

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title

Juvenile Law: Notice of Juvenile Hearings via Electronic Mail (Implementation of AB 879)

Action Requested

Review and submit comments by January 22, 2016

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; approve form EFS-005-JV/JV-141; reletter form EFS-005

Proposed Effective Date

July 1, 2016

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Proposed by

Family and Juvenile Law Advisory

Committee

Hon. Jerilyn L. Borack, Co-chair

Hon. Mark A. Juhas, Co-chair

Information Technology Advisory Committee

Hon. Terence L. Bruiniers, Chair

Executive Summary and Origin

To implement Assembly Bill 879, the Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee jointly propose (1) amending rules 5.524, 5.534 and 5.708 of the California Rules of Court; (2) approving optional form EFS-005-JV/JV-141, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile)*; and (3) relettering form EFS-005 to EFS-005-CV. Effective January 1, 2016, AB 879 authorizes e-mailing notices of hearings in juvenile court under Welfare & Institutions Code sections 290.1-295. This proposal aligns notice provisions in the rules with this change in law and provides a form for obtaining consent to electronic notice of hearings from those persons entitled to notice of juvenile court hearings. This proposal would also make technical changes to rules 5.550 and 5.815 to update references to and eliminate inconsistencies with the statutes.

Background

Code of Civil Procedure section 1010.6 and trial court rules 2.250-2.261 authorize electronic filing and electronic service in civil matters. On July 1, 2014, the Judicial Council amended rule 5.522 to expressly enable the electronic filing of juvenile court documents in accordance with the trial court rules, specifically rules 2.252, et seq. However, trial court rule 2.251 on electronic

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

service was expressly excluded. As rule 5.522(b)(4) states, “[t]his rule does not incorporate the electronic service provisions in rule 2.251.” Rule 2.251 authorizes electronic service in those courts that allow or require electronic filing, and sets forth technical requirements for electronic service.

Legislative Framework

Assembly Bill 879 (Stats. 2015, ch. 219) amends six statutory provisions that govern how probation officers, social workers, and juvenile courts provide notice of a variety of different hearings in juvenile proceedings. The amended statutes authorize notice of specified hearings by electronic mail and allow persons entitled to notice in these hearings to provide an e-mail address to the court for this purpose. The amendments will be in force as of January 1, 2016, and the affected code sections will revert back to current law on January 1, 2019, in the absence of legislation to remove the sunset clause or to extend the changes for an additional time period.

The County Welfare Directors Association of California and the Los Angeles County Board of Supervisors jointly sponsored AB 879, which was authored by Assemblymember Autumn Burke. The intent of the bill, according to the Los Angeles County Board of Supervisors, was to “modernize the process of providing notice in child welfare dependency court hearings...help to ensure parties receive notice, and...help to provide more timely permanence, stability and safety for children.” The Judicial Council supported the legislation. There was no registered opposition.

The bill authorizes notice by e-mail in the following types of juvenile dependency hearings: detention, jurisdiction, disposition, review and termination of jurisdiction. In order to provide notice of hearing by e-mail, two essential conditions must be met: (1) the court and the agency providing notice must choose to allow notice by electronic mail; and (2) those persons who are entitled to notice of the hearing must have affirmatively consented to receive electronic mail notice using the EFS-005.

The amended statutes also authorize providing notice by e-mail, *in addition to* U.S. mail, for “selection and implementation” (permanency) hearings in relation to which a social worker will recommend the termination of parental rights.

There are additional protections for minors who are entitled to receive notice. Only minors who are 14 years of age or older may consent to receive notice of hearing by e-mail. When a minor gives such consent, his or her attorney must also consent to the minor receiving e-mail notice of hearing. Minors who are 16 or 17 years old may consent to receive notice of hearing only by e-mail, while minors who are 14 or 15 years old and provide this consent will receive notice by both electronic and regular mail. Finally, the provisions authorizing notice of hearing by e-mail do not apply when the court or agency providing notice knows or has reason to know that an Indian child is involved in the proceedings.

The Proposal

The provisions of AB 879 apply to a defined set of hearings conducted for children in the juvenile dependency system, and authorize notice by e-mail for those hearings specified in statute. The ability to receive notice of hearings by e-mail extends not only to parties to the case, but to all persons entitled to notice, which for juvenile court hearings can include legal guardians, siblings, caregivers, and others. Several of these juvenile court hearings are noticed by non-court entities, such as probation and child welfare departments. The advisory committees recommend making the following changes to the title 5 rules of court:

Rule 5.524(e)

Number the existing paragraph as (1) and add a paragraph (2) to require courts that choose to offer notice of hearing by e-mail to develop a process for obtaining consent from persons entitled to notice and a process for communicating with other agencies that provide notice when consent is given.

Rule 5.534

Add a subparagraph to rule 5.543(m) to indicate that in those counties in which notice via e-mail is offered, a person entitled to notice may use the EFS-005-JV/JV-141 to provide consent and an e-mail address to the court.

Rule 5.550(a)(6)

Delete subparagraph (6) in order to eliminate an outdated cross-reference to rule 5.667 and an inconsistency between rule 5.550 and Welfare and Institutions Code section 316.2 with regard to the effect of the failure of an alleged father to return a certified mail receipt of notice. In cases in which a continuance of a hearing pursuant to section 316.2, 352 or 354 is requested, rule 5.550(a)(6) states that “failure of an alleged father to return a certified mail receipt of notice as described in rule 5.667 does not, in and of itself, constitute good cause to continue a hearing.” This notice is one required to be provided to each alleged father “alleging that he is or could be the father of the child.” (§ 316.2(b).) Rule 5.667 does not require or describe any sort of notice via certified mail, so this appears to be an outdated reference. In addition, the enabling statute for this rule, section 316.2(c) states that “The court *may determine* that the failure of an alleged father to return the certified mail receipt *is not good cause* to continue a hearing pursuant to Section 355, 358, 360, 366.21, or 366.22.” (Emphasis added.)

Rule 5.708(n)(5)

Eliminate notice by mail requirement and make direct reference to notice of hearing being provided pursuant to Welfare and Institutions Code section 294.

Rule 5.815(d)

Delete reference in rule to Probate Code section 1511 and instead reference Welfare and Institutions Code section 294, in accordance with the language of the rule’s enabling statute.

The advisory committees recommend the following changes to Judicial Council forms:

EFS-005-JV/JV-141

The statutes amended by AB 879 specifically mandate that consent to receive notice of hearing by e-mail be provided on the EFS-005. The EFS-005 allows litigants and attorneys in civil litigation to provide an “electronic service address,” which does not necessarily equate to an electronic mail address. In addition, “electronic service” is a broader concept than notice of a hearing, which is the sole focus of AB 879. Therefore, the advisory committees propose creating a new optional form EFS-005-JV/JV-141, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile)*. This form would enable persons entitled to notice in juvenile court proceedings to give consent to receive notice by e-mail and provide the court with a current e-mail address. The EFS-005-JV/JV-141 would also allow persons entitled to notice in juvenile court proceedings to notify the court of a change in the e-mail address for receiving electronic notices of hearings. Finally, this form would allow persons entitled to notice in juvenile court proceedings who have previously provided consent to receive notices of hearing by email to withdraw that consent.

EFS-005 → EFS-005-CV

The advisory committees recommend relettering the current form EFS-005 to “EFS-005-CV” and preserving its content, since it remains applicable in the civil context.

Alternatives Considered

Although the legislation does not mandate that notice of juvenile court hearings be provided by e-mail, once a court and social service agency in a county have jointly decided to offer notice by e-mail, there are requirements in the code that dictate how consent must be given and place limits on the ability to notice exclusively by e-mail. Within these parameters, the committees considered an alternative proposal that would add language to the existing EFS-005 and EFS-010 to allow persons entitled to notice in juvenile hearings to provide consent to receive notice of hearing by e-mail, to provide an e-mail address to the court and to change their e-mail address on file with the court. The committees ultimately decided that creating a separate version of the EFS-005 specifically for juvenile hearings was the most efficient and expedient way to ensure a workable process in the juvenile court, without impacting current civil law forms.

Implementation Requirements, Costs, and Operational Impacts

Implementation may require changes in court procedures and training in those courts that choose to allow for notice of hearings via e-mail. Because the legislation contemplates consent being provided on a Judicial Council form, and in some cases entities other than the court are issuing notices of hearings (e.g., the probation department or social services agency), it will be important for the court to coordinate with its justice partners to ensure communication about the consent provided and that each entity has an up-to-date e-mail address on file.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the name “*E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile)*” and number “EFS-005-JV/JV-141” clear enough to signal that this is a juvenile form?
- Is the EFS-005-JV/JV-141 as drafted, sufficiently clear for the use of all persons who may be entitled to notice in a juvenile court hearing, including children?
- Is the information on the second page of the proposed EFS-005-JV/JV-141 sufficient to help those persons entitled to notice in a juvenile court hearing understand the requirements for receiving notice by e-mail?
- Is the proposed addition to rule 5.524(e) sufficient to ensure that courts will create a process and protocols for obtaining consent and communicating with justice partners, while still allowing for local court discretion in the exact parameters of the process?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708 and 5.815, at pages 6-9.
2. Proposed forms EFS-005-CV and EFS-005-JV/JV-141, at pages 10-13.
3. AB 879,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB879
4. Welfare and Institutions Code sections 290.1-295, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=290.1-297>
5. Welfare and Institutions Code section 316.1, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=305-324.5>

Rules 5.524, 5.534, 5.550, 5.708 and 5.815 of the California Rules of Court would be amended, effective July 1, 2016, to read:

1 **Rule 5.524. Form of petition; notice of hearing**

2
3 (a)–(d) * * *

4
5 (e) Notice of hearing-dependency (§§ 290.1, 290.2, 297, 338)

6
7 (1) When the petition is filed, the probation officer or social worker must serve a
8 notice of hearing under section 290.1, with a copy of the petition attached.
9 On filing of the petition, the clerk must issue and serve notice as prescribed in
10 section 290.2, along with a copy of the petition. CASA volunteers are entitled
11 to the same notice as stated in section 290.1 and 290.2.

12
13 (2) If the county, or city and county, and the court choose to allow notice by
14 electronic mail of hearings under sections 290.1-295, the court must develop
15 a process for obtaining consent from persons entitled to notice and
16 communicating with the entities that may provide notice of a hearing, when
17 consent is given.

18
19 (f)–(h) * * *

20
21 **Rule 5.534. General provisions-all proceedings**

22
23 (a)–(l) * * *

24
25 (m) Address of parent or guardian-notice (§ 316.1)

26
27 At the first appearance by a parent or guardian in proceedings under section 300 et
28 seq., the court must order each parent or guardian to provide a mailing address.

29
30 (1) The court must advise that the mailing address provided will be used by the
31 court, the clerk, and the social services agency for the purposes of notice of
32 hearings and the mailing of all documents related to the proceedings.

33
34 (2) The court must advise that until and unless the parent or guardian, or the
35 attorney of record for the parent or guardian, submits written notification of a
36 change of mailing address, the address provided will be used, and notice
37 requirements will be satisfied by appropriate service at that address.

38
39 (3) *Notification of Mailing Address* (form JV-140) is the preferred method of
40 informing the court and the social services agency of the mailing address of
41 the parent or guardian and change of mailing address.

42
43 (A) The form must be delivered to the parent or guardian, or both, with the
44 petition.
45

1 (B) The form must be available in the courtroom, in the office of the clerk,
2 and in the offices of the social services agency.

3
4 (C) The form must be printed and made available in both English and
5 Spanish.

6
7 (4) If the county, or city and county, and the court allow notice of hearings under
8 sections 290.1-295 by electronic mail, those persons who are entitled to
9 notice may provide consent to service of notice of court proceedings via e-
10 mail by signing *E-Mail Notice of Hearing: Consent, Withdrawal of Consent,*
11 *Address Change (Juvenile)* (form EFS-005-JV/JV-141).

12
13 (n)-(p) * * *

14
15 **Rule 5.550. Continuances**

16
17 (a) Cases petitioned under section 300 (§§ 316.2, 352, 354)

18
19 (1) The court must not continue a hearing beyond the time set by statute unless
20 the court determines the continuance is not contrary to the interest of the
21 child. In considering the child's interest, the court must give substantial
22 weight to a child's needs for stability and prompt resolution of custody status,
23 and the damage of prolonged temporary placements.

24
25 (2) Continuances may be granted only on a showing of good cause, and only for
26 the time shown to be necessary. Stipulation between counsel of parties,
27 inconvenience of parties, and pending criminal or family law matters are not
28 in and of themselves good cause.

29
30 (3) If a child has been removed from the custody of a parent or guardian, the court
31 must not grant a continuance that would cause the disposition hearing under
32 section 361 to be completed more than 60 days after the detention hearing
33 unless the court finds exceptional circumstances. In no event may the
34 disposition hearing be continued more than six months after the detention
35 hearing.

36
37 (4) In order to obtain a continuance, written notice with supporting documents
38 must be filed and served on all parties at least two court days before the date
39 set for hearing, unless the court finds good cause for hearing an oral motion.

40
41 (5) The court must state in its order the facts requiring any continuance that is
42 granted.

43
44
45 ~~(6) Failure of an alleged father to return a certified mail receipt of notice as~~
46 ~~described in rule 5.667 does not, in and of itself, constitute good cause to~~
47 ~~continue a hearing.~~

1
2 (b)–(c) * * *

3
4 **Rule 5.708. General review hearing requirements**

5
6 (a)–(m) * * *

7
8 (n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

9
10 The court must make the following orders and determinations when setting a
11 hearing under section 366.26:

12
13 (1) The court must terminate reunification services to the parent or legal guardian
14 and:

15
16 (A) Order that the social worker provide a copy of the child's birth
17 certificate to the caregiver as consistent with sections 16010.4(e)(5) and
18 16010.5(b)-(c); and

19
20 (B) Order that the social worker provide a child or youth 16 years of age or
21 older with a copy of his or her birth certificate unless the court finds
22 that provision of the birth certificate would be inappropriate.

23
24 (2) The court must continue to permit the parent or legal guardian to visit the
25 child, unless it finds that visitation would be detrimental to the child;

26
27 (3) If the child is 10 years of age or older and is placed in an out-of-home
28 placement for 6 months or longer, the court must enter any other appropriate
29 orders to enable the child to maintain relationships with other individuals
30 who are important to the child, consistent with the child's best interest.
31 Specifically, the court:

32
33 (A) Must determine whether the agency has identified individuals, in
34 addition to the child's siblings, who are important to the child and will
35 maintain caring, permanent relationships with the child, consistent with
36 the child's best interest;

37
38 (B) Must determine whether the agency has made reasonable efforts to
39 nurture and maintain the child's relationships with those individuals,
40 consistent with the child's best interest; and

41
42 (C) May make any appropriate order to ensure that those relationships are
43 maintained.
44

- 1 (4) The court must direct the county child welfare agency and the appropriate
 2 county or state adoption agency to prepare an assessment under section
 3 366.21(i), 366.22(c), or 366.25(b);
 4
- 5 (5) The court must ensure that notice is provided as follows required by section
 6 294:
 7
- 8 (A) ~~Within 24 hours of the review hearing, the clerk of the court must~~
 9 ~~provide notice by first class mail to the last known address of any party~~
 10 ~~who is not present at the review hearing. The notice must include the~~
 11 ~~advisements required by rule 5.590(b).~~
- 12
- 13 (B) ~~The court must order that notice of the hearing under section 366.26 not~~
 14 ~~be provided to any of the following:~~
- 15
- 16 (i) ~~Any parent whether natural, presumed, biological, or alleged-~~
 17 ~~who has relinquished the child for adoption and whose~~
 18 ~~relinquishment has been accepted and filed with notice under~~
 19 ~~Family Code section 8700; or~~
- 20
- 21 (ii) ~~An alleged parent who has denied parentage and has completed~~
 22 ~~item 2 of *Statement Regarding Parentage (Juvenile)* (form JV-~~
 23 ~~505).~~
- 24
- 25 (6) The court must follow all procedures in rule 5.590 regarding writ petition
 26 rights, advisements, and forms.
 27

28 **Rule 5.815. Appointment of legal guardians for wards of the juvenile court;**
 29 **modification or termination of guardianship**

30

31 (a)-(c) * * *

32

33 (d) Notice (§ 728(c))

34

35 The clerk must provide notice of the hearing to the child, the child's parents, and
 36 other individuals as required by ~~Probate Code section 1511~~ section 294.
 37

38 (e)-(g) * * *

39

Clerk stamps date here when form is filed.

DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

With this form, you can:

- Tell the court that you want to receive notices of hearings by electronic mail (give consent to e-mail notice) and give the court your e-mail address;
• Change the e-mail address where you want to receive notices of hearings; or
• Tell the court that you do not want to receive e-mail notices of hearing anymore (withdraw your consent to e-mail notice).

- 1 This is the first time I am giving consent to e-mail notice in this case and providing my e-mail address.
I want to change the e-mail address where I can receive a notice of hearing. I want to receive notices at the new email address below as of the following date:
I want to withdraw my consent to receive notices of hearing by e-mail as of the following date:

- 2 I am entitled to notice in a juvenile court hearing because I am a (choose one of the following):
Child who is the subject of the hearing, and I am: 14 or 15 years old 16 or 17 years old
Nonminor dependent who is the subject of the hearing
Parent or presumed/alleged parent (name):
Legal guardian (name):
Attorney of record in this case (name and party represented):
Grandparent/Other adult relative (name and relationship to subject of hearing):
Current caregiver for child or nonminor dependent (name):
Sibling of child who is subject of hearing (name and age, if minor):
Caregiver for sibling of child who is subject of hearing (name):
Attorney for sibling of child who is subject of hearing (name):
Other (name and relationship to subject of hearing):

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

- 3 I consent to receiving notices of hearings at the following e-mail address (please print carefully):
Please keep my e-mail confidential
I withdraw my consent to receiving notices of hearings by e-mail. I am attaching a copy of the Judicial Council form, Notification of Mailing Address (JV-140) with my current mailing address.

Date:

Type or print name

Signature

If you are a child filling out this form, your attorney must also give consent to the court for you to receive e-mail notices of hearings.

Date:

Type or print name

Signature

Child's name: _____

If your court and social services agencies offer e-mail notice of hearing, and you are entitled to receive notice of a hearing under Welfare & Institutions Code sections 290.1-295:

- You can (but do not have to) agree to receive notices of hearings by e-mail.
- If you want to receive notices of hearings by e-mail, you must fill out and sign this form, the EFS-005-JV/JV-141, and return it to the court.
- The e-mail address you provide will be used by the court and the social services agency to provide notice of a hearing under sections 290.1-295 of the Welfare & Institutions Code. These hearings include an initial hearing to decide whether to remove a child from the custody of his or her parents, the review hearings in juvenile dependency cases, and hearings to determine the permanent placement for a child, among others.
- The e-mail address you provide will be used to notify you of hearings unless and until you notify the court of a change in e-mail address.
- You may ask the court or social services agency providing notice to keep your e-mail address confidential by checking the box next to your e-mail address.
- **For a hearing at which a social worker will recommend the termination of parental rights over a child**, notice of the hearing must still be made by mail or in person. An e-mail notice of this type of hearing can only be in addition to another type of notice.
- If you are a child, **age 14 or 15**, and consent to receive notices of hearing by e-mail, **your attorney must also sign this form** and provide consent for you to receive notices of hearings by e-mail. Your consent means that you will receive notices of hearings by e-mail *in addition* to notice by regular mail.
- If you are a child, **age 16 or 17**, and consent to receive notices of hearing by e-mail, **your attorney must also sign this form** and provide consent for you to receive notices of hearings by e-mail. **Your consent means that you will only receive notices of hearings by e-mail.**
- You may also use this form to notify the court of a **change in e-mail address** using this form.
- You may also use this form to **withdraw your consent** to receive notice of hearings. If you have already given the court or social service agency an e-mail address and agreed to receive notice of hearings by e-mail, you can use this form to tell the judge that you no longer want to receive notices of hearing by e-mail. **If you decide to withdraw your consent, please fill out and attach a copy of the Judicial Council form *Notification of Mailing Address (JV-140)* with your current mailing address when you submit this form.**

