



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2011

Title	Agenda Item Type
Protective Orders: Rule Changes to Reflect and Implement Recent Legislation	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 2.503 and 3.1152 and repeal rule 3.1153	January 1, 2012
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	October 3, 2011
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends the amendment of rule 2.503 of California Rules of Court to add records in private postsecondary school violence prevention proceedings to the list of similar types of cases whose records are available electronically only at the courthouse. The committee also recommends that the amendment of rule 3.1152 to make the procedures for requesting protective orders to prevent civil harassment, workplace violence, private postsecondary school violence, and elder or dependent adult abuse similar to the procedures for requesting orders to prevent domestic violence. The committee recommends the repeal of rule 3.1153 because recent legislation clarifies the matters addressed in that rule.

Recommendation

The Civil and Small Claims Advisory Committee¹ recommends that the Judicial Council, effective January 1, 2012:

1. Amend rule 2.503 of the California Rules of Court to provide that records in private postsecondary school violence prevention proceedings are available electronically only at the courthouse;
2. Amend rule 3.1152 to provide that the procedures in civil harassment, private postsecondary school violence, and workplace violence prevention proceedings are similar to the procedures applicable in domestic violence prevention proceedings and consistent with recent case law; and
3. Repeal rule 3.1153 on the ability of minors to appear without counsel because this ability has been clarified in recent legislation.

The text of the amended and the repealed rules is attached at pages 7–9.

Previous Council Action

The Judicial Council adopted rules on public access to electronic trial court records in 2002. These rules provide that access to certain specified types of electronic records may be available only at the courthouse. The access rules have been amended several times, including amendments in 2009 to rule 2.503 adding records in minor's compromise proceedings to the list of types of electronic records for which access is available only at the courthouse.

The council previously adopted a rule on civil harassment² that was amended in the 1990s to apply also to workplace harassment. This rule contains provisions about the time for service of petitions and responses in these proceedings. The council has adopted a separate rule on appearances of minors without counsel in restraining order proceedings.³

In 2010, the Judicial Council sponsored Assembly Bill 1596⁴ that will result in the comprehensive revision of the protective order statutes when it becomes effective on January 1, 2012.⁵

¹ In developing this proposal, the committee was assisted by the Protective Orders Working Group, which is co-chaired by Judges Jerilyn L. Borack and Patricia M. Lucas and consists of members from the Civil and Small Claims, Criminal Law, and Family and Juvenile Law Advisory Committees.

² Formerly rule 363; currently rule 3.1152.

³ Formerly rule 364; currently rule 3.1153.

⁴The text of AB 1596, as chaptered, may be viewed at www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1551-1600/ab_1596_bill_20100930_chaptered.pdf.

Rationale for Recommendation

To be consistent with previous Judicial Council policy providing limited access to protective order records and to implement Assembly Bill 1596, the rules on remote public access to electronic records and on protective orders should be amended and the rule on appearances of minors should be repealed, as described below.

Amend rule 2.503

Rule 2.503 concerns remote access to electronic court records. Subdivision (c) lists various records that are to be made available only at the courthouse. This list currently includes all protective order records except those under the newly created private postsecondary school violence prevention statute, Code of Civil Procedure section 527.85.⁶

Protective order records are included in rule 2.503(c) because the sensitive nature of the information they contain makes them more suitable for inspection only at the courthouse. The Civil and Small Claims Advisory Committee recommends that the records of private postsecondary school violence prevention proceedings be added to the list in (c) because the same kinds concerns about privacy and sensitivity apply to these records.

Amend rule 3.1152

Rule 3.1152 on protective orders contains provisions relating to the scheduling of hearings, the service of the orders, and the time for filing and serving responses. It also provides that there is no requirement to submit memorandums with petitions for protective orders. This rule currently applies only to civil harassment and workplace violence prevention proceedings.

Because AB 1596 will soon become effective, changes in the rule are needed. Some of these changes are purely technical—such as changing “defendant” to “respondent” to be consistent with the language used in all the protective order statutes under AB 1596. Because all the protective order statutes will have specific, uniform provisions regarding the scheduling of hearings, subdivision (a) of the rule is no longer necessary and should be deleted.

Additional amendments to rule 3.1152 would expand the rule to apply to protective order proceedings in cases involving elder and dependent adult abuse and private postsecondary school violence. For all four types of proceedings covered by the amended rule, procedures would be established that are similar to the domestic violence prevention procedures and consistent with recent case law, as described below.

⁵ A copy of the Judicial Council report recommending the protective order legislation is available at www.courts.ca.gov/documents/121509item5.pdf.

⁶ Section 527.85 was added by Assembly Bill 188 (Stats. 2009, ch. 566, § 1).

First, rule 3.1152(c) would be modified to state that requests for protective orders, notices of hearing, and temporary restraining orders must be personally served on respondents at least five days before the hearing, unless the court for good cause orders a shorter time. This statement of the law reflects time for service provided in the amended statutes that will go into effect under AB 1596 on January 1, 2012.

Second, rule 3.1152(d) would be amended to modify the provision on serving responses to protective orders, to state that a response may be written or oral; this reflects the holding in *Ross v. Figueroa* (2006) 139 Cal.App.4th 856 for domestic violence cases. As in Family Code section 243, the amended rule would also provide that if a response is served at least two days before the hearing, the petitioner would not be entitled to a continuance based on the response. These provisions would replace the statement in the current version of the rule that the petition “must be filed and delivered to plaintiff or plaintiff’s attorney no later than 48 hours before the hearing.”

Third, a new subdivision (e) would state that a respondent may request continuance of the hearing upon a showing of good cause. This reflects the holding in *Freeman v. Sullivant* (2011) 192 Cal.App.4th 532. The amended rule would also provide that if the court grants the continuance, any temporary restraining order that has been granted would remain in effect until the end of the continued hearing, unless otherwise ordered by the court.

Repeal rule 3.1153

Rule 3.1153 provides that minors may appear without counsel for the purpose of obtaining or objecting to various protective orders. This rule implemented Code of Civil Procedure section 374. The rule, however, is no longer necessary. Under AB 1596, cross-references to section 374, stating that minors may appear without counsel, have been included in the appropriate protective order statutes. Hence, the attached rule proposal includes the repeal of rule 3.1153.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment between April 21 and June 30, 2011. Four comments were received.⁷ The commentators consisted of two superior courts, a local bar association, and an individual. A chart summarizing the comments and the responses is attached at page 10.

Two commentators supported the proposal without any specific comment. One individual requested clarification about whether the list in rule 2.503(b)(1) is accessible from a home

⁷ A fifth comment was received on SPR11-61 (this rules proposal), but appears actually to relate to some other proposal concerning family law forms.

computer. As explained in the response to the comment, the rule provides that records on the list are not remotely accessible, which means that they would not be available on a home computer. Finally, a court suggested adding a provision about protection for pets that is beyond the scope of the rules proposal that was circulated. After considering the comments, the committee recommends that the Judicial Council approve the rules proposal as circulated.

Although rule 2.503 on public access to electronic records might be left unchanged, that is not desirable. If the amendments are not made to rule 2.503(c) as proposed by adding postsecondary school violence prevention records to the list of records that are not remotely accessible to the public, these records will be treated differently from all the other similar types of records; as a result, they will be given less protection. The implementation required to include such records in the category of those available only at the courthouse appears to be minor and there are benefits to parties and the courts from treating all protective order records in electronic form in the same manner.

Similarly, although rule 3.1153 might be left unchanged, that too is not desirable. If the recommended changes to rule 3.1153 are not made at this time, there will be adverse consequences for litigants and the courts. Different types of protective orders will be treated differently—in particular, the time for service of responses will vary for different types of protective orders. As mentioned above, under current law, for domestic violence cases, there is no requirement that a written response be served before the hearing; however, Family Code section 243 provides that if a response is served at least two days before the hearing, the petitioner is not be entitled to a continuance based on the response. On the other hand, under current rule 3.1153, for civil harassment and workplace violence cases, the time for service of responses is 48 hours before the hearing; the rule is silent on continuances. Finally, for cases involving allegations of elder and dependent adult abuse and private postsecondary school violence, there is currently no rule specifying the time for serving responses or providing expressly for continuances; thus, for those types of cases, the law is ambiguous.

The proposed amendments to rule 3.113 that are modeled on Family Code section 243 will make all the times for service of responses to protective orders consistent with one another effective January 1, 2012, when AB 1596 becomes effective. In addition, the amendments to rule 3.1153 will provide clear authority for continuances in all types of protective order cases. The amendments will also provide explicit protection for petitioners in the applicable types of protective order proceedings by providing that if the court grants a continuance, any temporary restraining order that exists remains in effect until the end of the continued hearing unless otherwise ordered by the court.

Finally, although rule 3.1153 on the appearance of minors without counsel might be left unchanged, that rule is no longer necessary after the enactment of AB 1596. There appears to be no reason to leave it in the rules, and eliminating it should not impose any burdens or costs.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require some minor implementation to ensure that records in private postsecondary violence prevention cases are not available remotely. However, these records are not voluminous; and treating electronic records in all types of protective order cases the same way should be easier and more economical than treating them differently. Likewise, some implementation will be needed to reflect that the times for service of responses will be consistent for all protective orders, but it should be easier and more efficient to treat all such responses similarly. So although some operational changes will need to be made as a result of the rule amendments, the amendments should improve and simplify court practices, create efficiencies, and reduce costs.

Attachments

1. Cal. Rules of Court, rules 2.503, 3.1152, and 3.1153, at pages 7–9
2. Chart of comments and responses, at page 10

Rules 2.503 and 3.1152 of the California Rules of Court are amended and rule 3.1153 is repealed, effective January 1, 2012, to read as follows:

1 **Rule 2.503. Public access**

2
3 **(a)–(b) * * ***

4
5 **(c) Courthouse electronic access only**

6
7 A court that maintains the following records in electronic form must provide
8 electronic access to them at the courthouse, to the extent it is feasible to do so, but
9 may provide remote electronic access only to the records governed by (b):

- 10
11 (1) Records in a proceeding under the Family Code, including proceedings for
12 dissolution, legal separation, and nullity of marriage; child and spousal
13 support proceedings; child custody proceedings; and domestic violence
14 prevention proceedings;
15
16 (2) Records in a juvenile court proceeding;
17
18 (3) Records in a guardianship or conservatorship proceeding;
19
20 (4) Records in a mental health proceeding;
21
22 (5) Records in a criminal proceeding;
23
24 (6) Records in a civil harassment proceeding under Code of Civil Procedure
25 section 527.6;
26
27 (7) Records in a workplace violence prevention proceeding under Code of Civil
28 Procedure section 527.8;
29
30 ~~(7)~~(8) Records in a private postsecondary school violence prevention proceeding
31 under Code of Civil Procedure section 527.85;
32
33 ~~(8)~~(9) Records in an elder or dependent adult abuse prevention proceeding under
34 Welfare and Institutions Code section 15657.03; and
35
36 ~~(9)~~(10) Records in proceedings to compromise the claims of a minor or a person
37 with a disability.

38
39 **(d)–(i) * * ***

1 **Rule 3.1152. Requests for protective orders to prevent civil harassment, and**
2 **workplace violence, private postsecondary school violence, and elder or dependent**
3 **adult abuse**

4
5 **(a) Scheduling of hearing**

6
7 ~~On the filing of a petition for an injunction under Code of Civil Procedure section~~
8 ~~527.6 or 527.8, a hearing must be set in accordance with the requirements of~~
9 ~~subdivision (d) of section 527.6 or subdivision (f) of section 527.8.~~

10
11 **(a) Application**

12
13 This rule applies to requests for protective orders under Code of Civil Procedure
14 sections 527.6, 527.8, and 527.85, and Welfare and Institutions Code
15 section 15657.03.

16
17 **(b) No memorandum required ~~Temporary restraining order~~**

18
19 Unless ordered by the court, no memorandum is required in support of or in
20 opposition to a request for a protective order. ~~A temporary restraining order may be~~
21 granted in accordance with the provisions of Code of Civil Procedure section
22 527.6(e) or 527.8(e), but unless otherwise ordered no memorandum is required.

23
24 **(c) Service of ~~petition~~ requests, notices, and orders**

25
26 ~~The petition and order to show cause, request for a protective order, notice of~~
27 ~~hearing, and any temporary restraining order, must be personally served on the~~
28 ~~defendant respondent at least five days before the hearing, unless the court for good~~
29 ~~cause orders a shorter time. Service must be made in the manner provided by law~~
30 ~~for personal service of summons in civil actions.~~

31
32 **(d) Response by ~~defendant~~**

33
34 The response to a request for a protective order may be written or oral, or both. If ~~A~~
35 a written response by defendant must be filed and delivered to plaintiff or
36 plaintiff's is served on the petitioner or, if the petitioner is represented, on the
37 petitioner's attorney no later than 48 hours at least two days before the hearing-, the
38 petitioner is not entitled to a continuance on account of the response.

39
40 **(e) Continuance**

41
42 A respondent may request continuance of the hearing upon a showing of good
43 cause. If the court in its discretion grants the continuance, any temporary

1 restraining order that has been granted remains in effect until the end of the
2 continued hearing unless otherwise ordered by the court.

3
4
5 **~~Rule 3.1153. Minors may appear without counsel to seek specified restraining~~**
6 **~~orders~~**

7
8 ~~A minor, accompanied by a duly appointed and acting guardian ad litem, may be~~
9 ~~permitted to appear in court without counsel for the limited purpose of obtaining or~~
10 ~~opposing:~~

- 11
12 ~~(1) An injunction or temporary restraining order or both to prohibit harassment under~~
13 ~~Code of Civil Procedure section 527.6;~~
14
15 ~~(2) An injunction or temporary restraining order or both against violence or a credible~~
16 ~~threat of violence in the workplace under Code of Civil Procedure section 527.8;~~
17
18 ~~(3) A protective order under Family Code section 6200 et seq.; or~~
19
20 ~~(4) A protective order under Family Code sections 7710 and 7720.~~

21
22 ~~In making the determination concerning allowing appearance without counsel, the court~~
23 ~~should consider whether the minor and the guardian have divergent interests.~~

SPR11-61**Protective Orders: Rule Changes to Reflect and Implement Recent Legislation** (amend Cal. Rules of Court, rules 2.503 and 3.1152; repeal rule 3.1153)

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

	Commentator	Position	Comment	Committee Response
1.	Roberta Fitzpatrick	NI	Pg. 4...: It is not clear if the list of case types may or may not be accessible on a home computer or other “remote electronic device.”	The list on page 4 (California Rules of Court, rule 2.503(b)(1)–(10)) is a list of records available only at the courthouse; those records are not available on a home computer or other remote electronic device.
2.	Orange County Bar Association By John Hueston, President	A	No specific comments.	No specific response required.
3.	Superior Court of Monterey County By Minnie Monarque Deputy Court Executive Officer	A	No specific comments.	No specific response required.
4.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	The requests for protective orders to prevent Civil Harassment, and Elder or Dependent Adult Abuse should include protection for pets and/or service animals.	This suggestion is beyond the scope of the present rules proposal.

