

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W16-11

Title	Action Requested
Family Law: Special Immigrant Juvenile Findings	Review and submit comment by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.130	July 1, 2016
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, 415-865-4507 corby.sturges@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 adopting a rule of court to guide litigants and courts in filing and adjudicating requests for Special Immigrant Juvenile (SIJ) findings in family law custody proceedings. The rule is needed for effective implementation of section 155 of the Code of Civil Procedure. (Sen. Bill 873; Stats. 2014, ch. 685, § 1.) Adoption of the rule would also respond to requests for a rule from the courts and the public in response to a previous invitation to comment.

Background

Special Immigrant Juvenile (SIJ) status was created by federal law in 1990 in response to concerns that state court child custody and child welfare determinations—especially permanent placements in juvenile dependency proceedings—were being undermined and the health, safety, and welfare of undocumented children were being placed in jeopardy by the risk that those children would be deported. To mitigate that risk by permitting abused, neglected, or abandoned immigrant children to remain in safe, stable, court-ordered placements in the United States, Congress amended the Immigration and Nationality Act (INA)¹ to include specified immigrant children within the class of “special immigrants,” eligible for admission to the United States and authorized to apply for adjustment to lawful permanent resident (LPR) status.²

¹ Pub.L. No. 82-414 (June 27, 1952) 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 et seq.

² Immigration Act of 1990, Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978, § 153.

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 These proposals are circulated for comment purposes only.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 INA defines an SIJ as an immigrant child³ present in the United States (1) “who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States”; (2) whose reunification with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law; and (3) for whom it has been determined by a juvenile court or authorized administrative agency that it would not be in his or her best interest to be returned to his or her country of nationality or last habitual residence.⁴

To apply for SIJ classification, a child must obtain and attach to his or her application a “juvenile court order” finding that the applicant satisfies each of the three elements of the statutory SIJ definition.⁵ The INA relies on predicate findings regarding these elements by state courts, made in proceedings under state law, in recognition of the fact that the federal immigration agencies are neither authorized to make child custody and child welfare decisions nor competent to resolve issues of abuse, neglect, abandonment, or a child’s best interest.

The federal SIJ regulations define a “juvenile court” broadly as “a court located in the United States having jurisdiction to make judicial determinations about the custody and care of” children.⁶ In California, the superior courts are courts of general jurisdiction. Any duly sworn superior court judge may hear and determine any action over which a statute has granted the court subject matter jurisdiction.⁷ But only in the context of certain actions or proceedings does the court hold authority to make a determination about the custody or care of a child. These proceedings include dependency and delinquency proceedings under the Juvenile Court Law (Welf. & Inst. Code, §§ 200–987), custody proceedings under the Family Code,⁸ and guardianship proceedings under the Probate Code.⁹

California law

In response to the increase in unaccompanied, undocumented children entering the southwestern United States and released to sponsors around the country,¹⁰ as well as perceived uncertainty

³ For purposes of the INA, a child is an unmarried person under 21 years old.

⁴ INA, 8 U.S.C. § 1101(a)(27)(J).

⁵ See 8 C.F.R. § 204.11(d)(2).

⁶ *Id.*, at § 204.11(a); 58 Fed.Reg. 42843, 42850 (Aug. 12, 1993).

⁷ See, e.g., *In re Chantal S.* (1996) 13 Cal.4th 196. In smaller courts, a single judge will hear and determine actions arising under several different codes. Larger courts are organized as a matter of convenience into divisions, each of which hears actions authorized under a specific code or codes.

⁸ See Fam. Code, §§ 200, 3020–3048.

⁹ See Prob. Code, §§ 800, 1510–1516, 2351.

¹⁰ Of the 68,541 unaccompanied children detained entering the U.S. in federal fiscal year 2014, 53,550 of those children were released from custody to private sponsors. A sponsor may be an adult relative (parent, aunt or uncle, sibling, cousin), family friend, or volunteer. 5,842 unaccompanied children were released to sponsors in California, more than half of those in Los Angeles County. Although fiscal year 2015 saw a significant drop in unaccompanied children entering the U.S., the number of federal SIJ petitions has continued to increase. This suggests that the state courts will continue to see increased requests for SIJ findings.

regarding the authority of the superior courts to make SIJ predicate findings, California enacted section 155 of the Code of Civil Procedure.¹¹ Section 155 incorporates the elements of the federal SIJ statute as interpreted by the California Court of Appeal. Subdivision (a) affirms the superior court's authority to make SIJ predicate findings in child custody and welfare proceedings, including probate guardianship and family law custody proceedings. Subdivision (b) requires the superior court to make the SIJ findings when requested if it has received sufficient evidence to support them and provides that the evidence may consist of, but is not limited to, a credible declaration by the child who is the subject of the requested findings. Subdivision (b) also incorporates, almost verbatim, the elements of the federal SIJ definition that require documentation in state court findings. Subdivision (c) protects the confidentiality of information about the immigration status of a child requesting SIJ findings if that information is not otherwise protected by state law. Subdivision (d) provides for sealing of the record of a proceeding to request SIJ findings in accordance with rules 2.550 and 2.551. Subdivision (e) of section 155 specifically requires the Judicial Council to adopt any rules of court and forms needed to implement these provisions.

Prior Circulation

In spring 2015, the Family and Juvenile Law Advisory Committee collaborated with the Probate and Mental Health Advisory Committee to develop and circulate forms to implement section 155 along with a rule of court specifying the procedure for filing and adjudicating a request for SIJ findings in a probate guardianship proceeding. These forms included a *Petition for Special Immigrant Juvenile Predicate Findings* (form GC-220) for use in probate guardianship proceedings, a *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) for use in family law custody proceedings, and a *Request for Special Immigrant Juvenile Predicate Findings—Juvenile* (form JV-356) for use in juvenile dependency and delinquency proceedings. All three forms provide separate, but similar, formats for requesting SIJ predicate findings. They solicit the information necessary for the superior court to make the SIJ findings if supported by sufficient evidence. The committees also proposed and circulated a joint SIJ findings form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357). The Judicial Council adopted the recommended rule and forms at its October 27, 2015, business meeting. The rule and forms will take effect January 1, 2016.

The Proposal

The family law rule in this proposal is intended to further the legislative mandate in section 155(e) of the Code of Civil Procedure by promoting the timely and effective adjudication of requests for SIJ findings in family law custody proceedings. The rule would also respond to requests from courts and attorneys for a rule of court addressing SIJ findings in family law proceedings.

¹¹ Sen. Bill 873; Stats. 2014, ch. 685, § 1 (effective Sept. 2014). A copy of section 155 is accessible via link at the end of this invitation.

As part of their joint proposal to address SIJ findings circulated in spring 2015, the Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee requested specific comment on whether a similar rule specifying a process for filing and adjudicating requests for SIJ findings in family law custody proceedings would be useful. Commentators who addressed the issue unanimously urged the Family and Juvenile Law Advisory Committee to develop such a rule.

Proposed rule 5.130 would specify procedures for filing and determining requests for SIJ findings in proceedings under the Family Code.¹² The rule would specify the types of family law proceedings in which a request for SIJ findings might be made (rule 5.130(a)(1)). It would further specify that the rules governing the procedures for filing and adjudicating requests for orders in family court apply to requests for SIJ findings (rule 5.130(b)).

The rule would then address who may file a request for SIJ findings. Rule 5.130(b)(2) would specify the procedural contexts in which a request may be filed. The rule would also require that a separate form FL-356 be filed for each child for whom SIJ findings are requested, and that a request for SIJ findings may be combined with a request for other orders regarding the same child (rule 5.130(b)(3)–(4)). Any person entitled to notice of a *Request for Order* under rule 5.92 would be permitted to file an objection or opposition to the request (rule 5.130(c)).

The rule would emphasize that, to obtain a hearing on a request for SIJ findings, a party must file a *Request for Order* (form FL-300) with form FL-356 attached (rule 5.130(d)). The rule would permit consolidation—into one hearing—of a request for custody and a request for SIJ findings for the same child, and separate requests for SIJ findings for multiple siblings or half-siblings (rule 5.130(d)(1)–(2)). Courts in which proceedings related to siblings or half-siblings were pending would be permitted to communicate about consolidation and proper venue consistent with the procedures and limits in section 3410(b)–(e) of the Family Code (rule 5.130(d)(3)).

In a case involving requests for SIJ findings for more than one child, the court would need to issue a separate set of findings for each qualified child in the case (rule 5.130(e)). Separate findings are advisable because the federal immigration proceedings for all qualified children in the same state court family law proceeding are not likely to be combined or consolidated.

Rule 5.130(f) would implement the confidentiality requirement in section 155(c) of the Code of Civil Procedure by requiring that all records of a proceeding on a request for SIJ findings that include information about the child’s immigration status be kept in a confidential part of the family law file or in a separate, confidential file.¹³ Finally, rule 5.130(g) would implement

¹² All subsequent rule references are to the California Rules of Court unless otherwise specified.

¹³ Section 155(c) also limits inspection of immigration information in the record to certain specified persons. The committee considered addressing this limit in the proposed rule, but decided not to do so because of uncertainty over the reach of the statute.

The committee also considered, and for similar reasons does not propose, a rule to implement Assembly Bill 899

section 155(d) by specifying that the record of a proceeding in response to a request for SIJ findings that is not otherwise required by law to be kept confidential may be sealed if the requirements of rules 2.550 and 2.551 are met.

Alternatives Considered

The committee considered developing or specifying separate procedures for requesting SIJ findings in family law custody proceedings. It decided, however, that the existing statutes and rules establishing procedures for requesting court orders in family law proceedings suited these requests as well.

The committee also considered including other statutory requirements in the rule. For example, commentators in spring 2015 suggested that a family law rule might include guidance on whether appointment of a guardian ad litem for a minor child is authorized or required in a proceeding to determine a request for SIJ findings. Because the committee concluded that the statutory requirements governing the underlying family law proceeding (a) apply to requests for SIJ findings, (b) vary depending on the specific type of proceeding, and (c) are sufficiently clear and detailed, it did not find sufficient reason to depart from the council’s policy against restating statutory provisions in the rules of court.

Finally, as discussed in footnote 13, the committee considered whether and how to implement the confidentiality provisions in section 155(c) of the Code of Civil Procedure and section 831 of the Welfare and Institutions Code. Because of possible conflict between statutory provisions along with the complexity of existing confidentiality law, the committee chose to defer action on these issues rather than risk giving guidance at odds with legislative intent.

Implementation Requirements, Costs, and Operational Impacts

Implementation of this proposal should require only modest implementation and training costs. The adoption of the proposed rule might require some training of judicial officers and court staff, particularly staff that receives and processes filings in family law proceedings. The training costs should be offset by fewer repeat filings and shorter wait times in the clerk’s office as well as fewer continued hearings in the courtroom.

(Stats. 2015, ch. 267). AB 899 added section 831 to the Welfare and Institutions Code to clarify that juvenile court records “should remain confidential regardless of the juvenile’s immigration status.” (Welf. & Inst. Code, § 831(a).) Section 831 goes on to state that nothing in article 22 (beginning with section 825) of chapter 2 of division 2 of the Welfare and Institutions Code, which governs access to juvenile court records, authorizes disclosure to, dissemination to or by, or attachment to documents given to or provided by “federal officials” of “juvenile information” without a court order in response to a petition filed under section 827(a)(1)(P) or 827(a)(4). (Welf. & Inst. Code, § 831(b)–(d).) The statute then defines “juvenile information” to include not only the case file, but also “information related to the juvenile, including name [and] date or place of birth,” regardless of its origin or source, as long as it is “maintained by a government agency.” (Welf. & Inst. Code, § 831(e).) Despite its express intent only to declare existing law, AB 899 seems to extend confidentiality to information not otherwise currently protected. Given multiple, plausible yet conflicting interpretations of legislative language and intent, the committee has chosen to defer action pending further legislative or judicial guidance.

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?

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

- Would the confidentiality requirement in proposed rule 5.130(f) impose specific logistical or record-keeping burdens on courts that use electronic filing or case-management systems? If so, how might the rule mitigate these burdens consistent with the confidentiality requirements in section 155(c) of the Code of Civil Procedure?
- 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 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- Would this proposal have different effects on courts of different sizes? How so?

Attachments and Links

1. Proposed rule 5.130 of the California Rules of Court, at pages 7–9
2. Code of Civil Procedure section 155,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=155.#
3. AB 899 (Stats. 2015, ch. 267),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB899

1
2 (C) In an initial action under the Domestic Violence Prevention Act, as an
3 attachment to *Request for Domestic Violence Restraining Order*
4 *(Domestic Violence Prevention)* (form DV-100) or *Response to Request*
5 *for Domestic Violence Restraining Order (Domestic Violence*
6 *Prevention)* (form DV-120).

7
8 (3) *Separate FL-356 for each child*

9
10 A separate form FL-356 must be filed for each child for whom SIJ findings
11 are requested.

12
13 (4) *Requests for multiple orders*

14
15 A party filing a request under this rule may combine that request with a
16 request for other orders relating to the child under the Family Code.

17
18 (c) **Opposition to request**

19
20 Any person entitled to notice of a *Request for Order* (FL-300) under rule 5.92 may
21 file an objection or other opposition to a request under this rule using *Responsive*
22 *Declaration to Request for Order* (form FL-320).

23
24 (d) **Hearing on request**

25
26 To obtain a hearing on a request under this rule, a party must file a *Request for*
27 *Order* (form FL-300) and attach a *Request for Special Immigrant Juvenile*
28 *Findings—Family Law* (form FL-356) for each child for whom SIJ findings are
29 requested.

30
31 (1) If filed at the same time as a request for a determination of custody or
32 parenting time with respect to a child, a request for SIJ findings for that child
33 and the request for order determining custody or parenting time may be heard
34 and determined together.

35
36 (2) The court may consolidate into one hearing separate requests under this rule
37 for more than one sibling or half-sibling named in the same family law case
38 or separate family law cases.

39
40 (3) If custody proceedings relating to siblings or half-siblings are pending in
41 multiple departments of a single court or in the courts of more than one
42 California county, the departments or courts may communicate about

1 consolidation consistent with the procedures and limits in section 3410(b)–(e)
2 of the Family Code.

3
4 **(e) Separate findings for each child**

5
6 The court must make separate findings for each child for whom a request under this
7 rule is made, and the clerk must issue a separate *Special Immigrant Juvenile*
8 *Findings* (form FL-357/GC-224/JV-357) for each child, whether the findings are
9 made in a single custody proceeding under the Family Code or multiple custody
10 proceedings.

11
12 **(f) Confidentiality (Code Civ. Proc., § 155(c))**

13
14 All records that pertain to a request under this rule and that include information
15 about the child’s immigration status must be kept in a confidential part of the case
16 file or, alternatively, in a separate, confidential file.

17
18 **(g) Sealing of record (Code Civ. Proc., § 155(d))**

19
20 A record or any part of a record that pertains to a request under this rule and that is
21 not otherwise required by law to be kept confidential may be sealed if the
22 requirements of rules 2.550 and 2.551 are met.