy protection in certain sensitive cases, yet still assures transparency and public access. However, because rule 8.83(b)(l)(C) creates a carve-out for court opinions, sensitive information can still be widely disseminated if the judge decides to include it in her final written opinion. [fn 1 See, e.g., Civ. Code, § 1798.24.] [fn 2 Gov. Code, §§ 6250-6270.5.] [fn 3 See e.g, Cal. Rules of Court, rule 8.83, subds. (c), (d) (stating that the presiding justice of the court has discretion in permitting remote electronic access by the public to court documents of sensitive issues like mental health proceedings and elder abuse); Pantos v. Super. Ct. (1984) 151	

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	Commentator	Position	Comment	Committee Response
			Cal.App.3d 258 (holding that the court may assert the privacy interests of a person who has submitted private information to the court).] Rule 8.90 attempts to correct this problem by reminding judges to exercise discretion in protecting privacy by anonymizing the individuals referred to in their opinions. But the proposed rule should consider going even further. Rule 8.90 may result in inconsistent anonymization because it provides no guidelines for judges on when anonymization is appropriate. This could lead to arbitrary differences between cases, with some people getting enhanced privacy protection and others not even when there is no meaningful difference in the situations. Participants in lawsuits provide a great deal of PII to the court over the course of litigation. While the public has a legitimate interest in access to complete court opinions,[4] there can rarely be value in connecting individuals to their PII in the circumstances listed in rule 8.90(b)(1)-(10). In fact, a lot of harm could result to these individuals if their PII was inappropriately disclosed - including the potential for blackmail, identity theft, physical	See response above.

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	Commentator	Position	Comment	Committee Response
			harm, discrimination, or emotional distress.[5] Creating clearer guidance that requires anonymization better captures the purpose of the rule change and better serves the court's role as a custodian of PII. If needed, an exception could be added to allow judges the ability not to anonymize in certain circumstances where they believe it is necessary to the public interest. This would solve the problem where removing PII would not serve the public interest. [fn 4 See, e.g., Sander v. State Bar of Cal. (2013) 314 P.3d 488, 498-99.] [fn 5 The "Gamergate" scandal and the subsequent suit by Zoe Quinn against her ex-boyfriend Eron Gjoni is an example of the fact that these issues are of practical significance in the real world today. Quinn has dropped her harassment suits against Gjoni for fear of retaliation by his online supporters. (Dewey, In the Battle of Internet Mobs vs. the Law, the Internet Mobs have Won, The Wash. Post (Feb. 17, 2016), <https://www.washingtonpost.com/news/the-intersect/wp/2016/02/17 /in-the-battle-of-internet-mobs-vs-the-law-the-internet-mobs-have-won/> [as of June 10, 2016].)]	

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	Commentator	Position	Comment	Committee Response
			Names and Personal Information Redacting sensitive PII such as Social Security numbers and financial account numbers in filed documents is mandatory for parties under existing rule l .20(b). However, PII is not limited to these specific identifiers. The court should not continue a privacy policy that may deter witnesses or plaintiffs from coming forward. Mandatory anonymization, with an exception that can be used at the court's discretion, is a reasonable and appropriate way to accomplish this goal. Recently, several statutes have expanded the use of pseudonyms in court records. Individuals now protected include those who have been unlawfully exposed to HIV infection [6] and plaintiffs in nonconsensual pornography cases.[7] By reminding judges of the discretion they have to protect privacy rights by anonymizing their opinions, proposed rule 8.90 acknowledges the privacy interests of individuals who are named in appellate court opinions and the need to protect sensitive information. Nevertheless, rule 8.90 should continue this trend of protecting the privacy of individuals involved	

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	Commentator	Position	Comment	Committee Response
			in the court system and require anonymity. [fn 6 Health & Saf. Code, § 120291, subd. (c)(3).] [fn 7 Civ. Code, § 1708.85, subds. (d), (f).] In *People v. Wish*,the court described in graphic detail the physical assault on Valerie Wish.[8] Not only is she identified by name, but the court also released her age, place of birth, current living situation, occupation, and the nature of her injuries. Many of these details may have been necessary to include in order to develop a complete opinion. But connecting the full name of the victim to so many details may also be experienced as an intrusion into the victim's privacy. Little could be gained by including her full name. Requiring anonymization under rule 8.90(b)(5)-by either using the victim's first name and last initial or her initials only· - would protect her and other victims from connections to past traumatic events. [fn 8 *People v. Wish* (Cal. Ct. App., Sept. 5, 2013, No. PA069613) 2013 WL 4759253.]	

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	Commentator	Position	Comment	Committee Response
			Rule 8.90(b)(11) and the Protection of Witnesses The privacy of witnesses is also of critical importance to protect but is not explicitly covered in Rule 8.90(b)(l)-(10). While adding an additional enumerated circumstance may be warranted in itself, at a minimum Rule 8.90(b)(11) can likely encompass witnesses from having their PII displayed in appellate opinions. Accordingly, the AGO recommends that the Advisory Committee Comment specifically identify witnesses as an example of who should be covered in rule 8.90(b)(l 1) by adding the phrase "such as witnesses" to the Advisory Committee Comment discussing rule 8.90(b)(l l). Rule 8.90(b)(1)-(10) replicates the circumstances where privacy considerations restrict remote electronic access to files under rule 8.83(c)(2)(A)-(J). The advisory committee believes that the same privacy considerations that limit remote access to records in these proceedings support privacy protections to specified categories of individuals in these proceedings when they are referred to in appellate court opinions. However, rule 8.90(b)(l l) adds another more	See response above.

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	Commentator	Position	Comment	Committee Response
			general category of individuals who should be protected when they are referred to in appellate opinions: "persons in other circumstances in which personal privacy interests support not using the person's name." Along with victims, witnesses are perhaps the group most at-risk when their PII is listed in an appellate opinion.[9] Although witnesses are often not directly involved in the conflict at issue in the litigation, mere association of their name to a case can be damaging. For instance, if an individual witness is named in a child molestation case, the completely innocent witness may have their name associated with child molestation in an online search. Requiring judges to anonymize the individuals listed in rule 8.90(b)(l)-(10), as well as individuals like witnesses that fit into rule 8.90(b)(l l), protects individuals where the release of their PII may lead to negative outcomes. [fn 9 Witness intimidation is neither a new nor an uncommon occurrence. (See e.g., McMurdo. Hells Angels Member Charged with Witness Intimidation, Havasu News (May 31, 2016), <http://www.havasunews.com/news/hells-	

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	Commentator	Position	Comment	Committee Response
			angels-member-charged-with-witness-intimidation/article _648c36f2-27b3- l 1e6-9f48-cb2deaed24c0.html> [as of June 10, 2016].)] **Ensuring Judicial Discretion** Altering rule 8.90 to require anonymization-subject to exception when the judge believes it proper to provide said information-does not hinder judicial discretion or limit a judge's evaluation of privacy concerns. Judges would retain the same autonomy over cases, but would be given clearer guidance on what otherwise could be a complicated process. Mandatory anonymization would lead to more consistent results and ensure the rule actually achieves its desired results to protect at-risk individuals from invasions of privacy. Privacy in court records is increasingly regulated at the state and federal levels. If strong privacy protections are not enacted for sources of information, such as appellate opinions, privacy protections may be implemented further down the chain-for example, on Lexis or Westlaw, or on search engines. One example of this type of indirect privacy restriction is the European	

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	Commentator	Position	Comment	Committee Response
			"Right to be Forgotten."[10] If these indirect privacy protections are enacted they inherently remove discretion from judges to decide whether or not a victim or witness should be anonymized in particular cases. For example, a "Right to be Forgotten" rule applied to Westlaw might require Westlaw employees to make a decision on anonymization of a witness that would have otherwise been decided by a judge. Strengthening rule 8.90 so as to require anonymization, subject to an exception, would deter these indirect privacy restrictions. [fn [10] Manjoo, 'Right to Be Forgotten' Online Could Spread, N.Y. Times (Aug. 5, 2015),'<http://www.nytimes.com/2015/08/06/technology/personaltech/right-to be-forgotten-online-is-poised-to- spread.html> (as of June 10, 2016).] **Alternatives to Mandatory Anonymization - A Presumption of Anonymity** As an alternative to mandatory anonymization, the AGO suggests altering the language of rule 8.90 to establish a rebuttable presumption that the court should anonymize for the circumstances listed in rule 8.90(b)(1)-	

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	Commentator	Position	Comment	Committee Response
			(10). While a rebuttable presumption of anonymization is a weaker standard than mandatory anonymization, it is preferable to the current formulation of rule 8.90 for the reasons stated above. Notably, current proposed rule 8.90 and the alternative suggestion of a rebuttable presumption share a lack of clear guidance. It is not certain that such a rule would have an effect on protecting privacy as neither approach would require appellate courts to change their practices. Thus, the best way implement rule 8.90's laudable intent of protecting privacy is to require anonymization and provide for an exception available at the judge's discretion.	
4.	California Protective Parents Association Connie Valentine, M.S., Policy Director,	A	Our organization assists non-abusive parents in custody disputes when their children disclose abuse by a parent or household member. Domestic violence is alleged in three quarters of California contested custody cases that go to mediation. However, the family court system has not been responsive to these children and often removes them from their non-abusive parents and places them with their abusive parents.	The committee appreciates the comments, and notes the commenter's agreement with the proposal.

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			Multiple studies show that when a batterer asks for custody, children are endangered in over 70% of such cases. The vast majority of family law litigants are self-represented and do not have a court record of their hearing or trial. Appeals are generally precluded for this population due the high cost of appealing a case and lack of transcripts due to no court record. In rare cases, a litigant may have transcripts and money for an appellate attorney. We are concerned about those cases in which an appellate decision becomes a published opinion. This is problematic for victims. Personal information about a child or adult victim may be found on line that perhaps they do not wish to have displayed. We would prefer that initials or first name and last initial be used in all published appellate decisions, just as in juvenile court cases. The importance of the published case is the judicial opinion and facts of the case, rather than the specific individuals involved in the case. There is no reason for the use of full	Requiring the use of initials or first name and last initial in all published appellate opinions would be a major substantive change to the proposal that was circulated for public comment. Under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without

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			names, which may cause distress or even danger in the future for the individuals, especially when domestic abuse is involved.	first being circulated for comment. The committee believes that adopting the proposal as modified, combined with publicity about the rule and training in drafting opinions to eliminate the unnecessary use of names or to anonymize names where appropriate, will have a significant effect in reducing the use of names where doing so would affect privacy interests. The committee intends to monitor the effectiveness of any new rules and will consider possible amendments in future rules cycles.
5.	Family Violence Appellate Project (FVAP) Jennafer Dorfman Wagner, Esq. Director of Programs	A	FVAP's comments relate to proposed Rule 8.90 "Privacy in opinions". FVAP strongly supports this proposed rule change, a purpose of which is to protect personal privacy and other legitimate interests of domestic violence survivors and their children. We would suggest, however, that the section (b)(1) of the rule be amended so the non-protected party could also be referred to by a pseudonym. This change is necessary because otherwise survivors and their children may remain readily identifiable as the former partner or child of the non-protected	The committee notes the commentator's support for the proposal. The committee discussed this suggestion but decided not to recommend this particular change. Instead, the committee is recommending adding a more general provision to subdivision (b) encouraging the use of protective nondisclosure where use of a person's name would defeat the objective of anonymity *for someone else* whose identity is to be protected under subdivision (b).

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			Judicial Council, Comments to Proposed Rule Changes Spring 2016 June 3, 2016 Page 2. [1] We also suggest making the same change to the sections (b)(6) – (9) of the rule relating to other types of protective orders so as to ensure the personal privacy of victims of other types of harassment are abuse are also protected. The exact changes we propose are as follows: [fn 1 Although the catch-all provision (11) speaks to "persons in other circumstances in which personal privacy interests supporting not using the person's name" we believe that provision may not be used to redact the names of non-protected parties where the purpose is to protect the privacy interests of the protected party, not the non-protected party. Furthermore, a change in the rules will make it more likely that all parties names will be redacted which will protect more survivors and their children.] **(b) Persons protected** To protect personal privacy interests, in all opinions, it is within the discretion of the reviewing court to refer to by first name and last initial—or, if the first name is unusual or other circumstances would	

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			defeat these objectives, by initials only—the following: (1) Children in all proceedings under the Family Code, and parties and protected persons in domestic violence–prevention proceedings; . . . (6) ~~Protected persons~~ Parties in civil harassment proceedings under Code of Civil Procedure section 527.6; (7) ~~Protected persons~~ Parties in workplace violence–prevention proceedings under Code of Civil Procedure section 527.8; (8) ~~Protected persons~~ Parties in private postsecondary school violence–prevention proceedings under Code of Civil Procedure section 527.85; (9) ~~Protected persons~~ Parties in elder or dependent adult abuse–prevention proceedings under Welfare and Institutions Code section 15657.03;	
6.	Office of County Counsel, County of Los Angeles Alyssa Skolnick, Principal Deputy County Counsel	AM	Re – Subd. (b) - Persons protected (b)(2) states: "Juveniles in juvenile court proceedings." Rather, it should include all persons, children and adults, referenced in juvenile court proceedings, including foster parents, relatives, and non-dependent minors,	The committee notes the commenter's support for the proposal if modified. The committee appreciates the comment and has modified proposed rule 8.90(b)(2) to be consistent with rule 8.401.

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			but not including persons acting in a professional capacity, e.g., social workers, doctors, therapists, etc.	
7.	Orange County Bar Assn (OCBA) Todd G. Friedland, President	AM	The OCBA does not believe the proposal adequately addresses the stated purpose because: (1) proposed Rule 8.90 leaves it to the absolute "discretion" of the reviewing Court to limit references to names without any criteria being made applicable, even though Rule of Court 8.401(a)(2) and Cal. Style Manual §5:9 make such protective references mandatory and; (2) no procedures are adopted for persons to request privacy protection nor to implement the Court's privacy protections for names. Form MC-120 also appears necessary for use in appellate Courts, but Rule 1.201(c) referencing the form appears applicable in any event.	The committee notes the commenter's support for the proposal if modified. The committee appreciates the comment and has modified proposed rule 8.90(b)(2) to be consistent with rule 8.401. Adding procedures for persons to request privacy protection or for courts to implement privacy protection would be an important substantive change to the proposal and would require circulation for comment under rule 10.22. Accordingly, the committee cannot recommend that the proposal be amended to include such procedures at this time, but will retain the suggestion for future consideration. The committee thanks the commenter for responding to this question.

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8.	State Bar of California Paul J. Killion, Chair, 2015-2016 Committee on Appellate Courts	AM	The Committee on Appellate Courts supports the proposed changes to the Rules of Court concerning Privacy In Documents, with one modification: add civil juror information to new rule 8.90 (discretionary use of protective nondisclosure in opinions). The Committee does not believe there is a need for form MC-120 or a similar form to be filed in appellate courts. The proposal to move subdivision (b) of rule 1.20(b) to become new rule 1.201, entitled "Protection of Privacy," appropriately addresses the stated purpose of increasing awareness of its requirements. On a collateral matter, the Committee notes a substantive ambiguity in this rule about the permissive or mandatory nature of Form MC-120, which a party "may file," "if the court orders. . . ." (Cal. Rules of Court, rule 1.20(b)(4).) The proposed new rule 8.41 appropriately addresses the stated purpose of clarifying that	The committee notes the agreement with the proposal if modified. The committee decided not to add the category of civil jurors to proposed rule 8.90 at this time because they appear to be adequately encompassed by the catch-all provision. The committee would be open to reconsidering this issue in the future if the catch-all provision proves inadequate. The committee thanks the commenter for the responses to its questions. The committee respectfully disagrees that proposed new rule 1.201 contains a substantive ambiguity. The rule (former rule 1.20(b)) describes the procedure a party that wishes to file a confidential reference list must follow. If a party filing a document containing identifiers also wants to file a confidential reference list, the party must obtain a court order to do so. If the party obtains the order, and chooses to file a confidential reference list, it must use form MC-120 for that purpose.

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			rule 1.201 [terminal digits] applies to appellate court filings. The proposed revision to form MC-120 to replace a reference to "1.20(b)" with the new "1.201" appropriately incorporates the proposed change to 1.20(b). In response to the request for specific comment: "Is there a need for form MC-120 or a similar form to be filed in appellate courts?" the Committee responds: No. Form MC-120 is redundant to rule 8.47(c) governing confidential filings in appellate courts. Social security and financial account numbers are confidential. (Rule 1.20(b)/1.201). Where confidential information is used, two sets of briefs must already be filed in the appellate court: one redacted and one unredacted under seal. (Rule 8.47(c).) Use of form MC-120 in appellate courts would do no harm (unless inadvertently disclosed) but it would create additional work for the practitioners with no added benefit. Proposed new rule 8.90 appropriately addresses the stated purpose to encourage	See response above.

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			expanded use of protective nondisclosure in opinions to protect individual privacy. While most litigation is embarrassing, there are instances where the identities of people innocently involved in the proceedings is highly sensitive and adds nothing to the opinion that a label or initial would not. The Committee believes that personal identifying information of civil jurors should be added to the list of protected persons for whom the reviewing court may consider protective nondisclosure.	
9.	Superior Court of Los Angeles County	A	Remittitur clerks should be alerted to this rule since the Opinions they receive may not have the full names.	The committee notes the support for the proposal and the suggestion that implementation include alerting remittitur clerks.
10.	Superior Court of San Diego County Mike Roddy, CEO	A	Q: Does the proposal appropriately address the stated purpose? Yes, but the proposed rule 8.90 change does not expressly extend to the Appellate Division (perhaps rule 8.887 should be similarly amended).	The committee notes the support for the proposal. Extending proposed rule 8.90 to the appellate division by possible amendment of rule 8.887 would be a major substantive change to the proposal that was circulated for public comment. Under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without first being circulated for comment. This suggestion will be retained for future consideration.

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			An apparent ambiguity in Rule 1.201(c) is noted: 1.201(c) initially provides that a party "may" file a reference list along with the redacted document, and then goes on to state that the party "must" use form MC-120 and that the list "must" identify each item of redacted information, etc. Q: Is there a need for form MC-120 or a similar form to be filed in appellate courts? Our Court of Appeal clerk advised that the MC-120 is not used. Generally, the record on appeal will not include documents not contained in the trial court file, so there may not be a need for MC-120 to be separately filed in appellate courts. Q: Would the proposal provide cost savings? No. Q: What are the implementation requirements for courts? None. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes. Additional comments: The proposal currently	The committee notes the comment regarding proposed rule 1.201(c), but does not perceive an ambiguity. The rule provides that a party *may* file a reference list, and that if the party does so, the party *must* use form MC-120. Filing the reference list is permissive; use of form MC-120 for that purpose is mandatory. See response to State Bar of California, Committee on Appellate Courts, above. The committee appreciates the commenter's responses to its questions and the explanation of court procedures on this point. The committee notes the commenter's concern that

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			includes Rule 1.201(b), which states in part: "The court clerk will not review each pleading or other paper for compliance with this provision." The court's support of this rule change would be contingent upon this language remaining within the rule as it would be overly burdensome and inappropriate for clerks to take on the responsibility of a party's compliance.	responsibility for compliance not be shifted to court clerks.

JUDICIAL COUNCIL OF CALIFORNIA
OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

CALIFORNIA'S ACCESS TO VISITATION GRANT PROGRAM

2016 FORUM MEETING NOTES AND COMMENTS

The enclosed comments and feedback notes consist of information generated from the Judicial Council of California, Operations and Programs Division, Center for Families, Children & the Courts (CFCC), Access to Visitation (AV) Grant Program 2016 Forum Meeting held on September 23, 2016, in San Francisco, California. The purpose of the meeting was to bring together court leadership, AV grant recipients, community-justice partners and other key stakeholders to discuss and explore ways to collaborate, coordinate resources within existing court-connected services, and dialogue about how to create institutional (i.e., courts, child support, Family Law Facilitator (FLF), Self-help, community agencies) "on ramps" (through coordination and collaboration) for increasing to noncustodial (NCP) parents parenting time through the AV grant funded services.

The information enclosed are general comments and suggestions and may possible consideration of next steps and/or ideas the AV grant program may or may not focus on under the direction of the Family and Juvenile Law Advisory Committee. The informational comments are based on: (1) the Forum evaluation forms from participants. We received a total of 20 completed forms and Judicial Council program staff specifically asked attendees (a) what would/do they propose as next steps resulting from the Forum Meeting and (b) if the AV program was to convene another meeting, what suggestions or ideas do they have for the next Forum Meeting; (2) feedback summary notes from the outside consultants; and (3) debriefing meetings and Judicial Council program staff notes.

PURPOSE OF MEETING

The goal of the federal Child Access and Visitation Grant Program funder (the federal Office of Child Support Enforcement, OCSE) is to have states increase their outreach efforts and build stronger connections between the state AV grant program and child support community, especially with child support regarding parenting time services for NCP parents. In addition, federal OCSE has placed an increased interest and greater emphasis on program efficiency, coordination of services, and increased attention to family safety. The 2016 Forum Meeting was designed as one means for addressing the federal directive to state AV programs, as well as addressing the new national focus on the Sense of Congress (PL 113-183, section 303) which encourages states to use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, AV grants, and Fatherhood and Healthy Marriage grants. The

meeting was also intended to strengthen and improve coordination and collaboration with child support that serves the target population of noncustodial parents seeking access to and visitation with their children.

ATTENDEES

The meeting included approximately 42 participants representing about 20 counties statewide. Participants involved representatives from the judiciary (3); F&J Committee co-chairs; grant recipient courts (current and past); local subcontractor service providers; community justice partners; Family Court Services Directors/Managers, Family Law Facilitators / Self-Help Centers staff; child support; and other subject matter experts. The meeting was facilitated by an outside consultant, Ms. Debra Pontisso, *Retired* Child Access and Visitation Program Manager with the federal Office of Child Support Enforcement, and two subject matter consultants with extensive experience and expertise regarding the AV funded services and domestic violence.

AGENDA

The meeting provided attendees with an overview regarding federal, state, and local AV grant programs. Discussion was held regarding the new Sense of Congress (Public Law 113-183) which has been focused on as a potential remedy for addressing parenting time issues for noncustodial parents and increasing parents access to their children through the establishment of parenting time orders. Participants were divided in the day into two separate Roundtable Groups, with key consultants assigned as facilitators. The separate groups consisted of: (1) AV funded services group; and (2) Child support, family law facilitator and self-help center group.

The two Roundtable group professionals focused on (1) identifying barriers and obstacles for increasing parenting time for noncustodial parents and (2) solutions and linkages that may help to create institutional "on ramps" for addressing parenting time for noncustodial parents. Additionally, based on the comments from the perspectives of both Roundtable group of professionals, six "centralized" themes appeared to emerge which may or may not be used and/or considered for additional discussion or strategic planning guidance.

1. Costs (e.g., affordability of services, ability to pay for services, funding limitations, availability of centers, including available hours and time slots for parents to visit, no money to hire an attorney);
2. Fear (e.g., of going to court, of the other parent, distrust of child support and the court, of the outcome for the case regarding custody and visitation);
3. Compliance (e.g., with the court order, the custody and visitation order, both parents compliance with the AV funded service rules and policies);
4. Lack of information, knowledge, and education about the various processes (e.g., complexity of the court system, child support services, custody and visitation, supervised visitation services process, referrals for service, understanding available resources, how are services coordinated);

5. Safety (e.g., domestic violence, mental illness, and substance abuse concerns, cultural barriers, available resources and support services, fear of other parent and financial means); and
6. Collaboration and available resources for parents, courts, and child support agencies.

GENERAL COMMENTS, PROPOSED NEXT STEPS, AND TIMELINE

As mentioned during the Forum Meeting, **t**he first directional step is for Judicial Council/CFCC program staff to **seek feedback and guidance** from the Judicial Council Family and Juvenile Law Advisory Committee **regarding any suggestions and direction for the grant program.**

Based on the feedback comments received, the following was provided regarding possible next steps:

- Convene another meeting and ensure inclusion of other key stakeholders. Consider perhaps regional meeting and/or Southern CA and Northern CA meeting (tentative 2017).
- Increase collaboration and education between the AV program, child support, and the courts (e.g., cross-over education and participation in AV, DCSS meetings/conferences).
- Survey attendees in advance with some key questions especially those who are unable to attend the next Forum meeting but would like to participate as part of the information process.
- Review existing legislation (2017). The question arose during the meeting regarding whether the funding priorities via the AV funded services can be changed?
    - The State of California is the only state that has a legislative statute determining what grant services can be funded by the federal Child Access and Visitation Grant Program.
    - Where are there gap in services?
    - Conduct a needs assessment to determine funding priority regarding the three program services. For example, conduct a survey regarding parent education services statewide and use information to help shape/determine what type/s of parent education programs would be beneficial for increasing noncustodial parents parenting time.
- Develop/consider use of funding to support more statewide resources, more global uses with the funds versus local uses, and/or create a statewide use for the funds (e.g., a statewide AV hotline, more centralized uniform activities (i.e., one court/agency could be the central office and serve as the "host" for other courts/agencies, or develop statewide parent education program that is accessible for all counties/child support designed to address NCP access to visitation issues).
- 2017 AV Grant Program RFP grant application (anticipate release in June 2017). Should the application be changed and/or additional ideas integrated that focus on collaboration and coordination of services or institutional statewide resources. For example, the grant application may request specific types of parent education services, or request/seek development of hotline, etc.)

Judicial Council of California
Operations and Programs Division
Center for Families, Children & the Courts

SUMMARY OF CALIFORNIA'S ACCESS TO VISITATION GRANT PROGRAM

- Under Family Code section 3204, the Judicial Council is required to submit an application to the federal Administration for Children and Families / Office of Child Support Enforcement to fund child custody and visitation programs.
- The new OCSE grant application reflects a greater emphasis on program efficiency, coordination of services, and increased attention to family safety. In addition, OCSE encourages states to review the guidance under Public Law 113–183 *(Sense of Congress Regarding Offering of Voluntary Parenting Time Arrangements)*, to support the establishment of parenting time arrangements including child support incentives, Access to Visitation Grants, and Health Marriage and Responsible Fatherhood Grants.
- California's state application plan will cover three fiscal years (FYs 2017–2019) of funding and any change to the plan during this period will require prior approval by the federal OCSE.

Federal Legislation: The "Grants to States for Access and Visitation" Program (42 U.S.C. 669b) was authorized by Congress through passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The **goal** of the federal Child Access and Visitation Grant Program is to enable states to establish and administer programs to support and facilitate noncustodial parents' access to and visitation with their children.

Allowable Services: States are permitted to use the grant funds to develop programs and to provide services that support the goal of the program. Family Code section 3204 limits the use of the grant funds to three types of programs: supervised visitation and exchange services, parent education, and group counseling services for noncustodial parents and their children.

Annual Funding: $10 million is divided among the states annually. This is a formula grant program based on the number of single parent households. California receives the maximum amount of eligible funds (approximately $940,000), which represents less than 10 percent of the total national funding. California is required under the grant program to provide a 10 percent state match share.

Funding Responsibilities: States are required to ensure the funds expended under the program respond to and support the program goals, which is to establish program to support and facilitate

noncustodial parents' access to and visitation of their children. States are required to monitor programs funded to ensure that programs are providing services authorized by law; being conducted in an effective and efficient manner; and have safeguards to ensure the safety of parents and children.

State Administration: Under Family Code section 3204(a), the Judicial Council is charged with administering and distributing California's share of federal Child Access and Visitation Grant funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement (OCSE). The council is also required by the state statute to determine the number and amounts of funding to the superior courts statewide.

- *Currently Funded Superior Courts.* A total of $770,000 was allocated to 11 superior courts representing 18 counties, involving 20 community-justice partners for federal fiscal years 2015–2016 through 2017–2018. The Judicial Council approved at its April 2014 meeting, effective federal FY 2015–2016, a new funding methodology under the grant program. Additionally, in FY 2012, the council approved the creation of an AV Stakeholder Working Group charged with (1) proposing new funding methodology options for federal FY 2014–2015 and (2) making final recommendations to the council on ways to streamline the grant application processes and develop alternatives that more equitably distribute the funding while maintaining program goals.
- *Grant funding eligibility.* Family courts throughout California are eligible to apply for and receive AV grant program funds, which are 100 percent federal funds. Under the state's allocation process, the grants are awarded to the superior courts through a statewide request for proposals grant application procedure. The family law divisions of the superior courts are required to administer the programs. Applicants involve multiple courts and counties with one court designated as the lead or administering court. Service provider agencies /community justice partners under the grant that wish to participate are not allowed to apply directly for these grants, but instead must do so as part of the courts AV grant application. Contract agreements are made only with the designated superior court.
- *Eligible Grant Recipients of Services.* Recipients of the grant funds are low-income, separated, separating, divorced, or never married parents and their children who are involved in custody and visitation proceedings under the Family Code. Funds can only be used to serve noncustodial fathers and noncustodial mothers.

(1) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and realigning the left margin of subparagraph (C) so as to align with subparagraphs (A) and (B) (as so redesignated);

(2) by inserting "(1)" after "(b)"; and

(3) by adding at the end the following:

"(2) An Indian tribe or tribal organization operating a program under section 455(f) shall be considered a State for purposes of authority to conduct an experimental, pilot, or demonstration project under subsection (a) to assist in promoting the objectives of part D of title IV and receiving payments under the second sentence of that subsection. The Secretary may waive compliance with any requirements of section 455(f) or regulations promulgated under that section to the extent and for the period the Secretary finds necessary for an Indian tribe or tribal organization to carry out such project. Costs of the project which would not otherwise be included as expenditures of a program operating under section 455(f) and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under a tribal plan or plans approved under such section, or for the administration of such tribal plan or plans, as may be appropriate. An Indian tribe or tribal organization applying for or receiving start-up program development funding pursuant to section 309.16 of title 45, Code of Federal Regulations, shall not be considered to be an Indian tribe or tribal organization operating a program under section 455(f) for purposes of this paragraph.".

Waiver authority.

(c) CONFORMING AMENDMENTS.—Section 453(f) (42 U.S.C. 653(f)) is amended by inserting "and tribal" after "State" each place it appears.

SEC. 303. SENSE OF THE CONGRESS REGARDING OFFERING OF VOLUNTARY PARENTING TIME ARRANGEMENTS.

(a) FINDINGS.—The Congress finds as follows:

(1) The separation of a child from a parent does not end the financial or other responsibilities of the parent toward the child.

(2) Increased parental access and visitation not only improve parent-child relationships and outcomes for children, but also have been demonstrated to result in improved child support collections, which creates a double win for children—a more engaged parent and improved financial security.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards; and

(2) States should use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, Access and Visitation Grants, and Healthy Marriage Promotion and Responsible Fatherhood Grants.