

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Juvenile Law: Intercounty Placements	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Kerry Doyle, 415-865-8791 kerry.doyle@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends amending one rule and repealing and adopting one rule of the California Rules of Court, and approving two forms, to conform to recent statutory changes regarding who a child welfare agency must notice when moving a foster child to a different county.

Background

Assembly Bill 1688 (Rodriguez; Stats 2016, ch. 608) requires the county to provide notice to the child's attorney and to the child, if 10 years of age or older, before moving the child to a placement outside the county, and allows for the child and child's attorney to object to the move. When this legislation was passed, the committee determined that rules and forms were not necessary to implement the changes to the intercounty placement notice requirements. Since then, Judicial Council staff has been asked by both the California Department of Social Services, and a large law office representing children, to create forms for both the notice of, and potential objection to, the proposed move.

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 These proposals are circulated for comment purposes only.

The Proposal

Rules 5.610 and 5.614 would be amended to ensure they conform to the requirements in Welfare and Institutions Code section 361.2(h) and to remove any language that is repetitive of statute.¹

Rule 5.610. Transfer-out hearing

Rule 5.610(c) would be amended to delete the specific findings drawn from sections 375 and 750.

Rule 5.614. Courtesy supervision (§§ 380, 755)

Rule 5.614 would be repealed because it simply restates the text in sections 380 and 755.

Rule 5.614. Intercounty placements

Rule 5.614 would be replaced with a rule governing intercounty placements.

To streamline the rule, it would contain a cross-reference to section 361.2(h). This would obviate the need to amend the rule again if this code section is amended in the future. The rule would also identify the optional forms that can be used for notice and objection.

Notice

While section 361.2(h) requires that notice of a need to place the child out of county be provided to the child's parent or guardian, the child's attorney, and the child, if the child is 10 years of age or older, it does not provide for notice to two important groups: the child's identified Indian tribe and the child's Court Appointed Special Advocate (CASA) volunteer. Proposed rule 5.614 includes notice to these two additional participants.

Federal and state law protect the relationship between an Indian child and the child's tribe.² In particular, the law requires that whenever an Indian child is removed from his or her home for placement or further placement, the placement must comply with the placement preferences of the Indian Child Welfare Act.³ Furthermore, the child's tribe must be consulted on any

¹ Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s at a time when access to statutory materials via electronic devices and online resources was far more limited by judicial officers than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year because of the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily and at no cost. This major change in the information infrastructure for juvenile courts warranted a reexamination of the roles of the rules of court in these proceedings. Effective January 1, 2017, the Judicial Council amended 21 rules and repealed three to delete language that duplicated statute. This approach streamlines the rules and reduces the frequency with which the rules need to be amended to reflect changes in the statutory text.

² 25 U.S.C. §§ 1901–1903; Welf. & Inst. Code, § 224.

³ 25 U.S.C. § 1915; 25 C.F.R. §§ 23.129–23.132; Welf. & Inst. Code, §§ 224(b), 361.31.

placement or change in placement.⁴ A child's identified Indian tribe is entitled to receive notice of every hearing in a dependency case.⁵

Due to the significant role a dependent child's CASA volunteer plays in the child's life, CASA volunteers are entitled to notice of all hearings under the California Rules of Court. (Cal. Rules of Court, rules 5.710–5.725, 5.740, 5.810.) Given the potentially life-changing importance of an out-of-county placement, the CASA volunteer should receive notice of the agency's request to remove the child, as the volunteer receives notice of other important court events regarding the child.

The Family and Juvenile Law Advisory Committee considered possibilities regarding who should have the duty of providing notice of the hearing. Options included requiring the clerk of the court to provide notice and requiring the agency requesting out-of-county placement to provide notice. Workload concerns arose about both options. Another option is to have the party requesting the hearing provide notice; this caused concern, since children are unlikely to have the necessary procedural knowledge.

The proposed rule takes a "hybrid" approach. It would require that if the party objecting is represented by counsel, that counsel must provide notice. The clerk would be required to give notice of a hearing requested by a participant not represented by counsel. The committee's intention is to ensure proper notice and somewhat reduce the burden this new procedure places on court clerks.

Burden of Proof

Section 362.1(h) is silent about the burden of proof for the hearing on the proposed out-of-county placement. Evidence Code section 115 establishes that, except as otherwise provided by the law, the burden of proof requires proof by a preponderance of the evidence. Proposed rule 5.614 would clarify that the agency must show by a preponderance of the evidence that the standard in section 361.2(h) is met.

Notice of Intent to Place Child Out of County (form JV-555) and Objection to Out-of-County Placement (form JV-556)

The proposal creates two optional forms for use to notice, and object to, a planned out-of-county placement. One benefit to proposed form JV-555 is that it contains a statement informing the person notified that if he or she does not agree with the proposed placement, they may request a court hearing.

Alternatives Considered

As mentioned above, when AB 1688 was passed, the committee determined that rules and forms were not necessary to implement the changes to the intercounty placement notice requirements. However, since then, both the California Department of Social Services, and a large law office representing children, have asked Judicial Council staff to create forms for both the notice of,

⁴ Welf. & Inst. Code, § 361.31(g).

⁵ Welf. & Inst. Code, § 224.2(b).

and potential objection to, the proposed move. The committee now recognizes a potential need for optional forms to ensure the required written notice.

The committee considered not creating optional Judicial Council forms and only amending rule 5.614. The committee questioned whether the forms were necessary. Ultimately, the committee decided to circulate the forms for public comment and to seek specific comment on whether the forms were helpful.

Implementation Requirements, Costs, and Operational Impacts

This proposal restates the law that became effective January 1, 2017; therefor courts are already receiving objections to, and setting hearings on, out-of-county placements. Similarly, the written notice requirements to parents and guardians have been in place for many years, and the written notice requirements to the child’s attorney and the child age 10 or older have been in place since January 1, 2017; therefor this should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the child’s CASA be included in the list of those who should receive notice of the agency’s proposed placement of the child out of the county?
- Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient?
- The “hybrid” notice approach requires that the clerk determine whether the person objecting has an attorney who should notice the hearing, or whether the clerk should notice the hearing. Is this too much of a burden on the clerk? Will the “hybrid” notice approach help to somewhat lessen the burden of notice on the clerk?

The advisory committee also seeks 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. Cal. Rules of Court, rules 5.610 and 5.614, at pages 6–9
2. Forms JV-555 and JV-556, at pages 10–13
3. Assembly Bill 1688,

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1688

1 **Rule 5.614. ~~Courtesy supervision (§§ 380, 755)~~**

2
3 ~~The court may authorize a child placed on probation, a ward, or a dependent child to live~~
4 ~~in another county and to be placed under the supervision of the other county's county~~
5 ~~welfare agency or probation department with the consent of the agency or department.~~
6 ~~The court in the county ordering placement retains jurisdiction over the child.~~

7
8 **Rule 5.614. Intercounty Placements**

9
10 **(a) Procedure**

11
12 Whenever a social worker must place a child outside the child's county of
13 residence, the procedures in section 361.2(h) must be followed.

14
15 **(b) Participants to be served with notice**

16 Unless the requirements for emergency placement in section 361.2 are met, before
17 placing a child out of county, the agency must notify the following participants of
18 the proposed removal:

19 (1) The participants listed in section 362.1(h);

20 (2) The child's identified Indian tribe if any;

21 (3) The child's Indian custodian if any; and

22 (4) The child's CASA program if any.

23 **(c) Form of notice**

24 The social worker may provide the required written notice to the participants in (b)
25 with *Notice of Intent to Place Child Out of County* (form JV-555). If form JV-555 is
26 used, the social worker must also provide a blank copy of *Objection to Out-of-*
27 *County Placement* (form JV-556).

28 **(d) Service of notice**

29 The agency must serve notice of its intent to place the child out of county as
30 follows:

31 (1) The agency must serve notice either by first-class mail, sent to the last known
32 address of the person to be noticed, or by personal service;

33

1 (2) Notice to the child’s identified Indian tribe and Indian custodian must comply
2 with the requirements of section 224.2; and

3 (3) Proof of Notice (form JV-326) must be filed with the court before the hearing
4 on the proposed out-of-county placement.

5 **(e) Objection to proposed removal**

6 Each participant who receives notice under (b) may object to the proposed removal
7 of the child and the court must set a hearing as required by section 361.2(h).

8 (1) Objection to the proposed intercounty placement can be done by using
9 Objection to Out-of-County Placement (form JV-556).

10 (2) A request for hearing on the proposed removal must be made no later than
11 seven days of receipt of the notice.

12 **(f) Notice of hearing on proposed removal**

13 After the court has ordered a hearing on a proposed intercounty placement, notice
14 of the hearing must be as follows:

15 (1) If the party objecting is not represented by counsel, the clerk must provide
16 notice of the hearing to the agency and the participants listed in (b) above;

17 (2) If the party objecting to the removal is represented by counsel, that counsel
18 must provide notice of the hearing to the agency and the participants listed in
19 (b) above;

20 (3) Notice must be by personal service or mail; and

21 (4) Proof of Notice (form JV-326) must be filed with the court before the hearing
22 on the proposed removal.

23 **(g) Burden of proof**

24 At a hearing on an out-of-county placement, the agency intending to move the child
25 must prove by a preponderance of the evidence that the standard in section 361.2(h)
26 is met.

27 **(h) Emergency placements**

28 If the requirements for emergency placement in section 361.2 are met, the agency
29 must provide notice as required in section 16010.6.

1 **Rule 5.616. Interstate Compact on the Placement of Children**

2

3 **(a)-(j) * * ***

Notice of Intent to Place Child Out of County

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

This notice must be served with a blank copy of form JV-556, Objection to Out-of-County Placement.

- 1 To:**
 - a. Parent or Guardian (*name*):

 - b. Parent or Guardian (*name*):

 - c. Child's attorney (*name*):

 - d. Child, if 10 years of age or older (*name*):

 - e. Child's identified Indian tribe, if any (*name*):

 - f. Child's Indian custodian, if any (*name*):

 - g. Child's Court Appointed Special Advocate (CASA) program, if any (*name of person notified*):

Fill in court name and street address:

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:

2 Name of agency proposing move:

Address:

Phone number:

The agency is placing the child out of county. The reasons that require placement outside of the county are:

If more space is needed, attach a sheet of paper and write "JV-555, Item 2—Reasons for Out-of-County Placement" at the top.

Number of pages attached: _____



Case Number:

Child's name: _____

3 If you do not agree with the out-of-county placement, you may request a court hearing. To do this, you can fill out form JV-556, *Objection to Out-of-County Placement*, and file it with the court within seven days from the date you received this notice.

I declare under penalty of perjury under the laws of the State of California that the information in items 1 and 2 is true and correct, which means that if I lie on the form, I am committing a crime.

Date:

Type or print your name

 _____
Sign your name

*Clerk stamps date here when form is filed.***DRAFT
Not approved by
the Judicial Council**

If you do not agree with the out-of-county placement, you can request a court hearing by filling out this form. The following people can object to removal: the child's parent or guardian, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court.

If you are not an attorney and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are an attorney in this matter and you requested the hearing, you must provide notice of the hearing to all other participants.

*Fill in court name and street address:***Superior Court of California, County of**

- ① a. Name: _____
- b. I am the child child's attorney child's parent
 child's identified Indian tribe child's CASA program
 child's Indian custodian

*Fill in child's name and date of birth:***Child's Name:****Date of Birth:**

c. Confidential address

d. Address: _____

*Court fills in case number when form is filed.***Case Number:**

e. Phone number: _____

② If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney:

b. Address of child's attorney:

c. Phone number of child's attorney:

③ The child is 10 years of age or older. Child's phone number: _____
 Confidential phone number in court file

④ The child has a Court Appointed Special Advocate (CASA) volunteer.
 Phone number of CASA program, if known: _____

⑤ The child has an identified Indian tribe (*specify tribe*): _____
 Phone number of tribe: _____

⑥ The child has an Indian custodian (*name*): _____
 Phone number of custodian, if known: _____



Case Number: _____

Child's name: _____

7 The social worker should not place the child outside the county because *(give reasons)*:

If you need more space, attach a sheet of paper and write "JV-556, Item 7—Reasons to Not Place the Child Outside the County" at the top.

Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date: _____

Type or print your name

Sign your name

What if I am deaf or hard of hearing?



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for a *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)