

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR12-18

Title	Action Requested
Family Law: Revisions to Adoption Forms	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms ADOPT-200 and ADOPT-215	January 1, 2013
Proposed by	Contact
Family and Juvenile Law Advisory Committee,	Chris Cleary
Hon. Kimberly J. Nystrom-Geist, Cochair	christine.cleary@jud.ca.gov
Hon. Dean Stout, Cochair	415-865-8792

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes to revise two Judicial Council forms for use in adoption proceedings. Changes are needed to conform to new legislation, Assembly Bill 687, which allows the court to issue orders of adoption nunc pro tunc in certain cases. Other proposed changes respond to many suggestions the Administrative Office of the Courts (AOC) has received from courts and other users to make the forms both easier to use and more comprehensive.

Background

In October 2011, Assembly Bill 687 added section 8601.5 to the Family Code, which allows the court to issue an order of adoption nunc pro tunc “when it will serve public policy and the best interests of the child, such as cases where adoption finalization has been delayed beyond the child’s 18th birthday due to factors beyond the control of the prospective adoptive family and the proposed adoptee.” (Fam. Code, § 8601.5(a).) A request for a nunc pro tunc order must be stated in the adoption request (ADOPT-200) or on an amendment to the request and needs to include facts in support of such an order. While not explicitly noted in the legislation, presumably the nunc pro tunc order should be reflected in the adoption order (ADOPT-215) as well.

In addition to these legislatively driven changes, many form users have submitted comments requesting changes to these adoption forms. Some of these requests apply to the same forms that

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need revision to reflect the recent legislation; fulfilling these requests at the same time would make the forms more effective and helpful to the courts and the parties.

The Proposal

- This proposal for revisions to two adoption forms is necessary because it
 1. Is urgently needed to conform to the law (passage of AB 687); and
 2. Is responsive to identified concerns (lists of prior requests from users of the forms).
- The proposal would add language to two adoption forms, ADOPT-200 and ADOPT-215, that is responsive to legislative changes in Assembly Bill 687 that allow the court to make a nunc pro tunc adoption order under certain circumstances. It would also reorganize and reword parts of those same forms to clarify or correct sections that have caused confusion to form users.
- The proposal would benefit the judicial branch, along with attorneys and self-represented litigants who use the forms, by making the forms current with recent law and by clarifying them to make them more effective and user friendly.

Specific changes proposed

The following forms are proposed to be revised as follows:

Adoption Request (form ADOPT-200). Proposed changes to this form include the following:

- Under item 2, the check box for “Relative” has been removed and checkboxes for “Agency” and “Independent” have been modified to include subcategories for “Relative” and “Nonrelative”. This responds to suggestions from the California Department of Social Services noting that the “Relative” box is causing the Department problems because it is not a “type” of adoption, but rather, relative adoptions are either “Independent” or “Agency” adoptions.
- Under item 7, the “*If yes*” statement has been modified to read: “*If yes, attach Form ADOPT-220, Adoption of Indian Child, along with Forms ICWA-10(A), Indian Child Inquiry Attachment, and ICWA-20, Parental Notification of Indian Status, which must be attached to every adoption request.*” This responds to some apparent confusion that resulted in forms ICWA-10(A) and ICWA-20 being left off of adoption requests where ADOPT-220 was attached.
- Former items 14 through 18 have been combined into one item 14 with the heading “Consent for Adoption.” Former items 14 through 18 all applied to various issues involving consent to adoption. This combined section should clarify the various means available to dispense with consent.
- In item 14(b), formerly item 15, the following statement has been added under the “Name” lines: “*Enter the date of the court order ending parental rights and attach a copy of the order.*” There have been complaints that it is unclear what date is needed and that

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the termination of parental rights must be completed before the adoption can be granted, leading to extra work for social workers having to contact petitioners to make needed corrections.

- Item 14(d) (formerly item 17) now includes checkboxes for the two statutory bases on which the court can grant an application for freedom from parental custody and control. First, this revision (formerly found under item 18), clarifies that the operative statute is stated in the conjunctive: “Each of the following persons with parental rights has not contacted the child and has not paid for the child’s care, support, and education for one year or more when able to do so.” This proposed change clarifies that consent can be dispensed with where for one year or more there has been a failure to communicate **and** a failure to pay for the child’s care, support, and education when able to do so. (Fam. Code, § 8604(b).) Second, item 14(d)(2) is a new statement on dispensing with consent under the provisions of Family Code section 7822, related to proof of abandonment.
- Under item 14(e) (formerly item 18) a new section tracks the language of Family Code section 8604(a), which dispenses with the need for consent from a presumed father when he did not become a presumed father “before the mother’s relinquishment or consent became irrevocable or the mother’s rights were terminated.” (Fam. Code, § 8604(a).)
- A check box has been added under item 16 (formerly item 21) following the first check box, with the text: “I ask the court to date its order approving the adoption as of an earlier date (*date*): _____ for the following reason(s):

(Enter a date no earlier than the date parental rights were ended.)

This responds to the new legislation adding section 8601.5 to the Family Code, which allows for a nunc pro tunc adoption order in certain circumstances. The legislation notes that the request for a nunc pro tunc order should be stated in the request or attached as an amendment.

Adoption Order (form ADOPT-215). Proposed changes to this form include the following:

- Under item 2, “Place of birth” was amended to add “(*if known*):” and the line following was removed, leaving the city, state, and country lines below. This responds to comments that the line following “Place of birth” confused people who thought the name of the hospital or the address of the birth parents was required. This clarifies that the place of birth, if known, is simply the city, state, and country.
- Under item 8, the language of the first check box has been modified as follows: “This case is an adoption by a relative petitioned under Family Code section 8714.5.” This further clarifies that “relative” is not a type of adoption, but an adoption by a relative is filed as an independent or agency adoption request.
- Under item 12, a check box following the last paragraph has been added, to read: “The judge believes it will serve public policy and the best interests of the child to make this order effective as of (*date*): _____ and grants the request of the adopting parent or

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parents for the court to use that date on this order.” This change brings the form into compliance with Family Code section 8601.5, which allows for a nunc pro tunc order in certain circumstances.

Request for Comments on Possible Changes Planned for a Future Cycle

Form Compliance with Hague Adoption Convention

The Hague Adoption Convention (HAC) is a treaty that entered into force with respect to the United States on April 1, 2008. The HAC strengthens protections for children, birth parents, and prospective adoptive parents and establishes internationally agreed-upon rules and procedures for adoptions between countries that have a treaty relationship under the HAC. It provides a framework for member countries to work together to ensure that children are provided with permanent, loving homes, that adoptions take place in the best interests of a child, and that the abduction, sale, or traffic of children is prevented.

The Family and Juvenile Law Advisory Committee is considering creating forms and, if necessary, rules of court to comply with the HAC requirements for state court findings, which were issued by the U.S. Department of State. These findings would apply both when nationals from another convention country adopt a child who is a U.S. citizen (e.g., grandparents from Mexico adopt a child born in the U.S. to parents who have had their parental rights terminated) and when the state court is facilitating an intercountry adoption from a non-HAC country. Adoptions in state court that come from convention countries would be coming in with an HAC certificate that the adoption had been conducted according to the HAC, so state courts would know that HAC requirements had been met. For example, after the court made the appropriate findings in the first example above and granted the adoption, the adoptive parents could then apply to the State Department for an HAC certificate, which would provide formal international and intergovernmental recognition of the intercountry adoption, which should then be recognized and given effect in other convention countries.

The committee seeks comments from those who have experience in intercountry adoptions and who may have created and/or worked with local forms intended to ensure compliance with the HAC. The committee is particularly interested in hearing from such practitioners and courts about what, in the way of standardized forms and rules, might be able to facilitate HAC adoptions and ease the burden of compliance. As an example, please see section 5:10-15 of the New Jersey state rules of court: *Adoptions of United States Citizens by Residents of Foreign Countries That Are Signatories to the Hague Adoption Convention*, at www.judiciary.state.nj.us/rules/r5-10.htm.

Alternatives Considered

The committee considered proposing a separate form to request a nunc pro tunc order of adoption because the new statute, Family Code section 8601.5(b), requires that “[t]he request for nunc pro tunc entry of order shall be stated in the adoption request or an amendment thereto, and

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shall set forth specific facts in support thereof.” The committee, however, decided that simple amendments to the adoption request and the adoption order would alleviate the need for a new form.

The committee also considered a range of requested changes to a variety of adoption forms that had been submitted over a number of years, but limited its proposed changes to the two forms affected by the new legislation, again in the interest of efficiency and avoiding all but the most pressing changes.

And finally, the committee considered including proposals to bring applicable forms into compliance with the Hague Convention on Adoption, which became effective in the United States in 2008, but on reflection believed that it needed to hear from practitioners about what, if anything, was actually needed in the way of form revisions and/or new rules to ensure compliance.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of revising the forms. Nor does the committee anticipate any requirements for implementation or fiscal and operational impacts on the courts.

Request for Specific Comments

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

- What, if any, standardized forms and/or rules would be beneficial to practitioners and the courts for ensuring compliance with Hague Adoption Convention (HAC) requirements?
- What, if any, local rules and/or forms have been adopted to ensure compliance with the HAC?
- Does the proposal appropriately address the stated purpose?

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

- Will the proposal provide cost savings? If so please quantify.
- What are the implementation requirements 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 system, or modifying case management system.
- Would 2 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?

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Attachments and Links

Proposed revised form ADOPT-200 (*Adoption Request*) is attached at pages 7-10.

Proposed revised form ADOPT-215 (*Adoption Order*) is attached at pages 11-12.

Assembly Bill 687 is available at this link:

www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_687_bill_20111004_chaptered.pdf

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ADOPT-200 Adoption Request

If you are adopting more than one child, fill out an adoption request for each child.

Clerk stamps date here when form is filed.

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Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

1 Your name (adopting parent):
a. _____
b. _____
Relationship to child: _____
Street address: _____
City: _____ State: _____ Zip: _____
Telephone number: (____) _____
Lawyer (if any): (Name, address, telephone numbers, and State Bar number):

2 Type of adoption (check one):
 Agency (name): _____
 Relative Nonrelative
 Joinder has been filed. Joinder will be filed.
 Tribal customary adoption (attach tribal customary adoption order)
 Independent
 Relative Nonrelative
 International (name of agency): _____
 Stepparent

3 Information about the child:
a. The child's new name will be:

b. Boy Girl
c. Date of birth: _____ Age: _____
d. Child's address (if different from yours):
Street: _____
City: _____ State: _____ Zip: _____

e. Place of birth (if known):
City: _____
State: _____ Country: _____
f. If the child is 12 or older, does the child agree to the adoption? Yes No
g. Date child was placed in your physical care:

4 Child's name before adoption: (fill out ONLY if this is an independent, stepparent, or tribal customary adoption.)

5 Does the child have a legal guardian? Yes No
If yes, attach a copy of the Letters of Guardianship and fill out below:
a. Date guardianship ordered: _____
b. County: _____
c. Case number: _____

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing is set for:
Hearing Date → Date: _____
Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

Your name: _____

- 6 Is the child a dependent of the court? Yes No
 (If yes, fill out below):
 Juvenile case number: _____
 County: _____

- 7 Child may have Indian ancestry: Yes No
 a. Whatever you answered, you must attach *Forms ICWA-10(A)*, Indian Child Inquiry Attachment, and *ICWA-20*, Parental Notification of Indian Status.
 b. If you answered 'Yes', you must also attach *Form ADOPT-220*, Adoption of Indian Child.

- 8 Names of birth parents, if known:
 a. Mother: _____
 b. Father: _____

- 9 **If this is an agency adoption**
 a. I have received information about the Adoption Assistance Program Regional Center and about mental health services available through Medi-Cal or other programs. Yes No
 b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services. Yes No (If no, list the name and relationship to child of each person who has not signed the relinquishment form): _____
 c. This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

- 10 **If this is an independent adoption**
 a. A copy of the Independent Adoptive Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.)
 b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement from the California Department of Social Services. Yes No (If no, list the name and relationship to child of each person who has not signed the agreement form): _____
 c. I will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.

- 11 **If this is a stepparent adoption**
 a. The birth parent (name): _____ has signed a consent will sign a consent
 b. The birth parent (name): _____ has signed a consent will sign a consent
 c. The adopting parents were married on **or** The domestic partnership was registered on (date): _____ (For court use only. This does not affect social worker's recommendation. There is no waiting period.)

- 12 There is no presumed or biological father because the child was conceived by artificial insemination using semen provided to a medical doctor or a sperm bank. (Fam. Code, § 7613.)

- 13 **Contact after adoption**
 Form ADOPT-310, *Contact After Adoption Agreement*, is attached will not be used
 will be filed at least 30 days before the adoption hearing is undecided at this time
 This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.



Your name: _____

14 Consent for adoption

a. The consent of the birth mother natural father is not necessary because (*check the applicable subdivision of Fam. Code, § 8606*):

- (1) The birth parent has been judicially deprived of the custody and control of the child.
- (2) The birth parent in another jurisdiction has voluntarily surrendered the right to custody and control of the child, under a law of that jurisdiction authorizing the order.
- (3) The birth parent has deserted the child without provision for the identification of the child.
- (4) The birth parent has relinquished the child under Fam. Code, § 8700.
- (5) The birth parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b. A court ended the parental rights of:

Name: _____ Relationship to child: _____ on (date): _____

Name: _____ Relationship to child: _____ on (date): _____

(Enter the date of the court order ending parental rights and attach a copy of the order.)

c. The child is the subject of a tribal customary adoption order under Welf. & Inst. Code, § 366.24, which has modified the parental rights of:

Name: _____ Relationship to child: _____ on (date): _____

Name: _____ Relationship to child: _____ on (date): _____

Name: _____ Relationship to child: _____ on (date): _____

(Attach a copy of the order.)

d. I will ask the court to end the parental rights of (*attach copy of Petition to Terminate Parental Rights or Application for Freedom From Parental Custody, if filed*):

Name: _____ Relationship to child: _____

Name: _____ Relationship to child: _____

(1) Each of the following persons with parental rights has not contacted the child and has not paid for the child's care, support, and education in one year or more when able to do so. (Fam. Code, § 8604(b).) (*Attach copy of Application of Freedom from Parental Custody, if filed.*)

(2) The child has been abandoned as follows:

(a) The child has been left without provision for the child's identification by the child's parent or parents.

(b) The child has been left in the custody of another person by both parents or the sole parent for six months without any provision for the child's support, or without communication from the parent or parents, with the intent to abandon the child.

(c) One parent has left the child in the care and custody of the other parent for one year or longer without any provision for the child's support or without communication from the parent, with the intent to abandon the child.

(See Fam. Code, §7822(a).)

e. The consent of the presumed father is not required because he did not become a presumed father before the mother's relinquishment or consent become irrevocable or the mother's parental rights were terminated. (Fam. Code, § 8604(a))

f. Each of the following persons with parental rights has died:

Name: _____ Relationship to child: _____

Name: _____ Relationship to child: _____

Your name: _____

15 Suitability for adoption

Each adopting parent:

- a. Is at least 10 years older than the child
- b. Will treat the child as his or her own
- c. Will support and care for the child
- d. Has a suitable home for the child *and*
- e. Agrees to adopt the child

I ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

I ask the court to date its order approving the adoption as of an earlier date (*date*): _____, for the following reason (Fam. Code, § 8601.5): _____

(Enter a date no earlier than the date parental rights were ended.)

This is a tribal customary adoption. I ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welf. & Inst. Code, § 366.24.

17 If a lawyer is representing you in this case, he or she must sign here:

Date: _____ *Type or print your name*  _____ *Signature of attorney for adopting parents*

18 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ *Type or print your name*  _____ *Signature of adopting parent*

Date: _____ *Type or print your name*  _____ *Signature of adopting parent*

ADOPT-215 Adoption Order

Clerk stamps date here when form is filed.

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Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

1 Your name (*adopting parent*):
a. _____
b. _____
Relationship to child: _____
Street address: _____
City: _____ State: _____ Zip: _____
Daytime telephone number: (____) _____
Lawyer (*if any*): (*Name, address, telephone number, and State Bar number*): _____

2 Child's name after adoption:
First Name: _____
Middle Name: _____
Last Name: _____
Date of birth: _____ Age: _____
Place of birth (*if known*): _____
City: _____ State: _____ Country: _____

3 Name of adoption agency (*if any*): _____

4 Hearing date: _____
Dept.: _____ Div.: _____ Rm.: _____ Judicial Officer: _____
Clerk's office telephone number: (____) _____

5 People present at the hearing:
 Adopting parents Lawyer for adopting parents
 Child Child's lawyer
 Parent keeping parental rights: _____
 Other people present (*list each name and relationship to child*):
a. _____
b. _____

If there are more names, attach a sheet of paper, write "ADOPT-215, Item 6" at the top, and list the additional names and each person's relationship to child.

Judge will fill out section below.

6 The judge finds that the child (*check all that apply*):
a. Is 12 or older and agrees to the adoption
b. Is under 12
c. This is a tribal customary adoption and the child's consent is not required.



Your name: _____

- 7 The judge has reviewed the report and other documents and evidence and finds that each adopting parent:
 - a. Is at least 10 years older than the child
 - b. Will treat the child as his or her own
 - c. Will support and care for the child
 - d. Has a suitable home for the child *and*
 - e. Agrees to adopt the child

- 8 This case is an adoption by a relative petitioned under Family Code section 8714.5.
 - The adopting relative The child, who is 12 or older, has requested that the child's name before adoption be listed on this order. (Fam. Code, § 8714.5(g).)
 The child's name before adoption was:
 First Name: _____ Middle Name: _____ Last Name: _____

- 9 The child is an Indian child. The judge finds that this adoption meets the placement requirements of the Indian Child Welfare Act and that there is good cause to give preference to these adopting parents. The clerk will fill out 13 below.

- 10 The judge approves the *Contact After Adoption Agreement* (ADOPT-310)
 - As submitted As amended on ADOPT-310

- 11 This is a tribal customary adoption, The tribal customary adoption order of the _____ tribe dated _____ containing _____ pages and attached hereto is fully incorporated into this order of adoption.

- 12 The judge believes the adoption is in the child's best interest and orders this adoption.
 The child's name after adoption will be:
 First Name: _____ Middle Name: _____ Last Name: _____

The adopting parent or parents and the child are now parent and child under the law, with all the rights and duties of the parent-child relationship or, in the case of a tribal customary adoption, all the rights and duties set out in the tribal customary adoption order and Welfare and Institutions Code section 366.24.

- The judge believes it will serve public policy and the best interests of the child to make this order effective as of (date): _____ and grants the request of the adopting parent or parents for the court to use that date on this order.

Date: _____

Judge (or Judicial Officer)

Clerk will fill out section below.

13 Clerk's Certificate of Mailing

For the adoption of an Indian child, the Clerk certifies:

I am not a party to this adoption. I placed a filed copy of:

- ADOPT-200, *Adoption Request* ADOPT-220, *Adoption of Indian Child*
- ADOPT-215, *Adoption Order* ADOPT-310, *Contact After Adoption Agreement*

in a sealed envelope, marked "Confidential" and addressed to:

Chief, Division of Social Services
 Bureau of Indian Affairs
 1849 C Street, NW
 Mail Stop 310-SIB
 Washington, DC 20240

The envelope was mailed by U.S. mail, with full postage, from:

Place: _____ on (date): _____

Date: _____ Clerk, by: _____, Deputy