



JUDICIAL COUNCIL OF CALIFORNIA

RULES COMMITTEE

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RULES COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

Thursdays, December 8, 2022

4:10 - 5:30 p.m.

Videoconference

Advisory Body Members Present: Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Ms. Rachel W. Hill, Mr. Shawn C. Landry, Hon. Kimberly Merrifield, and Hon. David Rosenberg

Advisory Body Members Absent: Hon. Samuel K. Feng, Hon. Glenn Mondo, and Mr. Maxwell Pritt.

Staff Present: Ms. Anne M. Ronan and Ms. Benita Downs

Others Present Heather Anderson, James Barolo, Audrey Fancy, Michael Giden, Sarah Fleischer-Ihn, Tracy Kenny, Eric Long, Daniel Richardson, Sarah Namnama Saria, Christy Simons, and Marymichael Smrdeli

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:10 p.m., and Ms. Downs took roll call.

Approval of Minutes:

The committee unanimously approved the minutes of the November 1, 2022; and open session of November 16, 2022, Rules Committee meetings.

DISCUSSION AND ACTION ITEMS (ITEMS 1-6)

Item 01

Appellate Procedure: Costs on Appeal

The committee reviewed a recommendation from the Appellate Advisory Committee proposing amending the rules governing costs on appeal in civil actions to clarify that the general rule for awarding costs to the prevailing party is subject to exception for statutes requiring a different or additional finding, determination, or analysis. The proposal was responsive to a recent Supreme Court decision and the constitutional principle that rules of court may not be inconsistent with statute.

Action: *The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.*

Item 02

Appellate Procedure: Reporter's Transcripts

The committee reviewed a recommendation from the Appellate Advisory Committee proposing amending several rules relating to the format of reporter's transcripts and borrowing the record on appeal. Code of Civil Procedure section 271 required that as of January 1, 2023, a reporter's transcript must be delivered in electronic form unless a party or person entitled to the transcript requests it in paper format. In recognition that most reporter's transcripts would be in electronic form, the proposal would allow the transcripts to be in a single volume in most cases and would allow a party lending the record to another party to ask the court reporter to provide a read-only electronic copy of the reporter's transcript to the borrowing party rather than sending its copy of the reporter's transcript to the borrowing party. In addition, the proposal clarified that, when it is submitted by a party in lieu of depositing the estimated cost of the transcript with the court, a certified transcript must comply with specified format requirements. The proposal originated with suggestions from the California Court Reporters Association

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.

Item 03

Unlawful Detainer: Opportunities for Settlement Before Trial

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee proposing a new rule and a new form for optional use in unlawful detainer cases to promote settlement opportunities through the use of alternative dispute resolution processes. The new rule states a policy favoring at least one opportunity for participation in some form of pretrial dispute resolution, and will allow a court to shorten the existing deadline for submitting a mandatory settlement conference statement. The proposed new form will allow parties to submit any settlement agreement they reached to the court and ask for either an order without judgment or a stipulated judgment.

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.

Item 04

Criminal Procedure: Mental Competency Proceedings

The committee reviewed a recommendation from the Criminal Law Advisory Committee proposing amendments to rule 4.130 of the California Rules of Court to reflect the renumbering of Penal Code section 1001.36, statutory changes to Penal Code section 1369(a) regarding treatment with antipsychotic medication of a defendant found incompetent to stand trial, and minor, nonsubstantive technical revisions.

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.

Item 05

Criminal Procedure: Petition for Resentencing Based on Health Conditions due to Military Service

The committee reviewed a recommendation from the Criminal Law Advisory Committee proposing revisions to the optional Judicial Council petition for resentencing based on health conditions due to military service to reflect statutory changes to Penal Code section 1170.91(b). The section was amended to delete the requirement that the petitioner was sentenced before January 1, 2015, and to add exclusions for petitioners convicted of specified serious and violent felony offenses and offenses requiring sex offender registration. The committee also recommended technical and formatting revisions to comply with Judicial Council form standards.

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.

Item 06

Criminal Procedure: Defendant's Financial Statement

The committee reviewed a recommendation from the Criminal Law Advisory Committee proposing revisions to the optional Judicial Council form used by defendants to state financial eligibility for appointment of counsel and record on appeal at public expense to reflect the repeal of Penal Code section 987.8 by Assembly Bill 1869 (Stats. 2020, ch. 92). The repeal of section 987.8 removes the authority of the court to make a postproceeding determination of the defendant's ability to pay and to order the defendant to reimburse the county for the costs of the public defender.

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.

Item 07

Juvenile Law: Changes to Implement New Disposition for Serious Offenses

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee proposing adopting three rules of court, amending four rules of court, and repealing one rule of court, as well as approving one optional form, revising eight forms, and revoking one form to reflect the closure of the Department of Juvenile Justice and create new procedures to assist courts in using the new secure youth treatment facility disposition. These revisions will become effective on July 1, 2023, to align with the closure of the Division of Juvenile Justice on June 30, 2023.

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.

Item 08

Juvenile Law: Sex Offender Registration Termination

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee proposing the adoption of three mandatory forms and the approval of two optional forms to be used to petition the juvenile court for termination of sex offender registration for persons required to register as sex offenders as a result of a juvenile adjudication and commitment to the Division of Juvenile Justice. All

five forms were adapted from existing forms that were approved by the council for use in criminal courts and became effective July 1, 2021.

Action: *The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.*

Item 09

Juvenile Law: Transfer of Jurisdiction to Criminal Court

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee proposing to amend one rule and revise one form to implement recent legislative changes requiring that the court find by clear and convincing evidence that a youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court. Assembly Bill 2361 (Bonta; Stats. 2022, ch. 330) amended Welfare and Institutions Code section 707 to include that standard of proof, and to require the court to set forth the basis in an order entered upon the minutes for making that finding.

Action: *The committee unanimously approved the proposal for circulation on the regular winter cycle through January 20.*

Item 10

Juvenile Law: Technical Changes to Juvenile Rules and Forms

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee proposing revising four forms to conform to recent statutory changes to section 300 of the Welfare and Institutions Code enacted by Senate Bill 1085 (Kamlager; Stats. 2022, ch. 832). The committee also had identified an error that is technical in nature in a form recently updated in a proposal implementing the federal Family First Prevention Services Act. The committee recommended that these revisions go into effect as soon as possible, without prior circulation, because they are minor, nonsubstantive changes unlikely to create controversy that merely make the forms conform to statute.

Action: *Action: The committee unanimously approved Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the January council meeting.*

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 4:40 p.m.

C L O S E D S E S S I O N

Pursuant to California Rules of Court, rule 10.75(d)(3 & 10)

Item 01

Judicial Council Jury Instructions: Public Access and Publication

Action:

Adjourned closed session at 5:35.

The open session minutes were approved by the advisory body on February 16, 2023.