



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	Agenda Item Type
Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL- 357/GC-224/JV-357; revoke forms GC-224 and JC-224	January 1, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	August 27, 2015
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Corby Sturges, 415-865-4507 Corby.Sturges@jud.ca.gov
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Hon. John H. Sugiyama, Chair	

Executive Summary

The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee recommend adopting one rule of court, adopting four Judicial Council forms (including a joint findings form), and revoking two separate findings forms. The rule and forms are needed to implement Senate Bill 873 (Stats. 2014, ch. 685), which clarified the superior court's authority to make the factual findings needed for an undocumented child to apply for federal classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act into California law. The rule and forms are intended to guide a party requesting SIJ findings from a superior court in a child custody, guardianship, or

juvenile dependency or delinquency proceeding, and to supply the court with a sufficient factual basis to make accurate, just, and effective findings under California law.

Recommendation

The Family and Juvenile Law (F&J) and the Probate and Mental Health (PMHAC) Advisory Committees recommend that the Judicial Council, effective January 1, 2016:

1. Adopt rule 7.1020 of the California Rules of Court to specify procedural requirements for seeking SIJ findings in probate guardianship proceedings;
2. Adopt *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) to request SIJ findings in a family law custody proceeding;
3. Adopt *Petition for Special Immigrant Juvenile Findings* (form GC-220) to request SIJ findings in a probate guardianship proceeding;
4. Adopt *Request for Special Immigrant Juvenile Findings* (form JV-356) to request SIJ findings in a juvenile dependency or delinquency proceeding;
5. Adopt *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357); and
6. Revoke *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224).

The text of rule 7.1020 and the new and revoked forms are attached at pages 14–28.

Previous Council Action

The Judicial Council has not previously adopted any California Rules of Court¹ related to Special Immigrant Juvenile (SIJ) findings.

The council adopted *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224) for mandatory use, effective January 1, 2007, and revised it once, effective July 1, 2011.

The council adopted *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) for mandatory use, effective January 1, 2014.

Rationale for Recommendation

In response to the increase in unaccompanied, undocumented children entering the southwestern United States and being released to sponsors around the country,² as well as perceived

¹ All subsequent rule references are to the California Rules of Court unless otherwise specified.

uncertainty over the authority of the superior courts to make SIJ findings, California enacted a new law regarding immigrant children, effective September 27, 2014.³ New section 155 of the Code of Civil Procedure⁴ incorporates many of the provisions of the federal SIJ statute as interpreted by the California Court of Appeal. Subdivision (a) codifies the holding in *B.F. v. Superior Court* that the superior court has jurisdiction to make the SIJ findings in appropriate child custody proceedings.⁵ Subdivision (b) requires the superior court to make those findings when requested if there is 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 by state court findings. Subdivision (e) of section 155 specifically requires the Judicial Council to adopt any rules of court and forms needed to implement the new section. This recommendation constitutes the first and most extensive effort to fulfill the statutory mandate.

Underlying federal law

Special Immigrant Juvenile (SIJ) status was created by federal law in 1990 in response to concerns raised at the national level by local California child welfare agencies that child welfare and child custody 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 of these children’s deportation. To mitigate that risk, Congress amended the Immigration and Nationality Act (INA)⁶ 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.⁷

The INA defines an SIJ as an immigrant child⁸ 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

² Of the 68,541 unaccompanied children detained entering the U.S. in federal fiscal year 2014 (Oct. 1, 2013–Sept. 30, 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. Of the 5,842 unaccompanied children released to sponsors in California, more than half of those went to in Los Angeles County.

³ Stats. 2014, ch. 685 (Sen. Bill 873), §§ 1–2, 12–13, 15–16, 20, http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873.

⁴ Added by Sen. Bill 873 (Stats. 2014, ch. 685), § 1.

⁵ See *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 627–629 (*B.F.*). (The order appointing a guardian under the Probate Code was a “juvenile court” custody determination placing the children in the custody of an individual appointed by the court.)

⁶ Pub.L. No. 82-414 (June 27, 1952) 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 et seq.

⁷ Immigration Act of 1990 (Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978), § 153.

⁸ Under the INA, a child is an unmarried person under 21 years old. 8 U.S.C. § 1101(b)(1), (c)(1). Compare the definition of an “unaccompanied alien child” in the Homeland Security Act of 2002 as, among other elements, “a child ... who has not attained 18 years of age....” 6 U.S.C. § 279(g)(2).

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.⁹

To be eligible to apply for SIJ classification, a child must first obtain a “juvenile court order” finding that the applicant satisfies each of these three elements of the statutory SIJ definition.¹⁰ The INA relies on state court findings, made under state law, in recognition that the federal immigration agencies are neither authorized nor competent to make child custody and child welfare decisions or resolve issues of abuse, neglect, abandonment, or a child’s best interest.

Since their adoption, the SIJ implementing regulations have defined 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.¹¹ A straightforward application of this definition to California courts would include not only superior court divisions with jurisdiction over dependency and delinquency proceedings under the Juvenile Court Law (Welf. & Inst. Code, §§ 200–987), but also court divisions with jurisdiction over custody proceedings brought under the Family Code¹² and under the guardianship provisions of the Probate Code.¹³ The original statutory definition of an SIJ, however, required the child to have been declared a dependent of the state court and deemed eligible for long-term foster care.¹⁴ These provisions restricted requests for SIJ findings in California to juvenile dependency proceedings. Amendments to the INA by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 expanded the SIJ definition so that all California courts fitting the regulatory definition of “juvenile court” now have jurisdiction to make the determinations necessary to file a federal SIJ petition.¹⁵

To help protect immigrant child victims of human trafficking, the TVPRA expanded the INA’s definition of an SIJ in two significant ways. First, it expanded the types of state court orders that a child could use to satisfy the first SIJ criterion to include (1) an order committing a child to a state agency or department and (2) an order placing the child under the custody of a state agency

⁹ INA, 8 U.S.C. § 1101(a)(27)(J).

¹⁰ See 8 C.F.R. § 204.11(d)(2).

¹¹ *Id.*, at § 204.11(a); 58 Fed.Reg. 42843, 42850 (Aug. 12, 1993).

¹² See Cal. Fam. Code, §§ 200, 3020–3048.

¹³ See Cal. Prob. Code, §§ 800, 1510–1516.

¹⁴ Immigration Act of 1990, *supra* note 6, at § 153. To curb perceived abuses, the definition was further restricted in 1997 to children deemed eligible for long-term foster care “due to abuse, neglect, or abandonment.” Pub.L. No. 105-119, § 113 (Nov. 26, 1997) 111 Stat. 2440, 2460–2461.

¹⁵ Pub.L. No. 110-457 (Dec. 23, 2008), 122 Stat. 5044; see *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 349 (*Leslie H.*).

or department or an individual or entity appointed by the court.¹⁶ The addition of an order of commitment opened the possibility that a ward of the juvenile court under section 602 of the Welfare and Institutions Code would qualify for the findings.¹⁷ Furthermore, the inclusion of an order placing the child in or under the custody of an individual or entity opened the possibility that a child placed in the custody of a legal guardian or in the sole custody of one parent would also qualify.¹⁸

Second, the TVPRA eliminated the requirement that the child be eligible for long-term foster care, with its implication that the child not be able to reunify with any parent. In its place, the TVPRA inserted the requirement that the child not be able to reunify with “1 or both” parents because of “abuse, neglect, abandonment, or a similar basis” under state law.¹⁹ The United States Citizenship and Immigration Services (USCIS) consistently adjudicates SIJ petitions of children placed in the custody of one parent, but unable to reunify with another parent because of abuse, neglect, abandonment, or similar conduct by the latter parent.²⁰

The TVPRA also added protection against “aging out” of the jurisdiction of the state court and eligibility for SIJ classification.²¹ Today, USCIS will not, based on age or custody status, deny an SIJ petition if, at the time of filing, the youth was under 21 years of age and had been the subject of a valid state court order that was terminated solely because the youth reached the age of majority under state law.²²

Rule 7.1020

Other than form GC-224, adopted last year, no statewide guidance has been developed for requesting or making SIJ findings in probate guardianship proceedings. The Probate and Mental Health Advisory Committee has developed proposed rule 7.1020 to provide that guidance.

The rule requires a request for SIJ findings to be made by verified petition (rule 7.1020(b)(2)(A)). Whether filed concurrently with a petition for the appointment of a guardian or later in the guardianship proceeding, the SIJ petition must be filed as a separate petition (rule

¹⁶ TVPRA, *supra* note 15, at § 235(d)(1)(A).

¹⁷ See *Leslie H.*, 224 Cal.App.4th at pp. 351–352 (adjudication as a ward, placement in juvenile hall, and commitment to ongoing supervision on release are sufficient to satisfy the first SIJ criterion).

¹⁸ See *B.F.*, *supra* note 5, at pp. 627–629.

¹⁹ TVPRA, *supra* note 15, at § 235(d)(1)(A).

²⁰ See *In re Israel O.* (2015) 233 Cal.App.4th 279, 291 (*Israel O.*) (citing United States Citizenship and Immigration Services, *Immigration Relief for Abused Children: Information for Juvenile Court Judges, Child Welfare Workers, and Others Working With Abused Children* (April 2014)).

²¹ TVPRA, *supra* note 15, at § 235(d)(6).

²² See U.S. Citizenship and Immigration Services, *Policy Memorandum: Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* (June 25, 2015; PM 602-0117), at p. 2.

7.1020(b)(2)(B)). However, an SIJ petition filed concurrently with an appointment petition may be heard and determined together with the latter (rule 7.1020(e)(1)).

The majority of requests for SIJ findings come before the probate court in uncontested guardianship proceedings. In that context, the probate court must receive the verified petition as evidence (Prob. Code, § 1022, and rule 7.1020(e)(5)) and may decide whether to make the requested findings based on the facts alleged in the petition. However, the committee believes that if evidence is taken in a contested matter in support of or opposition to the requested findings, it should be heard and weighed in open court subject to cross-examination, and not simply in declarations (see rule 7.1020(e)(4)).

Any person eligible to petition for the appointment of a guardian under Probate Code section 1510, including the minor if over the age of 12 years, may file a request for SIJ findings (rule 7.1020(b)(1)). In a case with multiple minors, each age-eligible minor may file a petition only for him- or herself; however, his or her petition could be heard and determined with the SIJ petitions by or on behalf of other minors in the same guardianship proceeding (rule 7.1020(b)(1)(A), (e)(2)).

The rule requires notice of a hearing on the petition and a copy of the petition to be served by mail on the minor's parents and the persons listed in Probate Code section 1460(b) (rule 7.1020(c)). Any person entitled to notice of the petition may object or file an opposition to it (rule 7.1020(d); see also Prob. Code, § 1043). The rule also confirms the court's authority to either appoint counsel for the minor under Probate Code section 1470 or appoint a guardian ad litem under section 1003 for a minor who files a request for SIJ findings in a guardianship proceeding or who is the subject of a petition filed on his or her behalf by another (rule 7.1020(b)(1)(B)).

In cases involving more than one (proposed) ward seeking SIJ findings, the court is required to issue separate findings for each qualified minor in the case (rule 7.1020(f)). Separate findings are advisable because the federal immigration court proceedings for all qualified minors in the same guardianship case may not be similarly combined.

Forms for requesting SIJ findings

Proposed new *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Petition for Special Immigrant Juvenile Findings* (form GC-220), and *Request for Special Immigrant Juvenile Findings* (form JV-356) provide separate, but similar, formats for requesting SIJ findings. Each form is intended to solicit all information necessary for the superior court to determine a request for SIJ findings.

Format. The probate guardianship petition follows the text of rule 7.1020 and is somewhat more formal in tone and structure than the family and juvenile forms, in keeping with the procedural requirements of the Probate Code and title 7 of the California Rules of Court. The form must be filed as a separate, verified petition. Item 1 on the form tracks the requirements of Probate Code

section 1510 and proposed rule 7.1020(b)(2) as to the identity of the petitioner or petitioners. The form also tacitly incorporates the ordinary procedural requirements of guardianship practice under the Probate Code and title 7 of the rules of court.

The family law request form is styled as an attachment to a petition, response, *Request for Order* (form FL-300), or other request or responsive filing. It enumerates in item 5 the range of Family Code actions that typically underlie a request for SIJ findings. The common denominator of these actions is that all may support a request for child custody under division 8 (beginning with section 3000) of the Family Code.

On the other hand, the juvenile law request form is intended to stand alone. A child or person on behalf of the child may request SIJ findings at any point in the proceedings after the court has made the necessary underlying order. In family law and probate guardianship proceedings, on the other hand, the request for findings may be filed concurrently with or after the initial petition.

First finding. The first required finding—that the child has been declared a dependent of the court or committed to or placed under the custody of a state agency or department or an individual or entity appointed by the court—depends on the court’s decision in the underlying state law “custody” proceeding. The forms, therefore, ask the person requesting the findings to document that the necessary relief has been requested and to state whether that request is pending or has been granted. If the court has granted the underlying relief at the time the SIJ request is filed, the forms also require the requesting person to indicate the date of the court order. The forms specify the nature of the relief that would warrant the court making the first finding.

The family and juvenile law request forms go on to request expressly that the court make the first finding. The probate guardianship form leaves that request implicit in the statements in items 3 and 4.

Second finding. The forms next provide the opportunity to request the second finding of fact needed to enable a child to file a federal petition for SIJ classification: that reunification of the child with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under California law.²³ The forms provide space for detailed statements of facts in support of this finding to allow the court to make an accurate and just decision.

The finding that family reunification is not viable includes two parts: (a) that reunification is not viable; and (b) that abuse, neglect, abandonment, or conduct fitting a similar description under

²³ Until this year, it was uncertain whether a child, placed with one parent but unable to reunify with the other parent because of abuse, neglect, or abandonment by that parent, qualified for this finding under California law. Two recent appellate cases, *Israel O.*, *supra* note 20, in the First Appellate District, and *Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319 (*Eddie E. 2*), in the Fourth Appellate District, have made clear that a child in those circumstances does qualify for this finding.

California law is the basis for that finding. With respect to reunification, an order denying or terminating reunification services in a juvenile dependency or delinquency foster care case would almost certainly be sufficient. Other juvenile dispositional orders, such as placement with a previously noncustodial parent or appointment of a guardian, with or without declaring dependency, might also suffice. Item 5 on the juvenile request form requires the identification by date of any orders relevant to the viability of the child’s reunification with one or both parents.

In family and probate guardianship law, the precise meaning of reunification is less firmly established than in juvenile law. Because orders may be modified on a showing that the circumstances that required the initial order have changed and that modification would be in the child’s best interest, no family court custody order or guardianship is ever truly final or permanent.²⁴ Reunification—in the sense of the child’s return to the physical custody of the noncustodial parent—is never completely foreclosed. However, part 2 of division 8 of the Family Code (beginning with section 3020), which governs both family law custody and probate guardianship determinations, provides a clue to the effect of a guardianship or custody order on the prospects of family reunification. Specifically, Family Code section 3026 expressly prohibits the court from ordering reunification services in the context of a child custody or visitation proceeding.²⁵ The court must base its custody determination not on the child’s short-term best interest, but on his or her overall, long-term best interest. Thus, reunification with a parent who is not awarded custody or guardianship of the child, even under a plan agreed on by the parties, is outside the scope of the family or probate court’s authority and, therefore, arguably not viable as a matter of law as long as that order remains in effect.²⁶ This interpretation is consistent with juvenile law, which regards court-ordered placement of a child in the physical custody of a previously noncustodial parent or appointment of a legal guardian for the child as “permanent plans” available only after reunification services have been denied or terminated.²⁷

If facts constituting abuse, neglect, abandonment, or a similar basis for denying custody to one or more parents have not been shown to the court’s satisfaction in the underlying guardianship, custody, dependency, or delinquency proceeding, the requesting party will need to show that reunification is not viable on one of those grounds. Under California law, many different definitions of abuse, neglect, or abandonment exist.²⁸ For purposes of supporting the SIJ finding, parental conduct falling within any of those definitions would seem to suffice. In addition, other grounds under California law, such as a finding that placement with a parent would be

²⁴ This is also true in juvenile proceedings, unless parental rights have been terminated. See Welf. & Inst. Code, §§ 366.26, 366.3, 388.

²⁵ See *In re Kaylee J.* (1997) 55 Cal.App.4th 1425, 1430–1433 (“Once a . . . guardianship is established and a nonparent guardian is appointed . . . , the court has no authority to take steps to return custody to a parent” while the guardianship is in effect.)

²⁶ *Id.*

²⁷ See Welf. & Inst. Code, §§ 361.2(b), 361.5, 366.26(b), 727.2, 727.3(b).

²⁸ See, e.g., Fam. Code, §§ 6203, 6211, 7822–7823; Pen. Code §§ 270–273.5, 11165.1–11165.6; Welf. & Inst. Code, §§ 300, 361, 361.5.

detrimental to the child’s health, safety, or welfare under Family Code section 3041, may supply a sufficiently similar basis for the finding. Persons requesting findings should be prepared to include detailed statements of facts supporting the reasons that reunification is not viable.

Third finding. The third necessary finding, as indicated above, is that it is not in the child’s best interest to be returned to the child’s or parent’s country of nationality or last habitual residence. Under California law, all determinations affecting child custody, whether in family, juvenile, or probate court, are guided by the standard of the best interest of the child. An award of custody under California law to an individual or entity located in the United States could be understood to imply that the child’s best interest will not be served by removing the child from that custodial placement and returning him or her to his or her country of nationality. Nevertheless, the person requesting this finding should be prepared to introduce evidence of the circumstances facing the child in the country of nationality or last habitual residence in the event that the court has occasion to question the basis for this finding.

Form for making SIJ findings

The committees propose adopting a joint form for the superior court in a family law custody proceeding, a probate guardianship proceeding, a juvenile dependency proceeding, or a juvenile delinquency proceeding to make the SIJ findings when requested, warranted under California law, and supported by sufficient evidence. This joint form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357), replaces the existing standalone SIJ findings forms *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224), which are revoked. In fashioning the new combined form, the committees changed the title of the revoked forms to clarify that the superior court is not making a determination of a child’s eligibility for immigration relief. The court is rather documenting findings of fact and conclusions under state law that are necessary, but not sufficient, conditions for USCIS to consider an application for SIJ status.

In addition to combining the existing guardianship and juvenile SIJ findings forms into a single multipurpose form, the new form gives the family court a platform for making the SIJ findings. The use of a joint form ensures that California forms submitted to USCIS in support of an SIJ petition share a common format and articulate a reasonable factual basis for the judicial findings.

The joint findings form gives the court space to make detailed findings and to specify the grounds for each of its findings. In addition, the trial court, if it has “reason to doubt the petitioner’s good faith,” may take the opportunity urged on it by the Fourth Appellate District, in *Eddie E. 2*, to “include findings of any relevant facts that the court deems pertinent to the federal government’s inquiry.”²⁹

²⁹ *Eddie E. 2*, *supra* note 22, 234 Cal.App.4th at p. 333.

Comments, Alternatives Considered, and Policy Implications

External comments

As part of the spring 2015 invitation-to-comment cycle (April 17 to June 17), the proposal was sent out for public comment to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which included judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. In addition, committee staff sent the proposal to immigration attorneys, nonprofit immigrants' rights organizations, and the USCIS Office of Policy and Strategy. Eighteen comments were received; all commentators supported the proposal in principle.³⁰ Four commentators agreed with the proposal as circulated, while 14 commentators suggested modifications.

The committees requested comment on whether a rule of court for requesting SIJ findings in proceedings under the Family Code would be useful. The six commentators who addressed this question all agreed that a family law rule would be useful in promoting the fairness and efficiency of proceedings on requests for SIJ findings. The Family and Juvenile Law Advisory Committee considered trying to incorporate a family law rule into this proposal, but determined that the rule would benefit from more extended consideration and circulation for public comment. The committee intends to develop a family law rule for circulation in winter 2016.

The committees also requested comment on the usefulness of an information sheet or form to guide litigants and pro bono counsel through the process of requesting SIJ findings in proceedings under the Family or Probate Code. The three commentators who responded to this question agreed that an information sheet would be useful. The committees intend to consider the appropriate format and content for an information sheet in the coming months.

Several commentators suggested that the probate rule and the family, juvenile, and probate request forms be modified to clarify that a petitioner or requesting party is permitted to attach additional documents, including declarations and memoranda of points and authorities. The PMHAC has determined that the suggested clarification is not needed. Although addenda are permitted to be attached to mandatory Judicial Council forms in probate matters under rule 7.101, the inclusion of all necessary information in the verified petition will promote more effective and efficient proceedings. F&J agreed that inclusion of as much information as possible in the request forms is desirable, but recognized that circumstances may arise in which attachment of additional documents is necessary. The committee has added an item to the family and juvenile law SIJ request forms to indicate when additional documents are attached.

Many commentators suggested clarifying rule 7.1020 to specify that there is no separate filing fee for a petition for SIJ findings. The PMHAC declined to address this issue in the rule. Filing

³⁰ A chart providing the full text of the comments and the complete committee responses is attached at pages 27–101.

fees for proceedings under the Probate Code are set by sections 70650–70663 of the Government Code. The committee does not have authority to depart from or waive those fees in a rule of court. The committee anticipates, however, that almost all SIJ petitions will be filed concurrently with petitions for appointment of a guardian of the person only, or after such a guardian has been appointed. In those circumstances, Government Code sections 70657(e), 70658(c)(1), and 70658.5 provide that no fee may be charged for filings in those circumstances. In other circumstances, the petitioner may seek a waiver of fees under Government Code sections 68630–68641 and new rule 7.5, effective September 1, 2015. F&J intends to consider whether a provision clarifying fees is necessary and appropriate when developing the family law rule referred to above.

Some commentators also suggested that rule 7.1020 and form GC-220 be modified to permit multiple wards to file a single, joint request for SIJ findings in a guardianship proceeding. The PMHAC declined to make the suggested change. The court is required to issue separate SIJ findings for each child who warrants them. The requirement of a separate SIJ petition for each child is intended to ensure that the court receives facts applicable to each individual child so that it may tailor its findings to the specific circumstances of each child. For the same reasons, the family and juvenile SIJ request forms also require submission of a separate request for each child. The committees note that the SIJ petitions may be consolidated for hearing if sufficient common elements exist.

Commentators also suggested eliminating the requirement for a separate notice of hearing on an SIJ petition in guardianship proceedings. The PMHAC does not recommend eliminating this requirement. The rule’s notice requirements are quite limited. In addition to the guardian and the ward, the rule requires that the child’s parents receive notice. Parental notice is appropriate because the SIJ findings, especially a finding that parental conduct constituted abuse, neglect, or abandonment of the child, may have collateral legal consequences for the parent. Furthermore, the court may, under section 1460(e) of the Probate Code, dispense with notice for good cause.

Several commentators suggested explicitly requiring the court to hold a hearing on an uncontested SIJ petition before denying the petition. The PMHAC has concluded that there is no need to require a hearing in the rule because sections 1041 and 1043 of the Probate Code require a hearing to be held on every petition, contested or not. Indeed, because section 1043(b) permits an objection to be raised orally at the hearing, the court has no way to determine that a petition is uncontested without holding the hearing set under section 1041.

Many commentators suggested revising the presentation of “a similar basis under California law” on all forms. Most of these commentators suggested incorporating this language into each of the three enumerated bases—abuse, neglect, and abandonment—for determining that reunification with one or both parents is not viable. The committees do not recommend this change. Eliminating the “similar basis” as a separate, fourth basis and, instead, incorporating it into the specified bases might unnecessarily restrict the bases that a party might assert or a court might

deem sufficiently similar to make the finding. F&J has revised the family and juvenile forms to simplify the language soliciting an alternative basis for requesting the finding.

Some commentators suggested that form FL-356, the family law SIJ request, be made a standalone form instead of an attachment to promote confidentiality and procedural clarity. F&J does not recommend that form FL-356 be a standalone form. Confidentiality may be protected by attaching the request to a separate *Request for Order* (form FL-300) rather than to a petition, response, or combined request for order. The court may then place the request in the confidential portion of the family law file, as it does with other confidential documents. The clarity sought by commentators would compromise the court's flexibility to consider and determine SIJ requests in a variety of procedural contexts. The lack of flexibility might, in turn, operate to preclude the court from granting relief in a timely manner or otherwise harm the petitioner's interests.

For confidentiality reasons, most commentators objected reasons to the requirement on form JV-356, the juvenile request form, that the underlying juvenile court findings and orders be attached. F&J has revised the form to require specification of the dates of the underlying orders. The committee has concluded that the date should be enough information for judicial officers or court staff to identify and access the relevant orders.

Two commentators requested that the committees add an item and additional space to the joint SIJ findings form for the court to use to deny the request and give its reasons. The committees do not recommend adding the suggested item. Because the primary purpose of the form is to document the SIJ findings for submission to the U.S. Citizenship and Immigration Services (USCIS) and the form will not be submitted to USCIS if the court declines to make even one of the findings, the addition of space for a denial or explanation is not warranted. If the court denies a request for one or more of the findings, reasons articulated on the findings form in the space under the appropriate finding or on the minute order will suffice to provide a basis for the requesting party to seek a writ.

The committees also made several clarifying modifications to the forms in response to comments received.

Alternatives considered

The committees considered whether existing rules and forms were adequate to address the mandates of SB 873, and determined that a new probate rule and new forms are needed. The current "order" forms, GC-224 and JV-224, solicit only conclusions from the court without providing sufficient opportunities for the court to specify the factual bases for those conclusions. Furthermore, the absence of forms for requesting SIJ findings had led to great variation in the structure and content of the requests. This variation in turn, frustrated the development of standard procedures for adjudicating the requests. The proposed request forms encourage parties to frame their requests to bring material issues to the court's attention by tying relevant supporting evidence and information to the specific findings requested.

The Family and Juvenile Law Advisory Committee considered proposing the adoption of rules of court to specify procedures for requesting SIJ findings in family and juvenile court proceedings. The committee determined provisionally that the recommended forms solicited the information required for the court to make determinations necessary for the findings, and that requests could be filed under existing request for order procedures in family and juvenile law proceedings. Commentators, however, uniformly supported the development of a rule for bringing and adjudicating requests for SIJ findings in proceedings under the Family Code. The committee intends to develop a rule for SIJ findings in family law as soon as possible.

The committees also considered the alternatives presented by each suggestion submitted by commentators and modified the rule and forms in several respects in response, as documented in the attached chart of comments.

Implementation Requirements, Costs, and Operational Impacts

Implementation of this proposal should require only modest implementation and training costs. The adoption of standard forms for requesting SIJ findings that elicit the required information, in formats familiar to the court divisions receiving the requests, should reduce overall court costs by narrowing the issues, ensuring that relevant evidence is linked to those issues, and reducing the need for contested hearings. Implementing the requirements of Code of Civil Procedure section 155 without the structural guidance of the proposed forms, in the face of an anticipated increase in requests for SIJ findings, would almost certainly be less efficient and effective.

The forms will require some training of family, juvenile, and probate court staff. Family law and probate divisions will require training on processing requests and proposed SIJ findings in any event. Juvenile court staff familiar with SIJ findings will need training only in processing the forms. The joint findings form will promote uniformity in the content of the findings in the trial courts and should enhance the effectiveness of the underlying state court order by preventing its vitiation by inconsistent federal immigration rulings.

Attachments and Links

1. Cal. Rules of Court, rule 7.1020, at pages 14–16
2. Forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357, at pages 17–28
3. Chart of comments, at pages 29–103

Rule 7.1020 of the California Rules of Court is adopted, effective January 1, 2016, to read:

1 **Rule 7.1020. Special Immigrant Juvenile Findings in Guardianship Proceedings**

2
3 **(a) Application**

4
5 This rule applies to a request by or on behalf of a minor who is a ward or a
6 proposed ward in a probate guardianship proceeding for judicial findings needed as
7 a basis for filing a petition for classification as a Special Immigrant Juvenile (SIJ)
8 under federal immigration law. The term “request under this rule” as used in this
9 rule refers exclusively to such a request. This rule also applies to any opposition to
10 a request under this rule, any hearing on such a request and opposition, and any
11 findings of the court in response to such a request.

12
13 **(b) Request for findings**

14
15 **(1) Who may file request**

16
17 Any person or entity authorized under Probate Code section 1510 to petition
18 for the appointment of a guardian of the person of a minor, including the
19 ward or proposed ward if 12 years of age or older, may file a request for
20 findings regarding the minor under this rule.

21
22 **(A)** If there is more than one ward or proposed ward in the proceeding, a
23 minor eligible to file a request for findings under this rule may do so
24 only for himself or herself.

25
26 **(B)** The court may appoint an attorney under Probate Code section 1470 or
27 a guardian ad litem under Probate Code sections 1003 and 1003.5 to
28 file and present a request for findings under this rule for a minor or to
29 represent the interests of a minor in a proceeding to decide a request
30 filed on the minor’s behalf by another.

31
32 **(2) Form of request**

33
34 **(A)** A request for findings under this rule must be made by verified petition.
35 A separate request must be filed for each minor seeking SIJ findings.

36
37 **(B)** A request for findings under this rule by or on behalf of a minor filed
38 concurrently with a petition for the appointment of a guardian of the
39 person of the minor must be prepared and filed as a separate petition,
40 not as an attachment to the petition for appointment.

1 **(c) Notice of hearing**

2
3 Notice of a hearing of a request for findings under this rule, and a copy of the
4 request, must be sent to the minor's parents and the persons listed in section
5 1460(b) of the Probate Code, in the manner and within the time provided in that
6 section, subject to the provisions of subdivision (e) of that section and sections
7 1202 and 1460.1 of that code.

8
9 **(d) Opposition to request**

10
11 Any of the persons who must be given notice of hearing of a request for findings
12 under this rule may file an objection or other opposition to the request.

13
14 **(e) Hearing on request**

15
16 (1) If filed concurrently, a request for findings under this rule by or on behalf of
17 a minor and a petition for appointment of a guardian of the person of that
18 minor may be heard and determined together.

19
20 (2) Hearings on separate requests for findings under this rule by or on behalf of
21 more than one ward or proposed ward in the same guardianship proceeding
22 may be consolidated on the motion of any party or on the court's own
23 motion.

24
25 (3) Hearings on requests for findings under this rule by or on behalf of minors
26 who are siblings or half-siblings and are wards or proposed wards in separate
27 guardianship proceedings may be consolidated on the motion of any party in
28 either proceeding or on the motion of the court in either proceeding. If
29 multiple departments of a single court or courts in more than one county are
30 involved, they may communicate with each other on consolidation issues in
31 the manner provided for inter-court communications on venue issues in
32 guardianship and family law matters under section 2204 of the Probate Code
33 and rule 7.1014.

34
35 (4) Hearings on contested requests for findings under this rule must be conducted
36 in the same manner as hearings on other contested petitions under the Probate
37 Code.

38
39 (5) Probate Code section 1022 applies to uncontested requests for findings under
40 this rule.

1 **(f) Separate findings in multi-ward cases under this rule**

2

3 The court must issue separate findings for each minor in a guardianship proceeding
4 in which more than one minor is the subject of a request under this rule.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
---	--------------

REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW
 —This is not a court order—

Attachment to:

- Petition**
 Response
 Request for Order
 Responsive Declaration to Request for Order
 Other (specify):

1. I am the petitioner respondent other parent or party. I allege the following facts and request that the court make the specified findings and conclusions.

2. This court has jurisdiction to make a child custody determination about the child in item 3 under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam. Code, §§ 3400–3465.) If not currently on file with the court, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) is attached.

3. The child (*name*)* _____ (*date of birth*): _____
 is a national of (*country*): _____

4. The child's parents are (*name each*):

Mother

Father

Other legal parent

Mother

Father

Other legal parent

5. A petition has been filed earlier in this proceeding at the same time as this request in a different family law case (*specify court and case number*):
 - a. *Petition—Marriage/Domestic Partnership* ([form FL-100](#)), asking for sole physical custody.
 - b. *Petition to Establish Parental Relationship* ([form FL-200](#)), asking for sole physical custody.
 - c. *Petition for Custody and Support of Minor Children* ([form FL-260](#)), asking for sole physical custody.
 - d. *Request for Domestic Violence Restraining Order* ([form DV-100](#)), asking for sole physical custody.
 - e. *Adoption Request* ([form ADOPT-200](#)).
 - f. Another petition or request for sole physical custody of the child (*specify*): _____

6. This court made an order about physical custody of the child on (*date*): _____ . That order remains in effect.
 The case in item 5 is pending in this court.

7. After the court has granted the orders requested in item 5, the child will be legally placed under the custody of an individual appointed by the court. The court has jurisdiction to modify or terminate these orders, unless another court acquires valid jurisdiction, until the child reaches 18 years of age.

8. I understand that section 3026 of the Family Code prohibits the court from ordering reunification services as part of a child custody proceeding. After the court has ordered sole physical custody to one parent, return of the child to the physical custody of another parent (reunification) will not be legally permissible while that order is in effect.

* (*Prepare a separate form FL-356 for each child for whom you are requesting Special Immigrant Juvenile findings.*)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

9. The child has been placed in the custody of *(name)*:
 who is an individual appointed by the court as described in the order referred to in items 5 and 6.
10. Reunification of the child with the mother the father the other legal parent is not viable under California law because of *(check all that apply)*:
- abuse
 - neglect
 - abandonment
 - another legal basis *(specify)*:

Facts supporting this finding *(specify)*:

Continued on Attachment 10.

11. It is not in the best interest of the child to be returned to the child's or the parent's country of nationality or country of last habitual residence *(specify country or countries)*:

Facts supporting this finding *(specify)*:

Continued on Attachment 11.

12. Additional documents in support of the request are attached and incorporated into this form. *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.

Date: _____


 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	FOR COURT USE ONLY Draft Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF <input type="checkbox"/> (Name): _____ <div style="text-align: right;"> <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS </div>	
PETITION FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER: _____

Petitioner (name each): _____ alleges:

1. Petitioner is (check all that apply to a single petitioner or to more than one petitioner):
- a. The proposed guardian of the person or the person and estate of the minor named in item 2. This petition is filed concurrently with the petition for my appointment as guardian.
 - b. The guardian of the person or the person and estate of the minor named in item 2. The order appointing me was filed in this case on (date): _____ . Letters of Guardianship were issued on (date): _____
 - c. The minor named in item 2. I am at least 12 years of age. I was born on (date): _____
 If there are two or more wards or proposed wards in this case, I am asking the court for an order only for myself.
 - d. The *guardian ad litem* for the minor named in item 2. A certified or conformed copy of the *Order Appointing Guardian Ad Litem— Probate* (form GC-101) is attached to this petition as Attachment 1d.
 - e. An adult relative (specify relationship): _____ or other person on behalf of the minor named in item 2.
2. (Name of Minor):* _____
 is a national of (country): _____
3. This court has jurisdiction under California law “to make judicial determinations about the custody and care of juveniles” within the meaning of section 101(a)(27)(J) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a). The minor named in item 2 is under this court's jurisdiction and will remain under that jurisdiction if the court appoints (or has appointed) a guardian of his or her person in this proceeding.
4. If a guardian of the person of the minor named in item 2 has been appointed and has qualified in this proceeding, the minor is placed under the custody of an individual or entity appointed by a California state or juvenile court located in the United States within the meaning of INA section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

* (In a guardianship case involving more than one ward, prepare a separate petition for each ward for whom you are seeking SIJ findings.)

GUARDIANSHIP OF <i>(Name)</i> : <div style="text-align: center;"> <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS </div>	CASE NUMBER:
---	--------------

Requested Findings

5. Reunification of the minor named in item 2 with one parent both parents is not viable under California law because of *(check all that apply)*:
- abuse
 - neglect
 - abandonment
 - another legal basis *(specify)*:

Facts in support of this finding are stated below *(for each parent with whom reunification is not viable, state the reasons that apply to that parent)*:

Additional facts are stated on Attachment 5 to this petition. *(You may use Attachment to Judicial Council Form [\(form MC-025\)](#) for this purpose.)*

GUARDIANSHIP OF <i>(Name)</i> : <div style="text-align: center;"> <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS </div>	CASE NUMBER:
---	--------------

6. It is not in the best interest of the minor named in item 2 to be returned to the minor's or the parent's previous country of nationality or country of last habitual residence. (*specify country or countries*):

Facts in support of this finding are stated below:

Additional facts are stated on next page.

GUARDIANSHIP OF (Name): <div style="text-align: center;"> <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS </div>	CASE NUMBER:
---	--------------

6. (continued):

Additional facts are stated on Attachment 6 to this petition. (You may use Attachment to Judicial Council Form [\(form MC-025\)](#) for this purpose.)

7. All attachments to this form are incorporated by this reference as though placed here in this form. There are ___ pages attached.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)	▶	(SIGNATURE OF ATTORNEY*)
----------------------------------	---	--------------------------

* All petitioners must also sign (Prob. Code, § 1020).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
----------------------	---	---------------------------

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY Draft Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

I allege the following:

1. The child (*name*):* _____ (*date of birth*): _____
 is a national of (*name of country*): _____

2. The child's parents are (*name each*):

<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Other legal parent
<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Other legal parent
<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Other legal parent

3. The court found that the child was described by Welfare and Institutions Code section 300 602 other (*specify*): _____
 and assumed jurisdiction over the child on (*date*): _____
 The child is currently under the court's jurisdiction.

4. The child was (*check all that apply*):
 - declared a dependent child of the court on (*date*): _____
 - ordered committed to a state agency or department (*name*): _____
 on (*date*): _____ for a term of _____ months. The commitment order remains in effect.
 - ordered placed under the custody of an individual or entity (*name, unless confidential*): _____
 on (*date*): _____ . The placement or custody order remains in effect.

5. The court (*check and complete all that apply*):
 - ordered the child removed from the custody of (*name(s)*): _____ on (*date*): _____
 - declined to place the child in the custody of (*name(s)*): _____ on (*date*): _____
 - denied services to (*name(s)*): _____ on (*date*): _____
 - terminated services to (*name(s)*): _____ on (*date*): _____
 - appointed (*name*): _____ as the child's guardian on (*date*): _____
 - terminated the parental rights of (*name*): _____ on (*date*): _____

***(Prepare a separate form JV-356 for each child for whom you are requesting Special Immigrant Juvenile findings.)**

CASE NAME:	CASE NUMBER:
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I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

6. The child has been *(check all that apply)*:

- declared a dependent of the court
- committed to the custody of *(name of state agency or department)*:
- placed in or under the custody of *(name of individual or entity, unless confidential)*:

by virtue of the court order referred to above in item 4.

7. Reunification of the child with *(name(s))*:

- mother father other legal parent is not viable under California law because of *(check all that apply)*:
- abuse
- neglect
- abandonment
- another legal basis *(specify)*:

Facts supporting this finding, including any order listed in item 5 *(specify)*:

Continued on Attachment 7.

8. It is not in the best interest of the child to be returned to the child's or parent's country of nationality or country of last habitual residence *(specify country or countries)*:

Facts supporting this finding *(specify)*:

Continued on Attachment 8.

9. Additional documents in support of the request are attached and incorporated into this form. *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.

Date:



 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i> Draft Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
SPECIAL IMMIGRANT JUVENILE FINDINGS		CASE NUMBER:

1. Child's name: _____ Date of birth: _____
2. The petition or request for Special Immigrant Juvenile (SIJ) findings was heard:
- a. Date of hearing: _____ Time: _____ Dept.: _____ Room: _____
 - b. Judicial officer (*name*): _____
 - c. Persons and attorneys present (*names*): _____

The court has reviewed the evidence and finds the following:

3. Notice of the underlying proceeding was given as required by law.
4. a. The child was declared a dependent of the juvenile court of the county of (*specify*): _____
on (*date*): _____ and remains under the court's jurisdiction.

OR

- b. The child was
- (1) placed under the custody of an individual (*name, unless confidential*): _____
 - (2) placed under the custody of an entity (*name*): _____
 - (3) committed to a state agency or department (*name*): _____
appointed by this court or another California court on (*date*): _____
- The custody or commitment order remains in effect.

Supporting legal conclusions or factual findings, if necessary:

Continued on Attachment 4.

CASE NAME:	CASE NUMBER:
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5. Reunification of the child with the mother the father the other legal parent is not viable under California law because of parental abuse, neglect, abandonment, or a similar legal basis (*specify*):

as established on (*date*): _____, for the following reasons (*for each parent with whom reunification is not viable, state the reasons that apply to that parent*):

Continued on Attachment 5.

6. It is not in the child's best interest to be returned to the child's or parent's country of nationality or country of last habitual residence (*specify country or countries*):
for the following reasons:

Continued on Attachment 6.

Date:

JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE <input type="checkbox"/> OF _____ <i>(Name):</i> _____ <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS*	
<p style="text-align: center;">ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP</p>	

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. *(Name)*: _____ the minor one of the minors named above, was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by this court, on *(specify date)*: _____. He or she remains under this court's jurisdiction.
2. Reunification of the minor with one or both of his or her parents was deemed not to be viable on *(date)*: _____. This finding was made by reason of the abuse, neglect, or abandonment of the minor or by reason of a similar basis under California law.
3. It is not in the best interest of the minor to be returned to his or her previous country of nationality or country or countries of last habitual residence *(specify country or countries)*: _____
 or to his or her parents' previous country or countries of nationality or country or countries of last habitual residence *(specify country or countries)*: _____
4. It is in the minor's best interest to remain in the United States.
5. Additional findings about the minor or his or her parents are provided on Attachment 5. stated below:

Date: _____

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

* *(In a guardianship case involving more than one ward, prepare a separate order for each ward whose eligibility for special immigrant juvenile status is at issue.)*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): _____ TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS	

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602. The child was declared dependent on the juvenile court of the county of *(specify)*:
The child was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by a state or juvenile court, on *(specify date)*:
The child remains under this court's jurisdiction.
2. Reunification of the child with one or both of the child's parents was deemed not to be viable on *(specify date)*:
This finding was made by reason of the abuse, neglect, or abandonment of the child or by reason of similar basis under California law.
3. It is not in the best interest of the child to be returned to his or her previous country of nationality or country of last habitual residence *(specify country or countries)*:
or his or her parents' country or countries *(specify country or countries)*:
It is in the child's best interest to remain in the United States.
4. Specific factual findings about the child and/or the child's parents are set forth below or provided on Attachment 4.

Date:

_____ JUDICIAL OFFICER

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney Los Angeles	AM	<p>While Bet Tzedek is grateful for the clarity that passage of SB 873 has provided and supports the adoption of Rules of Court to better implement the process of securing the predicate findings required for specific relief as a Special Immigrant Juvenile, the proposed rule and proposed forms do not adequately meet that goal and, in some circumstances, may hinder application of the legislation. Therefore, Bet Tzedek opposes their adoption unless several modifications, discussed below, are made.</p> <p>* * *</p> <p>Bet Tzedek is grateful for passage of SB 873 and similarly supports the adoption of Rules of Court and forms to implement California Code of Civil Procedure section 155. The modifications discussed in the comments above, however, are necessary if the proposed rule and proposed forms are to achieve their purposes and comply with the spirit and intent [of] existing law. Therefore, Bet Tzedek opposes the adoption of the proposed rule and forms as written.</p> <p>*See comments on specific issues, below.</p>	The Family and Juvenile Law Advisory Committee (FJLAC) and the Probate and Mental Health Advisory Committee (PMHAC) (jointly, committees) thank you for your comment. See further responses to specific comments, below.
2.	Peggy J. Bristol, Attorney Law Office of Peggy Bristol-Wright Oakland	AM	<p>As a relatively new attorney with four years of practice in immigration law, I specialize in SIJS cases and have represented clients in probate and family courts in Contra Costa, Alameda, San Francisco, San Mateo, Santa Clara, and San Joaquin counties. I have also mentored a number of pro bono attorneys. I have nothing but the highest praise for California’s recent legislation</p>	The committees thank you for your comment. See further responses to specific comments, below.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commentator	Position	Comment	Committee Response
		<p>supporting immigrant youth, and the Judicial Council’s response to <i>B.F. v. Superior Court of Los Angeles County</i> and the appellate cases—<i>Leslie H.</i>, <i>Eddie E.</i>, and <i>Israel O.</i>—that followed. This is my first time responding to an Invitation to Comment.</p> <p><u>SIJS issues in Probate Court: the matter of “one-parent” guardianships in probate courts</u> As a matter of federal law, California courts now acknowledge that “reunification with one or both parents is not viable due to abandonment, abuse, or neglect” means that a state court may properly issue <i>SIJS factual findings</i> if a child lives with one parent. However, as a matter of probate law, a threshold issue still remains: whether a probate court can appoint a <i>guardian</i> when the child’s parent also lives in the home.</p> <p>The CEB Guardianship Practice Manual clearly refers to the one-parent guardianship scenario as a “technical change of custody,” as in cases where the grandparent has medical coverage but the parent does not; where the parent lives in the home but has a drug problem; or where the parent has a terminal illness.</p> <p>With respect to SIJS cases, some probate courts have also granted one-parent guardianships based on the argument that the parent is undocumented or already has an order of deportation, and as such cannot guarantee that he or she will always be</p>	<p>The PMHAC does not recommend addressing this issue in the rules of court, as it raises a substantive legal question appropriately resolved by the appellate courts or the Legislature.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commentator	Position	Comment	Committee Response
		<p>there to act in the child’s best interest. Appointing a close relative or family friend as guardian will give the child an additional level of safety and security that the parent cannot offer. However, other probate courts (San Mateo County comes to mind) have flatly refused to grant a single-parent guardianship and completely rejected the CEB practice manual’s reference to “technical change of custody.”</p> <p><u>SIJS “Age-Out” Issues for both Probate and Family Courts</u></p> <p>Finally, one more comment with respect to SIJS cases in California. The federal statute states that a young person can file his or her I-360 SIJS petition with USCIS up until age 21. However, in California the actual cutoff age is 18, the age of majority in this state. As a result, many young people and their advocates are scrambling to file cases in superior courts before the minor’s 18th birthday; otherwise, three years of additional eligibility under the federal standard are lost. Some courts will honor and accommodate the urgency of an age-out filing; others will not, and the result may literally be a matter of life or death for some young people.</p> <p>Some judges have asked why the minor waited so long to file a guardianship or family law petition. It’s not always a matter of procrastination on the part of a minor or his/her attorney; many young people are escaping from gang-related violence</p>	<p>The committees do not recommend addressing this issue through the rules of court. The age of majority in California is set at 18 by sections 6500–6502 of the Family Code. Under current law, the superior court loses authority to appoint a guardian or award custody when a child reaches age 18. Although the court may expedite review of a petition for guardianship or a request for custody because of exigent circumstances, that decision is properly left to the discretion of the court in each case.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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			<p>that reaches a point of critical mass as they enter their late teens.</p> <p>I would think that age-out cases also place additional strain on the superior courts, most of whom are already dealing with budget cuts. The great majority of my own SIJS cases have come from low-income families that easily qualified for fee waivers. The courts' caseloads are increasing as more and more SIJS cases are filed, particularly age-out cases, but with reduced staffing, reduced hours at filing windows, etc., I hope the Judicial Council's committees will be able to explore ways that California courts may ease the strain on everyone involved by granting SIJS orders beyond a young person's 18th birthday.</p> <p>*See additional comments on specific issues, below.</p>	<p>The committees do not recommend addressing this issue through a rule of court. The jurisdiction of the superior court is conferred by statute over specified proceedings. If the Legislature wishes to expand the court's jurisdiction, it may do so. SIJ request cases may indeed place a strain on the superior courts. But it seems counterintuitive to expand the superior court's jurisdiction to hear additional cases that include requests for SIJ findings as a way to reduce that strain.</p>
3. s	California Judges Association Joan P. Weber, President	A	<p>The proposed rule and forms are needed to implement SB 873, which clarified the superior court's authority to make predicate findings to enable an undocumented child to petition the federal government for classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act (INA) into California law. The proposed rule and forms are intended to specify the process for requesting SIJ predicate findings from a court in a family law, probate guardianship, juvenile dependency, or juvenile delinquency proceeding, and to supply the court</p>	<p>The committees thank you for your comment. See further responses to specific comments, below.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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			<p>with a sufficient factual basis to make accurate, just, and effective findings if warranted under California law.</p> <p>We support the proposed rule and forms. Not only does this improve the findings forms with one form for Family/Juvenile/Probate, but it also creates a Request for findings form which, in effect, requires the requesting party to state a detailed basis which can then be used on the findings form. This now places the burden on the requesting party to provide the Court with the detailed findings.</p>	
4.	Immigrant Legal Resource Center San Francisco Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney	AM	The Immigrant Legal Resource Center (ILRC) submits the following comments.... The ILRC has extensive experience working at the cross-section of state juvenile court systems and immigration law. In our work with immigrant youth advocates, we have seen many youth in California who meet the federal eligibility requirements for [Special Immigrant Juvenile Status (SIJS)] struggle to navigate through the state court systems that are empowered to make predicate eligibility findings for SIJS. We thank the Judicial Council for its thoughtful efforts to streamline the process for immigrant youth in state court proceedings through this proposed Rule of Court and Judicial Council forms and submit the following comments with the hope of further clarifying the processes for SIJS-eligible youth in our state courts.	The committees thank you for your comment. See further responses to specific comments, below.

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			*See additional comments on specific issues, below.	
5.	Legal Advocates for Children and Youth (LACY), San Jose Neha Marathe, Senior Attorney	AM	LACY supports the comments to the Proposed Rules and Forms submitted by the Immigrant Legal Resource Center (ILRC) to the Judicial Council. In addition, as advocates providing direct representation to SIJS-eligible children and youth in state court, we would like to emphasize certain points below. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
6.	Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	AM	We are family law and immigration advocates ... with experience working with clients in Special Immigrant Juvenile Status (SIJS) cases. We have reviewed the Judicial Council's SPR15-28 relating to SIJS findings and we respectfully offer the following comments, feedback, and suggestions. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
7.	Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	AM	Legal Services for Children submits the following comments.... [LSC] has been representing children in [SIJS] cases since the law was first passed in 1990. Since that time, our staff and pro bono attorneys have represented hundreds of youth in [SIJS] petitions. We have sought SIJS predicate findings from state juvenile and probate courts, for youth in foster care, on probation, or in probate guardianships. ...	The committees thank you for your comment. See further responses to specific comments, below.

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			<p>Through both our individual clients and our consultations with other advocates around California, we have seen too many youth ... who meet the federal SIJS eligibility criteria fall through the cracks because they are unable to obtain the state court predicate order necessary to apply. We thank the Judicial Council for its thoughtful efforts to streamline the process for immigrant youth in state court proceedings through this proposed rule of court and Judicial Council forms and submit the following comments with the hope of further clarifying the processes to SIJS-eligible youth in our state courts.</p> <p>*See additional comments on specific issues, below.</p>	
8.	Los Angeles County Counsel’s Office Dawyn Harrison, Assistant County Counsel	AM	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
9.	Orange County Bar Association Ashleigh Aitken, President	A	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
10.	Public Counsel Kristen Jackson, Senior Staff Attorney	A	I am writing in support of the Immigrant Legal Resource center’s (ILRC) comments on the Judicial Council’s proposed rule of court and forms related to Special Immigrant Juvenile Status (SIJS)... Public Counsel is widely recognized as a leader on SIJS cases.... Since the Judicial Council issued its Invitation to Comment, we have collaborated closely with the ILRC to shape its recommendations. Our attorneys with SIJS	The committees thank you for your comment. See further responses to specific comments, below.

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			<p>expertise in juvenile, probate, and family court provided input during the drafting process. We are in full support of the ILRC recommendations, and we look forward to the expansion of access to SIJS in the California court system.</p> <p>*See additional comments on specific issues, below.</p>	
11.	San Diego Volunteer Lawyer Program Amy Fitzpatrick, Chief Executive Officer	AM	<p>San Diego Volunteer Lawyer Program, Inc., (SDVLP) writes in support of the proposed rules and forms regarding SPR15-28, if modified.</p> <p>*[The SDVLP submitted comments identical to those submitted by the ILRC. For brevity and ease of review, these comments and the committees' responses are presented together below, with both organizations credited.]</p>	The committees thank you for your comment. See further responses to specific comments, below.
12.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	AM	<p>The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modifications.</p> <p>*See comments on specific issues, below.</p>	The committees thank you for your comment. See further responses to specific comments, below.
13.	State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	AM	<p><u>Does the proposal appropriately address the stated purpose?</u> Yes. The proposal appropriately addresses the stated purpose of implementing Senate Bill 873. The only other existing form adopted last year, GC-224, as mentioned in the background did not fully satisfy the requirements needed of a predicate finding.</p> <p>*See additional comments on specific issues,</p>	The committees thank you for your comment. See further responses to specific comments,

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			below.	below.
14.	Superior Court of Los Angeles County	AM	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so please quantify. If modified, the proposal may result in shorter hearings and reduce the likelihood of additional hearings.</p> <p>What would the implementation requirements be for the 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. New document, party type (GAL) and result codes need to be created in CMS. Staff will need to be trained and be familiarized with the new forms. If the petition may be filed within an open family law case, it may create additional work to keep these documents confidential within an otherwise public file.</p> <p>Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Probably.</p> <p>Would this proposal have different effects on</p>	<p>The committees thank you for your comment. See further responses to specific comments, below.</p> <p>No response required.</p> <p>See responses to specific comments, below.</p> <p>The committee acknowledges that implementation will require trial courts to make some procedural changes, though the committee does not understand why the court would consider a guardian ad litem (GAL) to be a new party type. The committee intends the proposed forms to streamline the SIJ findings process for both courts and litigants.</p> <p>No response required.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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			<p>courts of different sizes? How so? Probably not.</p> <p>*See additional comments on specific issues, below.</p>	No response required.
15.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers	AM	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
16.	Superior Court of Sacramento County Tim Ainsworth, Executive Officer	AM	<p>“... the person requesting this finding should be prepared to introduce evidence of conditions in the child’s country of nationality or last habitual residence”</p> <p>This statement is contrary to case law—<i>Israel O.</i></p> <p>*See additional comments on specific issues, below.</p>	<p>The committees thank you for your comment.</p> <p>The committees do not recommend withdrawing this statement and have included a similar statement on page 9 of the Judicial Council report. A person seeking a judicial determination that a child’s best interest requires permission to remain in the U.S. rather than to return to his or her country of origin would be well advised to offer all evidence relevant to that determination, including the circumstances to which the child would return. Nothing in <i>Israel O.</i> counsels otherwise. The court in that case limited its observations regarding the best interest finding to these: “[T]he juvenile court did not address the question of whether a return to his home country was in Israel’s best interest. [citation omitted] Although nothing in this record indicates that care and support is available for Israel in Mexico, a finding on this issue is best made by the juvenile court in the first instance.” (<i>In re Israel O.</i> (2015) 233 Cal.App.4th 279, 291.) These observations imply that evidence of</p>

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				<p>conditions in the child’s country of origin, including but not necessarily limited to whether care and support would be available there, would appropriately inform the trial court’s determination of the issue.</p> <p>See further responses to specific comments, below.</p>
17.	Superior Court of San Diego County Mike Roddy, Executive Officer	A	No narrative comments submitted.	The committees thank you for your comment. No further response required.
18.	Trial Court Presiding Judges and Court Executives Advisory Committees’ Joint Rules Subcommittee (JRS)	A	<p>This proposal simplifies and clarifies the <i>State</i> findings that must be made to support the minor’s request for special immigrant status in the minor’s <i>Federal</i> immigration proceeding. The current procedure requires lawyers and the courts to rewrite existing forms, and often leads to multiple hearings to get the California order to include the language required by the Federal court. The only impact is that it is another form for each court to implement, but it will create operational efficiencies. The clerks and self-help staff will have less work after very brief initial training; those who seek these orders will find it a faster, simpler and less mystifying process.</p> <p>*See additional comments on specific issues, below.</p>	The committees thank you for your comment. See further responses to specific comments, below.

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Need for Family Law Rule		
Commentator	Comment	Committee Response
Peggy J. Bristol, Attorney Law Office of Peggy Bristol-Wright	<p>Draft a Rule of Court on Procedure in Family Court. (This is an excellent recommendation, as many family courts are just becoming familiar with SIJS and some judges, despite multiple trainings on the immigration impact of family court decisions, appear to be unable or unwilling to accept requests for SIJS findings and in more than one county have gone to amazing lengths to circumvent granting an SIJS order, including redefining the hearsay rule in order to exclude a minor’s testimony about a parent’s <i>actions</i>.)</p> <p>The ILRC recommends a Rule of Court stating that a finding of paternity (or maternity, for that matter) is <u>not</u> required prior to making SIJS findings. There are many cases where a father’s name is not on a child’s birth certificate; certain Central Americans will not state the father’s name if he was not personally present to register the child’s birth. Some family law courts do not want to accept the other parent’s word alone, even in a verified declaration, which allows them to circumvent adjudicating <u>both</u> petitions for custody and for SIJS factual findings. I agree with this recommendation.</p> <p>* * *</p> <p>It would be extremely helpful if the Judicial Council could issue Rules of Court or some other form of state-wide guidance for family courts regarding the following:</p> <ol style="list-style-type: none"> 1. Whether one parent may seek sole custody for SIJS purposes if the other parent is deceased. 2. Whether, in family law cases, a parent’s inability to provide for a child due to poverty may also be considered a form of 	<p>The FJLAC agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee intends to develop a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code and circulate that rule for public comment at the earliest opportunity.</p> <p>The committee will consider, but is not likely to recommend, addressing this issue in a rule of court. Whether the parentage of a custodial parent must be legally established for the court to award custody to that parent and make SIJ findings is a substantive legal question better left to the appellate courts or the Legislature to resolve. Similarly, whether parentage of a noncustodial parent must be conclusively established for the court to find that reunification with that parent is not viable is also a substantive legal question better left to the appellate courts or the Legislature to resolve.</p> <ol style="list-style-type: none"> 1. The committee will consider whether to incorporate the suggested provision into a future rule of court. 2. The committee will consider whether to incorporate the suggested provision into a future rule of court.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Commentator	Comment	Committee Response
	<p>neglect. (This is a valid argument in probate courts, but was rejected by a family court in Alameda County.)</p> <p>3. That abandonment by a parent need not be willful, e.g., where a parent died without making adequate provisions for the child’s future care. (This was recently addressed in <i>D.L. v. Superior Court of San Mateo County</i>, [2015], case number A144960, an unpublished appellate decision overturning the family court’s refusal to issue SIJS findings because it held that the parent’s death did not constitute <i>willful</i> abandonment.)</p> <p>4. Flexibility in requirements for personal service of process when the non-custodial parent cannot be found. As an immigration attorney, I rely on family court practitioners for guidance in parental custody cases. They consistently advise that family courts require proof of personal service in parentage/custody cases. However, there are numerous cases where a child has been abandoned and the non-custodial parent’s whereabouts are now unknown.</p> <p>In guardianship cases, the petitioner and the attorney can both file verified declarations of due diligence and the probate court can dispense with the requirement of notice. The family courts should be able to do the same; custody orders are not</p>	<p>3. The committee will consider, but is not likely to recommend, addressing this issue in the rules of court. Whether and in what circumstances a parent’s death constitutes abandonment of the child is a substantive legal question. The federal INA relies on state laws to define abuse, neglect, and abandonment. The Legislature has addressed abandonment in sections 3402 and 7822 of the Family Code and section 300(g) of the Welfare and Institutions Code. As the commentator notes, the Court of Appeal has found no requirement in these provisions that parental abandonment have been willful. Rule 7.1020, as circulated, does not include such a requirement. The committee perceives no ambiguity appropriate for clarification in a rule.</p> <p>4. The committee will consider, but is not likely to recommend, modifying the requirements for notice and service of process through the rules of court. Notice requirements are governed by state and federal statutes within the United States, as well as by international treaties, including the Hague Service Convention, when serving notice abroad. These laws include provision for substitute service when a party cannot be located through the exercise of due diligence.</p> <p>The committee will consider, but is not likely to recommend, addressing this issue in the rules of court. The Code of Civil Procedure, supplemented by the Family Code, specifies detailed procedural requirements</p>

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Need for Family Law Rule		
Commentator	Comment	Committee Response
	necessarily permanent, and the non-custodial parent can always request that a custody order be modified if circumstances change.	for serving notice to parties in proceedings under the Family Code. When a party lives abroad, these requirements operate in conjunction with federal statutes and rules as well as international treaties, such as the Hague Service Convention.
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Draft a Rule of Court on Procedures in Family Court. Given the newness of the practice of requesting SIJS findings in family court custody cases, the lack of clarity on a range of procedural issues that have arisen, and the inconsistency in how these requests are handled in different jurisdictions and courtrooms, we believe that a rule of court clarifying the procedure in family court custody cases is necessary. It would be helpful for such a rule to address the following:</p> <ul style="list-style-type: none"> • that a minor over the age of 12 can be the petitioner in a parentage or custody proceeding; • that the court properly exercises jurisdiction over a minor until the day he or she turns 18 for purposes of child custody determinations; 	<p>The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity.</p> <ul style="list-style-type: none"> • The committee will consider, but is not likely to recommend, including the suggested provision in the proposed rule. Section 7630 of the Family Code expressly permits a child to bring a parentage action. Sections 7630(b) and 7650 permit “any interested person” to bring an action to establish, respectively, a mother-and-child or presumed-parent-and-child relationship. Section 7635 expressly permits or, if the child is 12 years of age or older, requires the child whose parentage is at issue to be made a party to the action. • The committee will consider, but is not likely to recommend, including the suggested provision in the proposed rule. Section 3010 of the Family Code establishes a parental right to custody of an “unemancipated minor child.” Section 3022 grants the court authority to make an order for custody of a

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Need for Family Law Rule		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none"> • under what circumstances a guardian ad litem is required in custody cases; • that a paternity/maternity finding is not required prior to making SIJS findings; • that personal jurisdiction over the non-custodial parent is not required if the court otherwise has jurisdiction over the child custody matter under the UCCJEA; 	<p>child “during minority.” Section 6500 clearly states that a child remains a minor until the first minute of the day on which he or she reaches 18 years of age. It is unlikely that a rule of court would provide additional clarity.</p> <ul style="list-style-type: none"> • The committee will consider whether to include in the proposed rule a provision clarifying when the court should appoint a guardian ad litem for a minor child in a parentage action. • The committee will consider whether to incorporate the suggested provision in the proposed rule. • The committee will consider, and is likely to recommend, including the suggested provision in the proposed rule. Although the comment raises a substantive legal issue, the court of appeal settled that issue in 1981, holding that the “stringent notice requirements” and “integrated, detailed plan for jurisdiction in child custody proceedings” in the predecessor to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) satisfied the requirements of due process and that personal jurisdiction over an out-of-state parent is therefore not required to make a binding custody determination. (<i>In re Marriage of Leonard</i> (1981) 122 Cal.App.3d 443, 458–459.) The notice requirements under the current UCCJEA are, if anything, more stringent than those under the earlier statute. This case remains binding legal precedent.

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Need for Family Law Rule		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none"> • whether a single request may be filed for multiple children who are part of the same case; and • any other matters that the Judicial Council finds germane to the efficient and consistent adjudication of these requests. 	<ul style="list-style-type: none"> • The committee will consider whether to include the suggested provision in the proposed rule. • The committee intends to develop a rule of court that will promote the consistent and efficient adjudication of requests for SIJ predicate findings in proceedings under the Family Code.
<p>Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney</p>	<p><u>Ambiguities to be Resolved by Analogous SIJS Rules in Family Court Proceedings</u> Although SPR15-28 only proposed rule 7.1020, which involves guardianship proceedings, it would be useful to propose analogous rules in the family law context. There is much confusion regarding SIJS requests among the courts, counsel, and litigants.</p> <p>First, similar to the proposed rule 7.1020, analogous rules in the family court should stipulate who may file a request for SIJS orders. Specifically, the minor child himself/herself should be allowed to petition for a SIJS order in a paternity action. In fact, many advocates in Los Angeles have already structured paternity actions as child versus parent, although not all courts accept this form of paternity action. However, an action brought by the child against a parent for paternity is permissible under Family Code section 7630. In particular, this type of action is often necessary where one parent has abandoned the child and that parent cannot be located. Thus, the only manner in which a SIJS request could be brought forth would be under a paternity action where the child sues the parent whose whereabouts are known. Thus, any proposed rule should make clear that SIJS orders may be obtained in a paternity action where the child is the petitioner.</p>	<p>The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity.</p> <p>The committee will consider whether to include the suggested provision in the proposed rule.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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	<p>Second, proposed rules for family court should also specify that any SIJS hearing could proceed by default, as with all other family law cases. In Los Angeles, several bench officers have raised the issue of “collusion” where the responding party in the family law case fails to respond. The judges surmise that the respondent does not respond on purpose and that petitioner and respondent parents are “in collusion” in order to confer an immigration benefit onto the child. These assertions are speculative at best and prejudicial at worst. Many family law cases proceed by default, without any negative inference of “collusion”. Therefore, the proposed rules should also clarify that while a judicial officer may conduct a default evidentiary hearing in order to make the necessary findings, the bench cannot make any presumptions of collusion in a default case where one party has failed to respond to the SIJS order request.</p>	<p>The committee will consider whether to include the suggested provision in the proposed rule.</p>
<p>State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair</p>	<p>Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify? Yes. Rules of procedure analogous to proposed rule 7.1020 would be useful to courts, counsel, and litigants. Ambiguities that the rules should attempt to clarify are what a description of the similar basis under California law would be. Although it is noted that abuse, neglect and abandonment would qualify under California law under the footnote provided in the background section, it is still unclear what other basis would be acceptable for a predicate finding under California law. This description should be included in any informational form as well. The rules of procedure for requesting SIJS findings, similar to proposed Rule 7.1020, would be helpful in family law court proceedings</p>	<p>The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Need for Family Law Rule		
Commentator	Comment	Committee Response
	<p>because SIJS cases are a newer practice area. Ideally, rules of procedure would set forth the step by step application process, requests for hearing, notice requirements, opportunity to respond and contest, and issuance of findings. The Rule would help establish a standard statewide procedure to avoid variability between counties.</p> <p>SCDLS also suggests the adoption of forms and rules of procedure specific to implementing the confidentiality requirements under the new law, and providing a less complex and entailed procedure for requests for sealing SIJS proceedings records in family law, notwithstanding Rules of Court, rule 2.550 and 2.551.</p>	<p>The committee does not recommend the suggested change at this time. The current statutory and rule-based confidentiality and sealing provisions provide a level of protection for children seeking SIJ findings in state court. In addition, pending legislation would modify and, in some respects, simplify the process of sealing court records in juvenile proceedings. The committees will consider proposing rules and forms in a future cycle if experience shows they are needed.</p>
Superior Court of Los Angeles County	<p>Would the rules of procedure requesting SIJS findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel and litigants? If so, what ambiguities should these rules attempt to clarify? Yes.</p>	<p>The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. The committee does not recommend developing a rule for SIJ findings in juvenile court at this time.</p>
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	<p>Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify? Rules analogous to proposed rule 7.1020, would be helpful to counsel/parties to better understand required forms, filing fees</p>	<p>The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose</p>

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Need for Family Law Rule		
Commentator	Comment	Committee Response
	<p>(if any), and litigation type filing guidelines. We also need direction on denied petitions - are they appealable?</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>The proposal addresses the stated purpose. However, clarification is needed when processing these petitions in family court. Is there a filing fee? What are the hearing requirements (e.g., are <i>Memos to Set</i> required)? Are there recommended processing time standards? Are courts required to provide interpreters for these hearings?</p>	<p>circulating the rule for public comment at the earliest opportunity. The committee does not recommend developing a rule for SIJ findings in juvenile court proceedings at this time.</p> <p>The committee intends to clarify issues within its purview through the development of a rule for requesting and considering SIJ findings in proceedings under the Family Code.</p>

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Need for Information Form		
Commentator	Comment	Committee Response
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	An informational form would indeed be useful especially because the proposed rule 7.1020 is very brief and the language of an informational form would also help pro per litigants without any reference to the proposed rule. Specifically, the informational form could help the self-represented better understand: 1) the steps for requesting SIJS findings; 2) the purpose of the form; and 3) the information the form solicits for purposes of the requested findings to ensure the court's order is sufficient.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code.
Superior Court of Los Angeles County	Would an informational form to accompany from FL-[356] or any other of the forms in this proposal be useful, for example to explain the process for requesting SIJS findings? Yes.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code.
Superior Court of Orange County Family and Juvenile Court Operations Managers	It would be beneficial to create an informational form that would provide information on the following: 1. Limitations of the superior court with regard to making the findings 2. Litigation type filing guidelines 3. Filings fees, if any 4. Options when petitions are denied (are they appealable)? Further, we recommend the information form be created in multiple languages.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code. The committees recommend and anticipate that any immigration-related Judicial Council forms will be translated into Spanish and any other language for which a sufficient demand exists.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
Permit attachments to the petition, including memorandums, declarations, etc.		
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	<p>Eliminate the prohibition of the use of motions, memorandums, and other supporting documents as means of requesting SIJ findings (Rule 7.1020(b)(2)(A)).</p> <p>Pursuant to California Rule of Court 1.31, forms adopted by the Judicial Council for mandatory use must be used by all parties; whereas, California Rule of Court 1.32 makes the use of forms approved by the Judicial Council optional. Therefore, the adoption of Council’s proposed Rule 7.1020(b)(2)(A) and the corresponding proposed form for mandatory use would require a request for SIJS findings in Probate Court to be made by verified petition <i>exclusively</i> through the use of the proposed form GC-220. While subsection (b)(2)(A) of the proposed rule does not explicitly prohibit the use of motions requesting SIJ findings, the Invitation to Comment issued by the council specifies that the proposed rule would prohibit a request for SIJS findings made by a motion supported by declarations. Given the expressed objective of this subsection, the proposed rule unnecessarily limits the means by which a request for SIJS findings may be made, eliminating the current, universal practice of filing a petition for SIJS findings accompanied by a memorandum of points and authorities and supporting declarations.</p> <p>The council’s own Invitation to Comment fails to provide any compelling reason for this restrictive change; it merely declares that Rule 7.1020 was created because “no statewide guidance has been developed for requesting or making SIJ findings in guardianship proceedings.” In fact, while California Code of Civil Procedure section 155 may lack detailed procedural instructions, what technical guidance it does offer, regarding declarations by the child, seems to</p>	<p>The PMHAC does not recommend the suggested change. Nothing in the rule, as circulated, prohibits the inclusion with or attachment to the petition of memorandums, affidavits, declarations, or other supporting documents.</p> <p>The committee recognizes that a number of methods have been used to seek SIJS findings in the past. The committee considered these various methods as part of developing these proposed rules and forms. After careful consideration, the committee concluded that the petition procedure, rather than a motion procedure, would be preferable both for petitioners and for the courts. The petition is intended to provide a common structure to a filing that has proved challenging for litigants and courts. Moreover, the petition is the preferred method of seeking relief in probate proceedings. See Probate Code section 1020.</p> <p>In guardianship proceedings, the petition procedure is intended to conform applications for SIJ findings to familiar probate practice; this conformity should improve efficiency and efficacy for all involved in these proceedings. This procedure gives the petitioner an opportunity to assert in the verified petition all facts that separate declarations would otherwise contain. If unopposed, the petition would be admitted into evidence</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	<p>have been wholly ignored in the creation of these proposed rules and forms. (see section b., below) Since the Trafficking Victims Protection and Reauthorization Act (TVPRA) was enacted in 2008, SIJS has been a potential form of relief for individuals in guardianship proceedings or otherwise under the Probate Court’s jurisdiction as a result of guardianship proceedings. Without the guidance of Rule 7.1020 and the GC-220 form, such individuals have been requesting and obtaining SIJ findings through the use of pleadings entitled “Petition” or “Motion,” memorandum of points and authorities, and supporting declarations. Given the recent increase in individuals potentially eligible for SIJS relief, executing more efficient policies and procedures is a commendable goal, however, not at the cost of quality. In fact, a more efficient but less effective administration of justice does more harm. To be clear, while it is clear that the adoption of a mandatory form and a rule prohibiting motions and supporting declarations may provide some benefit of uniformity for court personnel, the proposed prohibition diminishes the appearance of, access to, and application of justice.</p> <p>This prohibition of motions and supporting declarations limits the amount and quality of evidence by which a court may make a ruling upon a request for findings and it is therefore contrary to justice. Given the substantial confusion of law which led to the drafting and passage of SB 873, it is baffling that the council would develop a rule that prohibits SIJ finding requests from incorporating statutory and appellate authority.</p>	<p>under section 1022 to support the findings, notwithstanding the petitioner’s possible lack of personal knowledge of each fact asserted. If contested, the matter would be set for trial, at which live testimony would be required, subject to exceptions applicable to all civil trials.</p> <p>Neither the rule nor the form prohibits the filing of any other documents, including memorandums of points and authorities or affidavits, <i>with or as part of</i> the petition. (See Prob. Code, § 1022, which refers not only to verified petitions, but also to affidavits. Declarations are legally and functionally equivalent to affidavits (Code of Civ. Proc., § 2015.5).) Sufficient evidence in the petition, including any attached declarations, would support an uncontested request for SIJ findings. In a contested matter, neither the petition nor any separate</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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	<p>It is still frequently necessary, in order to succeed in court, for litigants to be able to cite case law, both in their pleadings and at the hearing, regarding one or more of the SIJ findings. The use of a verified petition in the format of a mandatory form handicaps litigants by disallowing a thorough recitation of facts, law, and the correct application of the latter to the former. Furthermore, the evidence that supports SIJS findings continues to be litigated at the trial and appellate court level; preventing litigants from presenting full and robust legal argument at the petition stage limits their ability to make a record sufficient for shaping and creating appellate case law.</p> <p>Finally, while we believe it to be appropriate, necessary, and permissible, despite the proposed rule and form, to continue to submit a separate Memorandum of Points and Authorities to supplement the petition, it is foreseeable that the proposed rule and form will discourage many litigants and counsel from continuing to adequately present their cases in this manner.</p>	<p>declarations would be sufficient. In that situation, under ordinary legal principles, the witnesses would be required to testify in court and be subject to cross examination. If the witnesses are not available at the time set for trial, there are procedures currently available from regular civil practice to obtain, preserve, and present their testimony at trial.</p> <p>As noted above, nothing in the rule or form precludes a thorough recitation of the facts or presentation of the law as part of the verified petition. The litigant may attach a memo of points and authorities to the petition at the time of filing. At the hearing on the petition, whether contested or not, the petitioner will have the opportunity to present argument on the law and its application to the facts before the court. The committee intends the rule and form to guide litigants, both represented by counsel and self-represented, in presenting relevant facts and applicable law in a format that will allow both the parties and the court to focus on the issues needing resolution.</p> <p>The committee does not believe that the proposed form petition will discourage self-represented persons from seeking SIJ relief. Rather, the committee intends the form to provide guidance as to the legal theories and factual allegations needed to support a petition for SIJ findings. This guidance should encourage eligible self-represented persons to seek relief. The committee fully expects that counsel, including the commentators, will be able to work within the framework present in probate matters. Consultation with experienced probate</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
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	<p>Accordingly, we suggest the current use of pleadings entitled “Petition” or “Motion,” memorandum of points and authorities, and supporting declarations remain authorized means by which an individual may seek SIJ findings in guardianship proceedings. This current practice can be incorporated into proposed Rule 7.1020(b)(2)(A) rather than prohibited by it. In the alternative, as discussed in detail in the next section of our comment, we suggest altering the proposed form GC-220 to specifically reference and incorporate the attachment of legal argument, points and authorities, and, most importantly, supporting declarations.</p> <p>Incorporate the use of declarations as attachments to the petition as evidence in support of the request (Rule 7.1020(b)(2)(A)).</p> <p>In pursuit of the SIJS relief created by federal law, litigants in California are guided by California Code of Civil Procedure Section 155, which details superior courts’ authority, the procedure for petitioning to secure predicate findings from such courts, and the evidentiary basis for making such findings. California Code of Civil Procedure section 155 requires a superior court to issue an order making the necessary findings regarding SIJS where there is evidence to support those findings; the statute <i>specifically</i> identifies a declaration by the child who is the subject of the petition as a source of such evidence. Despite the fact that this specific reference to such a declaration is within the statute that mandates that the Judicial Council create forms accordingly, the council’s proposed form for mandatory use</p>	<p>practitioners will help attorneys with other practice areas to adapt to these procedures.</p> <p>For the reasons stated above, the committee does not recommend the suggested change.</p> <p>The committee does not recommend the suggested change. As noted above, nothing in the rule or form bars the submission of a child’s supporting declaration with the petition for SIJ findings. The procedure outlined in the rule also permits the inclusion of the essence of the child’s testimony in the petition itself, thereby obviating the need, in at least some cases, for the submission of a separate declaration.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
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	<p>does not reference the need for or option to submit or attach a declaration of the child; rather, the proposed form GC-220 provides spaces for the petitioner to provide “facts in support of” the requested findings. While the proposed form does allow for additional facts to be submitted by way of an attachment, there is no reference to or instructions for a declaration by any person with personal knowledge of evidence material to the SIJS findings. Furthermore, where the petitioner is not the child, the format of the proposed form provides no method for the child to submit a declaration themselves, again despite the fact that such a declaration was anticipated by the legislature and is referenced in California Code of Civil Procedure section 155 as an evidentiary basis for the requested findings.</p>	
No Separate Filing Fee		
Bet Tzedek Legal Service	<p>Clarify that there is no separate filing fee for an SIJS petition (Rule 7.1020(b)(2)(B)). While the expressed purpose of proposed rule 7.1020(b)(2)(B) is to provide guidance, a consequence of the requirement that SIJS findings be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian is the potential for additional fees to be assigned. We oppose the assessment of fees on petitions for SIJ findings because such an assessment is problematic in principle and largely meaningless in practice. The fundamental premise of Special Immigrant Juvenile Status is the recognition of that fact that a child afforded such status has suffered abuse, abandonment and/or neglect; to assess fees for the process of securing findings of those facts runs counter to the humanitarian foundation upon which the relief was created. As a more practical matter, these children are almost exclusively impoverished and have no means by</p>	<p>The committee does not recommend addressing this issue in the rules of court. Fees for civil proceedings, including matters arising under the Probate Code and Family Code, are set by statute (See Gov. Code, §§ 70600–70677). Filings fees for a petition regarding appointment of a guardian of the person are set in section 70654. Section 70658.5 provides that no separate fee will be charged for a petition combining a request for relief with a guardianship petition. Sections 70657(e) and 70658(c)(1) prohibit fees for petitions or applications filed in a proceeding for a guardianship of the person after the issuance of letters of temporary or general guardianship. Section 70670 sets the fee for the initial filing in a proceeding under the Family Code. Section 70677 provides that only one fee will be charged for a filing that combines requests for relief on more than one issue, e.g., parentage, custody, and SIJS.</p>

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	<p>which to pay court fees and costs.</p> <p>Accordingly, we suggest that no fees be created or assessed for petitions requesting SIJ findings. Assessing fees would, at best, incur additional work for court personnel in processing all but certain applications for waiver of fees and costs.</p>	<p>Section 212 of the Welfare and Institutions Code bars fees for filing or serving papers in juvenile dependency or delinquency proceedings.</p> <p>Moreover, sections 68630–68641 of the Government Code provide for fee waivers based on the parties’ financial condition. Rules 3.50–3.58 of the California Rules of Court implement the fee waiver statutes by creating procedures and mechanisms for applying for, determining, and modifying fee waivers. In guardianship cases, eligibility for a fee waiver is now based on the ward’s financial condition. (See Gov. Code, § 68631.5, eff. Jan. 1, 2015; Cal. Rules of Ct., rule 7.5, eff. 9/1/15.)</p> <p>The committee does not intend the proposed rule to create any new filing fees.</p>
Peggy J. Bristol	Clarify that there is no separate filing fee for the SIJS petition.	See the committee’s response to Bet Tzedek’s comment, above.
Immigrant Legal Resource Center San Diego Volunteer Lawyer Program, Inc.	<p>Clarify that there is no separate filing fee for the SIJS petition (Rule 7.1020(b)(2)(B)).</p> <p>Subsection (b)(2)(B) would require that a request for SIJS findings must be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian. We understand and agree with the shift to making the request for SIJS findings by way of a separate petition, rather than as an attachment to the guardianship petition. However, clarification is needed that the separate petition for SIJS findings does not require a separate filing fee. Otherwise, there is concern that legal services providers or pro se applicants who qualify for a</p>	See the committee’s response to Bet Tzedek’s comment, above.

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	<p>fee waiver will have to prepare a separate fee waiver request when they are filing requests for SIJS findings for multiple wards in connection with one guardianship petition, which would be a burden on applicants and create additional work for the courts.</p> <p>Recommendation: Clarify that there is no separate filing fee for the SIJS petition.</p>	
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Clarify that there is no separate filing fee for the SIJS petition (Rule 7.1020(b)(2)(B)). Subsection (b)(2)(B) would require that a request for SIJS findings must be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian. We understand and agree with the shift to making the request for SIJS findings by way of a separate petition, rather than as an attachment to the guardianship petition. However, clarification is needed that the separate petition for SIJS findings does not require a separate filing fee, under GC 70657(e), even if the guardianship petition and SIJS petition are filed concurrently. Otherwise, there is concern that legal services providers or pro se applicants who qualify for a fee waiver will have to prepare a separate fee waiver request when they are filing requests for SIJS findings for multiple wards in connection with one guardianship petition, which would be a burden on applicants and create additional work for the courts, or wait until after the guardianship petition is granted and letters are issued in order to file the SIJS petition, which would create additional delays for eligible youth and might lead to some youth aging out of jurisdiction before obtaining the SIJS predicate order, and would also create administrative inefficiencies.</p> <p>Recommendation: Clarify that there is no separate filing fee for</p>	<p>See the committee’s response to Bet Tzedek’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	the SIJS petition.	
Permit Multiple Wards to File a Single Petition for SIJ Findings		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Allow the filing of one petition for SIJS findings for multiple wards (Rule 7.1020(b)(1)(A)). Subsection (b)(1)(A) of the proposed Rule would require that in the case of multiple wards in one proceeding, each minor would have to file a petition for SIJS findings for him- or herself. However, in many cases where multiple wards are requesting SIJS findings, it is far more efficient for the wards to file one consolidated request for SIJS findings. The procedure that the proposed rule contemplates will require additional forms and motions, in that a separate request will have to be prepared for each ward, followed by a motion to consolidate proceedings. There is also the potential that each ward will have to prepare and file a separate fee waiver request. Given that multiple children may file one joint guardianship petition, it is reasonable that such children may also file one joint request for SIJS findings. To the extent that there is a need to separate out the factual bases for each child, the proposed GC-220 could state: “If the petition contains a request for more than one minor, specify the factual basis for each minor.” If additional room is needed, the petitioners may state additional facts on Attachment 5 using MC-25, as is already instructed on the proposed GC-220. Further, if the factual basis for each minor is significantly different, the petitioners can choose to file separate petitions for SIJS findings, but this need not be obligatory, as is contemplated by the proposed Rule.</p> <p>Recommendation: Allow multiple wards the option of filing a joint request for SIJS findings by making the following changes to Rule 7.1020(b)(1)(A) (deletions in strike through, additions <u>underlined</u>):</p>	<p>a. The committee does not recommend the suggested change. In cases involving multiple wards seeking SIJ findings, either at their own request or on the request of others, separate petitions are preferable. The only necessary common element in a multi-ward case is the proposed or appointed guardian (Prob. Code, § 2106).</p> <p>Multiple wards may be wholly unrelated or related only remotely to one another. Cousins, possibly involving common grandparents or more remote ancestors but no common parents, often appear together in these cases. Their factual situations material to SIJS determinations may be entirely distinct. Separate orders on their petitions are necessary because these findings will be presented in separate immigration proceedings for each applicant.</p> <p>On the other hand, if there are significant common elements, say, for whole- or even half-siblings, there is no need to move for “consolidation” of the proceedings in a multi-ward case. There is only one guardianship proceeding. If all the guardianship and SIJ petitions were unopposed, there would be no trial hearing beyond the required probate calendar hearing, which would be on the same date and in the same court department if the petitions are filed together, at which hearing the petitions will be admitted into evidence (Prob. Code, § 1022). If multiple petitions are contested, they may be tried together if there are sufficient common elements, such as witnesses and other evidence.</p>

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	<p>(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so only for himself or herself, <u>or jointly with the other ward(s) or proposed ward(s).</u></p> <p>As discussed above, multiple wards should be permitted to request SIJS findings in a joint petition (Rule 7.1020(e)(2)). For the reasons discussed above, multiple wards should be permitted to request SIJS findings in a joint petition. If multiple wards are required to file separate petitions as contemplated by Rule 7.1020, then they will also have to move to consolidate proceedings as set forth in this subsection, which creates an unnecessary burden on petitioners.</p> <p>Recommendation: Allow multiple wards to request SIJS findings in a joint petition, which will lessen the need for this provision setting forth the procedure by which proceedings may be consolidated.</p>	<p>See the committee’s response, above.</p>
<p>Legal Advocates for Children and Youth (LACY) Neha Marathe, Senior Attorney</p>	<p>LACY supports ILRC’s recommendation to Proposed Rule 7.1020(b)(1)(A), to allow multiple wards the option of filing a joint request for SIJS findings in a guardianship proceeding. We believe doing so would make the process more streamlined for the proposed wards and guardians and allow traumatized children to achieve stability with greater ease. Further, as LACY can only provide direct representation to minors age 12 and over, allowing a minor to file a petition for SIJS findings jointly for him/herself and his/her younger siblings will ensure that LACY can provide legal representation to all SIJS-eligible minors in the proceeding (rather than the siblings under age 12 needing to secure new counsel to petition for SIJS findings, which would be burdensome and most often unfeasible).</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Allow the filing of one petition for SIJS findings for multiple wards (Rule 7.1020(b)(1)(A)).</p> <p>Subsection (b)(1)(A) of the proposed Rule would require that in the case of multiple wards in one proceeding, each minor would have to file a petition for SIJS findings for him- or her-self. However, in many cases where multiple wards are requesting SIJS findings, it is far more efficient for the wards to file one consolidated request for SIJS findings. The procedure that the proposed rule contemplates will require additional forms and motions, in that a separate request will have to be prepared for each ward, followed by a motion to consolidate proceedings. There is also the potential that each ward will have to prepare and file a separate fee waiver request.</p> <p>Given that multiple children may file one joint guardianship petition, it is reasonable that such children may also file one joint request for SIJS findings. To the extent that there is a need to separate out the factual bases for each child, the proposed GC-220 could state: <i>“If the petition contains a request for more than one minor, specify the factual basis for each minor.”</i> If additional room is needed, the petitioners may state additional facts on Attachment 5 using MC-25, as is already instructed on the proposed GC-220. Further, if the factual basis for each minor is significantly different, the petitioners can choose to file separate petitions for SIJS findings, but this need not be obligatory, as is contemplated by the proposed Rule.</p> <p><i>Recommendation:</i> Allow multiple wards the option of filing a joint request for SIJS findings by making the following changes to Rule 7.1020(b)(1)(A) (deletions in strike through, additions <u>underlined</u>):</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so only for himself or herself, <u>or jointly with the other ward(s) or proposed ward(s).</u>	
No Separate Notice of Hearing on Petition for SIJ Findings		
Bet Tzedek Legal Services	<p>Eliminate the requirements for a separate notice of hearing on an SIJS petition (Rule 7.1020(c).) As written, proposed subsection (c) of Rule 7.1020 would require that notice of a hearing on a request for SIJS findings be sent to the persons listed in section Probate Code section 1460(b). The rights of all persons described in section 1460(b) remain completely unimpinged upon the granting of SIJS findings. Similarly, there is no statutory basis or legal precedent indicating that any person other than the child themselves has standing to assert a position to the court regarding the request for SIJ findings. Therefore, there is simply no need for additional notice to be required as proposed by subsection(c) of Rule 7.1020.</p> <p>Accordingly, we suggest eliminating the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c).</p>	<p>The committee does not recommend the suggested change. In most cases, the rule requires notice only to the proposed ward’s parents and, by reference to Probate Code section 1460(b), to the guardian and the ward. The determination of a request for SIJ findings impacts the legal rights of the ward. The guardian, by virtue of the care, custody, and control of the ward with which he or she is charged, also has a legitimate interest in the hearing. The SIJ findings—especially a finding that reunification with one or both is not viable because of abuse, neglect, abandonment, or a similar basis—may also have collateral consequences for the ward’s parents.</p> <p>The rule’s requirement is not unduly burdensome. Section 1460(e), incorporated in the rule, authorizes the court for good cause to dispense with notice to any person otherwise entitled to notice under section 1460(b). Section 1460.1 limits the duty to provide notice to a ward under the age of 12. The rule also relieves parties of the more extensive notice requirements for a hearing on the underlying guardianship petition in section 1511.</p>
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney	<p>Eliminate the requirement for separate notice of a hearing on an SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, and create a procedure for parents to waive notice of the hearing on the SIJS findings (Rule 7.1020(c)).</p>	<p>See the committee’s response to Bet Tzedek’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
San Diego Volunteer Lawyer Program, Inc.	<p>Subsection (c) would require that notice of a hearing on a request for SIJS findings be sent to the minor’s parents and the persons listed in section 1460(b), in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1. Given that a request for SIJS findings may only be filed after a guardianship is already in place or concurrently with a guardianship petition, notice to all persons required by Section 1511 of the Probate Code will be completed or waived for good cause in every case in which SIJS findings are made. Separate notice of the hearing on a request for SIJS findings should not be required in light of the fact that notice of the underlying guardianship proceedings will have been provided or waived for good cause in every case, the petitions are frequently heard at the same hearing, and SIJS findings are simply factual findings that do not affect parental rights. For these reasons, we urge a change in this rule to provide that separate notice of the SIJS petition is not required.</p> <p>However, should this provision remain, we ask for two clarifying changes. First, although we appreciate that pursuant to this Rule, notice may be provided by mail, it would be helpful for the Rule to cite to Section 1215 which states that airmail is the correct method of mail delivery for purposes of notice mailed abroad. Currently, practices range in different counties, with a small number of judges and counties requiring that notice be provided by certified, international mail despite Section 1215.</p> <p>Second, we request that a form be developed for waiver of notice of the hearing on the Petition for SIJS findings, similar to the GC-211 that is used for guardianship petitions. This will</p>	

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	<p>allow parents who may be willing to waive notice of the hearing to submit such waiver to the court, which will save the attorney or pro se applicant significant time in not having to prepare notice by mail.</p> <p>Recommendation: Eliminate the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c) and replacing it with a statement that no separate notice is required for a hearing on the SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, pursuant to Section 1215, and create a procedure for parents to waive notice of the hearing on the SIJS findings.</p>	
<p>Legal Advocates for Children and Youth (LACY) Neha Marathe, Senior Attorney</p>	<p>LACY supports ILRC’s recommendation to Proposed Rule 7.1020(c) to eliminate the requirement for a separate notice of hearing of a request for SIJS findings. While notice of a petition for guardianship is expressly required under state law through the Probate Code, we note there is no requirement for notice of a request for SIJS findings under federal law (8 U.S.C. §1101(a) (27)(J)). As the ILRC letter notes, notice of the petition for guardianship will have been provided or attempted in each probate guardianship matter and a request for SIJS findings will not affect parental rights. Imposing additional notice requirements for SIJS petitions that are not required by law would not only be burdensome, but it would force minors to disclose detailed facts regarding past abuse, neglect, and/or abandonment to the very persons responsible for the trauma. Doing so could also put the minors and proposed guardians at risk for retaliatory action and could damage the minor’s connections to family members that continue to be important for the minor’s well-being. While LACY feels strongly that a separate notice of hearing of a</p>	<p>See the committee’s response to Bet Tzedek’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	request for SIJS findings should not be required, if such a requirement remains, we request that parties be permitted to file a request for SIJS findings on an ex parte basis (as permitted by Probate Code section 2250(f) for petitions for temporary guardianship), or request that the court waive notice of the request for SIJS findings for good cause (as permitted by Probate Code section 2250(e) for petitions for temporary guardianship).	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	Eliminate the requirement for separate notice of a hearing on an SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, and create a procedure for parents to waive notice of the hearing on the SIJS findings (Rule 7.1020(c)). Subsection (c) would require that notice of a hearing on a request for SIJS findings be sent to the minor’s parents and the persons listed in section 1460(b), in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1. Given that a request for SIJS findings may only be filed after a guardianship is already in place or concurrently with a guardianship petition, notice to all persons required by Section 1511 of the Probate Code will be completed or waived for good cause in every case in which SIJS findings are made. Separate notice of the hearing on a request for SIJS findings should not be required in light of the fact that notice of the underlying guardianship proceedings—the only petition which actually affects the parental rights to custody and care of their child—will have been provided or waived for good cause in every case, the petitions are frequently heard at the same hearing, and SIJS findings are simply factual findings that do not affect parental rights. Additionally, the petitions are frequently heard at the same hearing, and SIJS findings are simply a summary of	See the committee’s response to Bet Tzedek’s comment, above.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	<p>the factual findings that provided the basis for the guardianship and do not affect parental rights. Under California law, all determinations affecting child custody are guided by the standard of the best interest of the child, so in awarding custody of the child to an individual in the United States, the Court has already made a determination that it is not in the child’s best interests to return to his or her home country. For these reasons, we urge a change in this rule to provide that separate notice of the SIJS petition is not required.</p> <p>However, should this provision remain, we ask for two clarifying changes. First, although we appreciate that pursuant to this Rule, notice may be provided by mail, it would be helpful for the Rule to cite to Section 1215 which states that airmail is the correct method of mail delivery for purposes of notice mailed abroad. We would also request that if service by mail is not practicable, that any other reasonable means of service which provides actual notice to the required parties be accepted. Legal Services for Children has found that many SIJS-eligible youth have family members who live in remote areas in other countries where regular mail service is not reliable. We have found that often, family members will receive more timely notice if we ask them to find a local store or internet cafe where we can send them the documents by fax or email, and families are often able to fax or email back a notice and acknowledgement of receipt or consent and waiver of notice.</p> <p>Finally, we request that a form be developed for waiver of notice of the hearing on the Petition for SIJS findings, similar to the GC-211 that is used for guardianship petitions. This will allow parents who may be willing to waive notice of the</p>	<p>The committee does not recommend the suggested change at this time. Rules 7.51 and 7.52 provide detailed guidance on acceptable methods of substituted service. The committee is also concerned that Probate Code section 1215, last amended in 1990 and first enacted in 1987, may not be current on international mailing requirements imposed by treaties, conventions, or changes in U.S. Postal Service mailing policies.</p> <p>Concerning other substitutes for mailing notices of hearing: the Probate Code currently specifies only mailing or personal service. The committee will soon be working on legislation that would modernize all mailing provisions of the Probate Code to permit electronic delivery in lieu of mailing or personal delivery. The committee will examine section 1215’s international mailing provision as part of that project.</p> <p>The committee will consider developing a generic waiver of notice form, but suggests that a simple separate waiver of notice may be prepared for that purpose using the waiver language in form GC-211</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	<p>hearing to submit such waiver to the court, which will save the attorney or pro se applicant significant time in not having to prepare notice by mail.</p> <p>Recommendation: Eliminate the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c) and replacing it with a statement that no separate notice is required for a hearing on the SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, pursuant to Section 1215, and create a procedure for parents to waive notice of the hearing on the SIJS findings.</p>	<p>modified to refer expressly to the hearing on the SIJS petition. Form GC-211 is designed for use only for waiver of notice of a petition for the appointment of a guardian. It is not suitable for waiver of notice of any other hearing because it also consents to the appointment of the guardian sought in the appointment petition.</p>
Require hearing before denial of uncontested petition for SIJ findings		
Peggy J. Bristol	<p>Add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied.</p>	<p>The committee does not recommend addressing this issue by amending the rules of court. Existing statutes and rules provide procedures for filing and adjudicating petitions and requests for orders. For example, sections 210–218 of the Family Code and rules 5.90–5.125 govern filing and processing of requests for orders in proceedings under the Family Code.</p> <p>When a petition is filed under the Probate Code, it is set for hearing before it is served. Petitioner or counsel must be present in court at the hearing. If notice is proper and no objection, written or oral, is raised before or at the hearing, the verified petition may be offered into evidence. If so offered, the court must receive it in evidence. (Prob. Code, § 1022). If the facts alleged in the unopposed petition are sufficient to support the relief requested, the petition will be granted without an additional hearing. That process constitutes the evidentiary hearing in an uncontested matter under the</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
		<p>Probate Code. (See Prob. Code, §§ 1041, 1043(a), (b).)</p> <p>If the facts alleged in an unopposed petition are not sufficient to support the relief requested or notice is defective, the probate court—before the hearing through the court’s “probate notes” procedure—would require the filing of a supplement to the petition or completion and proof of service to provide the missing facts or establish proper notice. If there were a legal bar to the relief requested disclosed by the allegations of the petition, the petitioner would have an opportunity at the hearing to argue against denial of the petition and establish a clear record for appellate review of the court’s action. Thus, in every guardianship case, there will be a hearing.</p>
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc.</p>	<p>Add a provision noting that the court must hold a hearing and take testimony if the court intends to deny a request for SIJS findings (Rule 7.1020(e)(5)).</p> <p>Subsection (e)(5) would require that uncontested requests for findings be governed by Probate Code section 1022, meaning that the court would take the verified petition in evidence and decide whether to make the requested findings based on the facts and circumstances alleged therein. We appreciate the effort to simplify the procedure for requesting and obtaining SIJS findings. However, we are concerned that this provision leaves open the possibility that a court could deny a petition for SIJS findings without ever holding a hearing. This would be very problematic because it will deny the petitioner the opportunity to present live testimony and legal arguments prior to a court’s denial, both incredibly important not only for the opportunity that they provide the court to hear additional evidence and answers to any of its questions, but also in the</p>	<p>See the committee’s response to Peggy J. Bristol’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	<p>event of an appeal. Again, we understand and appreciate the desire to streamline the process for requesting SIJS findings by allowing for a decision without a hearing in uncontested cases, but are deeply troubled by the possibility that a judge could deny a request without ever taking testimony on the matter or hearing legal arguments. Should this situation arise, it would compromise the petitioner’s right to fully present his or her case.</p> <p>Recommendation: Add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied. If this exception is not added to this provision, we recommend in the alternative that this subsection be stricken.</p>	
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Add a provision noting that the court must hold a hearing and take testimony if the court intends to deny a request for SIJS findings (Rule 7.1020(e)(5)).</p> <p>Subsection (e)(5) would require that uncontested requests for findings be governed by Probate Code section 1022, meaning that the court would take the verified petition in evidence and decide whether to make the requested findings based on the facts and circumstances alleged therein. We appreciate the effort to simplify the procedure for requesting and obtaining SIJS findings. However, we are concerned that this provision leaves open the possibility that a court could deny a petition for SIJS findings without ever holding a hearing. This would be very problematic because it will deny the petitioner the opportunity to present live testimony and legal arguments prior to a court’s denial, both incredibly important not only for the opportunity that they provide the court to hear additional evidence and answers to any of its questions, but also in the</p>	<p>See the committee’s response to Peggy J. Bristol’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	<p>event of an appeal. In Legal Services for Children’s SIJS practice over the past 24 years, we have encountered numerous occasions where a judge was initially inclined to deny an SIJS petition either due to a misunderstanding of the law or confusion regarding the facts which make the child eligible for SIJS. In these cases, we believe it is imperative to have an opportunity to provide legal argument and offer testimony of the child, guardian, social worker, or other relevant party to clarify these concerns.</p> <p>We understand and appreciate that in many cases, children are clearly eligible for SIJS and allowing the Court to make that finding based on the verified petition would be beneficial for the child, who would not have to miss school or endure the anxiety of another hearing, and for the administrative convenience of the Court. However, we do believe that if a Court does not believe the evidence set forth in the petition is sufficient to establish the child’s eligibility for SIJS, the child should have the opportunity to provide testimony and further legal argument at a hearing.</p> <p>Recommendation: Keep subsection (e)(5) but add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied. If this exception is not added to this provision, we recommend that this subsection be stricken.</p>	
Miscellaneous comments on rule 7.1020		
Bet Tzedek Legal Services	Eliminate Rule 7.1020(e)(4).	The committee does not recommend the suggested

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	As discussed above, there is no statutory basis or legal precedent indicating that any person other than the child themselves has standing to assert a position to the court regarding the request for SIJ findings. Accordingly, we suggest eliminating the subsection (e)(4) of proposed Rule 7.1020.	change. All persons entitled to notice of proceedings under the Probate Code have the right to object. The rule and section 1460(b) prescribe the legally required notice.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	<p>Focus on the provision of appointed counsel rather than guardians ad litem (Rule 7.1020(b)(1)(B)).</p> <p>Subsection (b)(1)(B) would provide that the court may appoint a guardian ad litem under Probate Code sections 1003 and 1003.5, or an attorney under Probate Code section 1470 to file a request for SIJS findings for a minor or to represent the interests of a minor in a proceeding to decide a request for SIJS filed on the minor’s behalf by another. Given the provision of this section that allows for the appointment of an attorney under Probate Code section 1470 to file and present a request for SIJS findings or to represent the interests of a minor in a proceeding to decide a request filed on the minor’s behalf by another, we find the need for a guardian ad litem to be alleviated. Appointed counsel is preferable because an attorney is better suited to help a child navigate the petitioning process and represent their interests in an adversarial setting.</p> <p>Recommendation: Delete the reference to appointment of a guardian ad litem in Rule 7.1020(b)(1)(B) in the following manner (deletions in strikethrough, additions <u>underlined</u>):</p> <p>(B) The court may appoint a guardian ad litem under Probate Code sections 1003 and 1003.5 or an attorney under Probate Code section 1470 to file and present a request for findings under this rule for a minor or to represent the interests of a minor in a proceeding to decide a request filed on the minor’s</p>	The committee has reversed the order of the two options in the rule.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	Comment	Committee Response
	behalf by another.	
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	The proposed rule 7.1020 should address what other basis under California law is acceptable if the case does not fall under the purview of abuse, neglect, or abandonment.	The committee does not recommend addressing this issue in a rule of court. Whether another basis for determining that reunification of a child with a parent is not legally viable is sufficiently similar to abuse, neglect, or abandonment is a substantive legal question appropriately left to the Legislature or the appellate courts to resolve.
Superior Court of Los Angeles County	The proposal (page 5) says that a verified petition can be filed concurrently with a petition for GAL or later, but Rule 7.1020 (b)(2)(B) only addresses when it is filed concurrently. Also, we suggest that the Rule address whether the petition should be handled as a petition within another case or if it creates a new case with a separate case number. If a separate case is opened, should it be ordered related or consolidated with any existing Family Law case? If it is filed within an existing case, it will be difficult to ensure the confidentiality of the proceedings.	The committee notes that the discussion on page 5 of the invitation to comment and rule 7.1020(b)(2)(B) address a petition for appointment of a guardian of the person, not a guardian ad litem (GAL). Rule 7.1020(b)(1)(B) addresses appointment of a guardian ad litem (GAL) to pursue SIJ findings on behalf of a proposed ward. That provision covers the only situation where a GAL may file a request for findings under the rule: at the time of or after his or her appointment. A GAL could not file such a request before appointment, so there is no reason to cover that situation in the rule. The committee is not expert on the matter of assigning new case numbers, but it does not perceive any reason that a petition for SIJ findings filed in a guardianship proceeding should not always bear the same case number as the underlying proceeding. Assignment of a different case number might frustrate the effect of the findings when the youth presents them to USCIS.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	“SIJ petition must be filed separately”—Good!	No response required.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law ¹		
Commentator	Comment	Committee Response
Revise presentation of “similar basis under California law”		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Revise Number 8 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law, and Choose Whether Reunification is Not Viable With the Petitioner, Respondent, or Other Parent.</p> <p>In number 8 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects “A similar basis under California law,” he or she is then tasked with specifying the similar basis. This will undoubtedly confuse petitioners, as it is unclear whether the petitioner is then supposed to list the facts in support of the similar basis under California law, the code provision supporting the similar basis, or some other information. This will be particularly confusing to pro se petitioners. Further, guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect.</p> <p>Recommendation: Revise Number 8 to read (deletions in strikethrough; additions <u>underlined</u>):</p> <p>Reunification of the child with <input type="checkbox"/> the petitioner <input type="checkbox"/> the respondent <input type="checkbox"/> the other parent the <input type="checkbox"/> <u>mother</u> <input type="checkbox"/> <u>father</u> is not</p>	<p>The FJLAC does not recommend combining the “similar basis” language with the three bases specified in federal law. Eliminating the “similar basis” as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the finding. The committee does recommend using simpler language and has revised the form accordingly.</p>

¹ Forms FL-356 and JV-356 were circulated for comment as FL-317 and JV-317. The numbers were revised to associate these request forms more closely with the findings form, FL-357/GC-224/JV-357. The numbers in the comments have been updated in brackets for ease of reference.

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
	<p>viable because of</p> <p><input type="checkbox"/> Abuse <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Neglect <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Abandonment <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> A similar basis under California law (specify):</p>	
Add an item to indicate that supporting documents may be and are attached		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Add a Box for “Other Documents Attached,” Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.</p> <p>There is currently no field on the Form where a petitioner can indicate whether there are additional documents attached to the FL-[356], beyond the specific attachments that are noted in numbers 10 and 11. However, some petitioners may wish to attach other documents to the FL-[356], such as a declaration, a Memorandum of Points and Authorities, or additional documentary evidence. We appreciate that the [form] is intended to simplify the SIJS request process and that in many cases, the child’s eligibility for SIJS will be straightforward and additional evidence and/or legal arguments may be unnecessary. Nonetheless, eligibility is not straightforward in every case and it is important to make clear that petitioners may submit additional documentary evidence as well as legal arguments.</p> <p>Recommendation: Add a box that states: “Additional Documents Attached (<i>specify</i>):” to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.</p>	<p>The committee agrees with the suggestion and has added item 12 to the form to allow the requesting party to indicate that supporting materials, such as declarations or memorandums of points and authorities, are attached.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
<p>Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney</p>	<p><u>Form FL-[356] Should Contain an Advisement Regarding Inclusions of Additional Declarations and Points and Authorities</u> As the proposal currently stands, Form FL-[356] makes no mention of additional declarations and points and authorities that may be necessary for making a SIJS finding. The proposed FL-[356] makes it seem as though no additional information beyond the form itself would be needed for the issuance of a SIJS order.</p> <p>In addition, Form FL-[356] presumably could only be completed by the parent, who may or not have personal knowledge of the facts and circumstances supporting certain SIJS findings. A child’s declaration, however, could be a vital piece of evidence that the court needs in order to make a SIJS finding. In fact, SB 873 specifically states that evidence to support a SIJS finding, “may consist of, but is not limited to, a declaration by the child who is the subject of the petition.” Furthermore, SIJS cases are still legally complex cases that involve both state and federal law, and the court may require legal briefing on the issues. Form FL-[356] should advise litigants that they may include additional declarations, including those of the child, and possibly also a memorandum of points and authorities to support the request for SIJS findings.</p>	<p>See the committee’s response to the ILRC’s comment, above.</p> <p>Nothing prohibits the attachment of the child’s declaration or other documents to the request form. The committee will consider ways to clarify the process further when developing the formation form referred to above.</p>
<p>State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel</p>	<p>FLEXCOM believes that forms JV-[356] and FL-[356] should have a box indicating that additional forms can be attached. For example, a supporting declaration from the minor may be necessary in order to provide the facts necessary to support the predicate findings. Adding some type of indicator that such documents are acceptable should help avoid confusion among individuals petitioning the court.</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
Revise reference to parents in item 8 to be consistent with other SIJ forms		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	With respect to the selection of whether reunification is not viable with the petitioner, respondent, or other parent, we suggest that these choices be deleted, and instead replaced with the selection of mother or father, to more closely track the proposed order. <i>Recommendation:</i> Revise Number 8 to read (deletions in strike through ; additions <u>underlined</u>): Reunification of the child with the petitioner the respondent the other parent the <u>mother</u> <u>father</u> is not viable ...	The committee agrees in part with this comment and has revised this item to request a finding that reunification is not legally viable with the child’s mother, father, or other legal parent. This requires the addition of an item to the form to identify the child’s parents. The committee has incorporated that as item 2 on the form.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 8, and JV-[356], No. 7, should reflect one another with the following choices for mother, father, or both parents rather than petitioner, respondent, or other parent. This makes it confusing and it would be clearer for immigration purposes if the choices reflect the INA SIJ definition.	The committee agrees in part with this comment and has revised this item to request a finding that reunification is not legally viable with the child’s mother, father, or other legal parent. This requires the addition of an item to the form to identify the child’s parents. The committee has incorporated that as item 2 on the form.
Clarify the proper context for filing a request for SIJ findings		
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	<p><u>The Family Law Request Form Should be Styled as an Attachment to a Petition, a Response, or a Request for Order:</u></p> SPR15-28 states that the family law request form is “styled as attachment to a <i>Request for Order</i> (form FL-300).” However, a request for order is not the only manner in which a litigant could raise the request for SIJS findings. For example, a litigant could request SIJS orders as a part of the initial family law petition. Should the opposing party fail to respond, the matter could be set for a default trial. If the opposing party responds, then the matter could be set for a contest trial. Similarly, a respondent in a family law proceeding could also request SIJS	The committee agrees and intends that form FL-356 be attachable to a petition, response, request for order, or another appropriate filing. As circulated, the form itself offered these options. The committee regrets any confusion caused by the abbreviated characterization in the invitation to comment.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
	<p>orders as part of the response to any family law proceeding. Litigants seeking SIJS orders should be encouraged to request such orders in a manner that is the most convenient or most efficient for that particular case. There is no reason to limit a request for SIJS order only to hearings as a result of a request for order, when SIJS issues could just as well be decided as a matter for trial.</p> <p><u>SIJS Orders Cannot be Affirmatively Requested in a Responsive Declaration to Request for Order</u> Family Code Section 213 provides that in a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court. There is no authority for the court to consider issues that were not raised in the initial request for order. Thus, if a request for SIJS orders was not raised in the moving papers for a hearing, the opposing party would not be able to raise it in the responsive declaration to request for order. Our recommendation is that the reference on FL-[356] to SIJS orders being raised in a responsive declaration to request for order should be deleted.</p>	<p>The committee does not recommend the suggested change. If custody or visitation are raised in a petition or request for order, then an alternative custody order may be requested in a responsive declaration and a request for SIJ findings, if appropriate, may be attached to the responsive declaration.</p>
<p>State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair</p>	<p>Proposed form FL-[356] might be better suited as a standalone petition or request for SIJS findings similar to Proposed Form JV-[356]—Request for Special Immigrant Juvenile Findings, and Proposed Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings. The proposed format as an attachment can lead to confusion when attached to a Petition or Response. Thus, raising the following questions:</p>	<p>The committee designed form FL-356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
	<p>1) At what point will the court render its findings?</p> <p>2) Will the court set a hearing on its own motion when the attachment for request for SIJS findings is filed along with a petition or a response?</p> <p>3) Will the requesting party have to file a request for hearing to obtain predicate findings and orders from the court?</p>	<p>1) The court would render its findings at different times depending on the procedure used to request them. For example, the court might enter them as part of a default judgment or at the time of trial if the form were attached to a petition. It might make them at or after a hearing if the form were attached to a request for order.</p> <p>2) The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request is filed with a petition and response. If the other party is properly served and does not respond, a default may be appropriate.</p> <p>3) The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request supplies sufficient basis for the court to determine the findings. It might be appropriate for a proposed order to be submitted if a default is possible.</p>
Superior Court of Los Angeles County	1. Family Law Request FL-[356] – Just as the Guardianship and Juvenile requests are standalone forms, we believe the Family Law Request should be a standalone form as well, which would make it easier to manage the confidentiality requirements outlined in CCP 155(c).	1. The committee does not recommend the suggested change at this time. The committee designed form FL-356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required. If confidentiality is a concern, form FL-356 may be submitted separately from other requests for orders, under cover of a separate form FL-300. The committee will also consider this issue in developing the rule of court.
TCPJAC/CEAC Joint Rules Subcommittee	The JRS recommends that form FL-[356] be a stand-alone document. This would help staff deal with confidentiality.	The committee does not recommend the suggested change at this time. The committee designed form FL-

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
		356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required. If confidentiality is a concern, form FL-356 may be submitted separately from other requests for orders, under cover of a separate form FL-300. The committee will also consider whether to incorporate clarification regarding confidentiality and the process for filing form FL-356 into a family law rule of court.
Miscellaneous comments on form FL-356		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Add an Additional Signature Line in the Event That the Signature of the Guardian ad Litem is Required. In cases where a child is self-petitioning for custody orders, the appointment of a guardian ad litem may be required. In those cases, the court may then require that the guardian ad litem co-sign forms with the minor. Accordingly, we suggest the addition of an optional signature line for a guardian ad litem, should one be appointed in the case.</p> <p><i>Recommendation:</i> Add an additional signature line for use by the guardian ad litem, should one be appointed in the case.</p> <p>Add a Clarifying Note to the FL-[356] That Indicates That the Attachment of the FL-[356] Does Not Itself Trigger a Hearing. Given that the FL-[356] may be submitted as an attachment to the Petition, Response, Request for Order, Responsive Declaration to Request for Order, or Other, some of which trigger hearings and some of which do not, we believe that to best avoid confusion about whether the attachment of the FL-[356] itself triggers a hearing, a clarifying note should be included, either on the FL-[356] itself, or in an informational</p>	<p>The committee does not recommend the suggested change. If the court appoints a guardian ad litem for the child, the GAL has the authority to sign the form if the request is filed on the child’s behalf. The child’s signature is not required. If the GAL submits the child’s declaration in support of the request, though, the child would need to sign the declaration.</p> <p>The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request is filed with a petition and response. If the other party is properly served and does not respond, a default may be appropriate.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
	<p>sheet that accompanies the Form.</p> <p>Recommendation: Add a clarifying note to the FL-[356] or to an informational sheet for the FL-[356] that makes clear that the attachment of the FL-[356] itself does not trigger a hearing.</p>	
<p>State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair</p>	<p>Also, it is suggested that item 3 a–f, of the proposed form FL-[356], be revised so that it specifies that both types of custody, legal and physical, are requested in the respective petitions itemized on the form. Therefore, item 3 a–f should be changed from: “...asking for sole custody”, to: “...., <u>asking for sole legal and sole physical custody.</u>” This is consistent with the requirements for SIJS findings.</p> <p>Further, it is suggested that adopted informational forms be written in simple standard English.</p> <p>FL-[356], No. 9, and JV-[356], No. 8, suggested edit: “It is not in the best interest of the child to be returned to the child’s or parent’s previous country of nationality or country of last habitual residence.”</p>	<p>The committee agrees in part and has revised item 3 to specify that the listed petitions sought sole <i>physical</i> custody. If granted, sole physical custody with one parent would be sufficient to sustain a finding that reunification with any other parent is not legally viable.</p> <p>The committee agrees and intends to draft any proposed informational forms using plain-language principles.</p> <p>The committee agrees and has incorporated the suggested language into both forms.</p>
<p>Superior Court of Los Angeles County</p>	<p>FL-[356], item #3 – The form requires entry of the court and case number, but there is no room to insert the information.</p> <p>FL-[356], item #6 – This language is very confusing for a litigant, particularly for an immigrant who may have limited English proficiency.</p>	<p>The committee agrees and has added space to insert the information.</p> <p>The committee acknowledges that the language is complex, and has revised former item 6 (now 8) to clarify it. The committee will consider additional ways to present this information in developing an informational form. The committee also anticipates that this form will be translated into Spanish, thereby assisting a native Spanish speaker.</p>
<p>Superior Court of Orange County Family Law and Juvenile Court</p>	<ul style="list-style-type: none"> • Item #5 substitute “appointed” with “ordered.” 	<ul style="list-style-type: none"> • The committee does not recommend the suggested change. “Appointed” mirrors the language of the

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law¹		
Commentator	Comment	Committee Response
Operations Managers	<ul style="list-style-type: none"> • Item #6 remove wording within parenthesis “that is, return of the child to the custody of” to avoid confusion. • Item #7 remove reference to parent – should read, “...placed in the custody of (name).” In this same paragraph substitute “appointed” with “ordered.” • Item #8 remove reference to attachment 7, as this number may change if there are multiple children. Instead add, “Continued on Attachment_____.” 	<p>federal requirement.</p> <ul style="list-style-type: none"> • The committee agrees that the circulated language was confusing and has revised the item to clarify it. • The committee agrees with the suggestion and has revised the form accordingly. • The committee does not recommend the suggested change. A separate request should be filed for each child seeking SIJ findings, so the form never needs to refer to multiple children. The committee has, however, updated the attachment number to match the item number.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	<p>“4. [] The case in 3 is pending. [] An order about sole child custody was made on <i>(date)</i>: <i>(Attach a copy of the order.)</i>”</p> <p>Suggestion is to reverse the order of the items.</p>	<p>The committee agrees and has reversed the order of these items.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
Clarify that Attachments Are Permitted		
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	<p>[T]he use of the format chosen for proposed form GC-220 presupposes that the petitioner understands the importance of linking specific facts to specific legal conclusions. In contrast, the ability to file a declaration would allow a petitioner to present information in a manner much more likely to elicit material facts and obviate denials based upon poorly presented facts rather than insufficient merit. Declarations are substantially more beneficial for a court charged with adjudicating a request for SIJS findings. In cases where the petitioner is proceeding in propria persona, a declaration provides a fuller recitation of facts such that the judicial officer may identify determinative facts that the petitioner may not; in cases where the petitioner is represented by counsel, a declaration provides the attorney with concise statements which may be articulated, cited to, and utilized in the application of the law to the specifics of the case.</p> <p>The adoption of a mandatory form may provide uniformity for court personnel; however, the proposed form is not designed to elicit evidence in the manner most useful for proper court review, currently used by such petitioners throughout the state, and arguably anticipated by the legislature, i.e., declarations. Finally, an individual seeking SIJS status may need to attach one or more declarations to the petition in order to ensure that their request for SIJS status, subject to USCIS official scrutiny, demonstrates that sufficient evidence was included in support of the request for findings in the state court.</p> <p>Accordingly, we suggest the elimination of current Items 5</p>	<p>The PMHAC intends the rule and form to guide a litigant or attorney in presenting the facts in a way that links them to the issues to which they are relevant and material. This manner of presentation assumes little knowledge of the legal process and is intended to assist the petitioner in focusing attention on the facts related to each requested finding and supporting any inferences needed to make that finding. The committee intends, and prefers, that all facts be stated in the petition itself. As noted in the committee’s response to the comments on rule 7.1020, however, nothing in the rule or form precludes the petitioner from attaching one or more declarations to the petition.</p>

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
	and 6 from the proposed form GC-220 and the addition of a line item and box to the proposed form GC-220 indicating the existence of attached supporting declaration(s).	The committee recommends neither the suggested elimination of items 5 and 6 nor the suggested addition of a new item to indicate that supporting declarations are attached. There is no reason to have such a field in the body of the petition. A page inserted after the signature page can be added to identify any other documents attached to the petition, such as points and authorities or additional declarations.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	Add a Box for “Other Documents Attached,” Such That the Petitioner Can Note if There Are Additional Documents Attached to the Petition. Same comment as [submitted with respect to form FL-[356], above at page 44]. <i>Recommendation:</i> Add a box that states: “Additional Documents Attached (<i>specify</i>):” to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	See the committee’s response to Bet Tzedek’s comment, above.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	Add a Box for “Other Documents Attached,” Such That the Petitioner Can Note if There Are Additional Documents Attached to the Petition. There is currently no field on the Form where a petitioner can indicate whether there are additional documents attached to the GC-220, beyond the specific attachments that are noted in numbers 5 and 6. However, some petitioners may wish to attach other documents to the GC-220, such as a declaration, a Memorandum of Points and Authorities, or additional documentary evidence. We appreciate that the verified petition is intended to simplify the petitioning process and that in many cases, the child’s eligibility for SIJS will be straightforward and additional evidence and/or legal arguments may be	See the committee’s response to Bet Tzedek’s comment, above.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
	<p>unnecessary. Nonetheless, eligibility is not straightforward in every case and it is important to make clear that petitioners may submit additional documentary evidence as well as legal arguments.</p> <p>Recommendation: Add a box that states: “Additional Documents Attached (<i>specify</i>):” to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.</p>	
Revise item 5’s presentation of a “similar basis under California law”		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Revise Number 5 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.</p> <p>In number 5 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects “A similar basis under California law,” he or she is then tasked with specifying the similar basis. This will undoubtedly confuse petitioners, as it is unclear whether the petitioner is then supposed to list the facts in support of the similar basis under California law, the code provision supporting the similar basis, or some other information. This will be particularly confusing to pro se petitioners. Further, guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect.</p>	<p>The committee does not recommend the suggested change. It anticipates that self-represented California petitioners will be able to use “abuse, neglect, or abandonment” in almost every case, and that counsel desiring to use “similar basis under California law” will know that “similar basis” must mean a basis <i>similar to one of those three terms</i>, and will know the language to insert from an appellate decision, statute, or regulation. And, in the absence of legislative or appellate guidance, the committee has no grounds for specifying additional bases similar to abuse, neglect, or abandonment.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
	<p>Recommendation: Revise Number 5 to read (deletions in strikethrough; additions <u>underlined</u>):</p> <p>Reunification of the minor...</p> <p><input type="checkbox"/> Abuse <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Neglect <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Abandonment <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> A similar basis under California law (specify):</p>	
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Revise Number 5 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.</p> <p>In number 5 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects “A similar basis under California law,” he or she is then tasked with specifying the similar basis. Guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect.</p> <p>Recommendation: Revise Number 5 to read (deletions in strikethrough; additions <u>underlined</u>):</p> <p>Reunification of the minor...</p> <p><input type="checkbox"/> Abuse <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Neglect <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Abandonment <u>or a similar basis under California law</u></p>	<p>See the committee’s response to the ILRC’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
	<input type="checkbox"/> A similar basis under California law (specify):	
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	Item 5 <input type="checkbox"/> A similar basis under California law (specify): What does this include? Why not use “other”? This language is confusing to SRL’s and will result in being left blank instead of the desired factual statement.	See the committee’s response to the ILRC’s comment, above.
Reduce Blank Space on Form GC-220		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	Revise the Layout of the Form to Provide a More Appropriate Amount of Space for Facts. We recommend reducing the amount of space that has been allocated for facts in support of the best interests finding (number 6 on page 3). In particular, we suggest condensing pages 3 and 4 of the Form, as we believe that a half-page is sufficient in most cases to list the facts in support of the best interests finding, and additional facts can always be stated on an Attachment to the Petition using MC-25. The proposed Form FL-[356] reflects what we believe is the more appropriate amount of space for the facts in support of this finding. Recommendation: Combine pages 3 and 4 to eliminate unnecessary space for facts on both pages.	The committee respectfully declines to recommend this change. The amount of space saved would be minimal, at best. The larger amount of space is desirable because it encourages a showing of all facts available, not just a conclusory paragraph buttressed perhaps by declarations of others. This commentator and others appear to suggest the latter option, but the committee has concluded that the preferred method is to allege as many facts as possible in the petition itself. Moreover, the more space available in the petition, the less often will resort to attached additional pages be necessary.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	<p>Revise the Layout of the Form to Provide a More Appropriate Amount of Space for Facts.</p> <p>We recommend reducing the amount of space that has been allocated for facts in support of the best interests finding (number 6 on page 3). In particular, we suggest condensing pages 3 and 4 of the Form, as we believe that a half-page is sufficient in most cases to list the facts in support of the best interests finding, and additional facts can always be stated on an Attachment to the Petition using MC-25. The proposed Form FL-[356] reflects what we believe is the more appropriate amount of space for the facts in support of this finding.</p> <p>Recommendation: Combine pages 3 and 4 to eliminate unnecessary space for facts on both pages.</p>	See the committee’s response to the ILRC’s comment, above.
Miscellaneous Comments on Form GC-220		
Los Angeles County Counsel’s Office Dawyn Harrison, Assistant County Counsel	Agree with the suggested changes if amended to add a space to form GC-220, section 2, to indicate the child’s date of birth.	The committee does not recommend the suggested change. The minor’s date of birth is not necessary on this form and is not part of the proof required in the SIJ findings proceeding. Under current law, the ward of a probate guardianship must be under 18 years of age. The ward’s date of birth is prominently displayed in the <i>Petition for Appointment of Guardian of the Person</i> (form GC-210(P)); or the <i>Guardianship Petition—Child Information Attachment</i> (form GC-210(CA)), filed with the <i>Petition for Appointment of Guardian of Minor</i> (form GC-210).
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	<p>GC-220 is important because the availability of legal resources for representation is limited in these types of proceedings, leaving many SIJS eligible minors navigating the process without legal representation.</p> <p>Specific comment: p. 14 (GC-220) form should not assume places of birth and country of nationality are related.</p>	<p>No response required.</p> <p>The committee agrees in part with this suggestion. The committee has modified its recommendation to simplify</p>

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	Comment	Committee Response
	2. (Name of Minor): * Was born in (country): a national of that country. <i>and is</i>	the item by deleting the reference to the child’s country of birth. Only the country of nationality is relevant to the SIJ findings.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	Petitions have fees. Is there intent to impose another petition fee? If so, it should be stated.	The committee does not intend the proposed rules and forms to impose a fee separate from or in addition to those established by statute. See also the committee’s response to comment on filing fees submitted in reference to rule 7.1020, above.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
Delete or clarify references to “other parent” in items 2 and 7		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Delete the “Other Parent” Boxes in Number 2 on Page 1, as Well as Number 7 on Page 2. As proposed, the meaning of the “Other Parent” boxes in number 2 on page 1 is unclear, for example, whether “Other Parent” refers to a same sex partner, stepparent, putative parent, or some other individual. As presently drafted, this promises to confuse petitioners. Further, these boxes do not serve a clear purpose. Accordingly, we recommend deletion of these boxes.</p> <p>Recommendation: Delete the “Other Parent” boxes in number 2 on page 1, as well as number 7 on page 2.</p>	<p>The committee recommends retaining an option for a third parent, identified as “other legal parent.” Under California law, a child may have more than two parents. (See Fam. Code, § 7601(c), (d).) Furthermore, those parents may all be the same sex; some may not identify as a specific sex. The committee intends the format of items 2 and 7 to allow the identification of the parents no matter their number or identified sex.</p>
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Clarify the “Other Parent” Boxes in Number 2 on Page 1, as Well as Number 7 on Page 2. As proposed, the meaning of the “Other Parent” boxes in number 2 on page 1 is unclear, for example, whether “Other Parent” refers to a same sex partner, stepparent, putative parent, or some other individual. As presently drafted, this might confuse petitioners. [We recommend that the council reword the text to say:] “Other legal parent, as defined by State law (<i>specify</i>)”</p> <p>Recommendation: Reword the “Other Parent” boxes in number 2 on page 1, as well as number 7 on page 2 to say “Other legal parent, as defined by State law (<i>specify</i>)”</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>
<p>State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair</p>	<p>FL-[356], No. 8, and JV-[356], No. 7, should reflect one another with the following choices for mother, father, or both parents rather than petitioner, respondent, or other parent. This makes it confusing and it would be clearer for immigration purposes if the choices reflect the INA SIJ definition.</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
Insert space to indicate other bases for juvenile court jurisdiction		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Add an “Other” box to the options in number 3 on page 1. We are concerned that the boxes for section <input type="checkbox"/> 300 and <input type="checkbox"/> 602 do not cover all of the potential sections under which a youth may be subject to the court’s jurisdiction and eligible for SIJS findings. For example, youth who are subject to the court’s transition jurisdiction under Section 450 of the Welfare & Institutions Code as nonminor dependents also meet the eligibility requirements for Special Immigrant Juvenile Status, but this form is not set up to accommodate their situation. Additionally, dual-jurisdiction youth may also be eligible for SIJS, but the proposed Form does not appear to contemplate their inclusion. Accordingly, we suggest that an “other” box be added to number 3 on page 1.</p> <p>Recommendation: Make the following changes to Number 3 (deletions in strikethrough; additions <u>underlined</u>):</p> <p style="padding-left: 40px;">The court found that the child was described by section <input type="checkbox"/> 300 <input type="checkbox"/> 602 <u><input type="checkbox"/> other (specify):_____</u> and assumed jurisdiction over the child on...</p>	<p>The committee agrees to add a third box to item 3 to indicate other possible bases for the juvenile court’s assumption of jurisdiction.</p>
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Add an “Other” box to the options in number 3 on page 1. We are concerned that the boxes for section <input type="checkbox"/> 300 and <input type="checkbox"/> 602 do not cover all of the potential sections under which a youth may be subject to the court’s jurisdiction and eligible for SIJS findings. For example, youth who are subject to the court’s transition jurisdiction under Section 450 of the Welfare & Institutions Code as nonminor dependents also meet the eligibility requirements for Special Immigrant Juvenile Status, but this form is not set up to accommodate their</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
	<p>situation. Additionally, dual-jurisdiction youth under Welfare and Institutions Code 725 may also be eligible for SIJS, but the proposed Form does not appear to contemplate their inclusion. Accordingly, we suggest that an “other” box be added to number 3 on page 1.</p> <p>Recommendation: Make the following changes to Number 3 (deletions in strike through; additions <u>underlined</u>):</p> <p style="padding-left: 40px;">The court found that the child was described by section <input type="checkbox"/> 300 <input type="checkbox"/> 602 <input type="checkbox"/> <u>other (specify): _____</u> and assumed jurisdiction over the child on...</p>	
Eliminate requirement that the underlying juvenile court findings or orders be attached to request		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Delete the Requirement in Number 3 That the Petitioner Must Attach a Copy of the Court’s Jurisdictional Findings.</p> <p>Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the court’s jurisdictional findings. If required, in many cases the child or his or her immigration attorney would have to petition the court for access to a copy of the court’s jurisdictional findings through the JV-570 petitioning process (since the immigration attorney would not otherwise have access to the documents, and the child’s appointed state court attorney may not be comfortable filing the SIJS request). This process can often take a long time, and it would delay the filing of the SIJS request with the court. This is of particular concern if the child is close to aging out of court jurisdiction. This requirement seems particularly burdensome and unnecessary when the court already has access to this document in its own files.</p>	<p>The committee agrees to delete the direction to attach a copy of the jurisdictional findings from item 3. Although the requesting party is advised to give the court as much information as possible to promote the fair and efficient determination of its request, the date of the jurisdictional findings is sufficient to enable the court to locate the relevant documents in its file. The committee takes no position on whether the child’s immigration attorney might be permitted access to a child’s juvenile court records without a court order under section 827(a)(1).</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
	<p><i>Recommendation:</i> Delete the requirement in number 3 that the petitioner must attach a copy of the court’s jurisdictional findings.</p> <p>If Numbers 4 & 5 Are Included in the Form, Delete the Requirements in Numbers 4 & 5 That the Petitioner Must Attach a Copy of the Underlying Juvenile Court Orders. Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the underlying juvenile court orders. If required, the child or his or her immigration attorney would have to petition the court for access to a copy of the underlying juvenile court orders through the JV-570 petitioning process. This seems particularly burdensome and unnecessary when the court already has access to these orders in its own files.</p> <p><i>Recommendation:</i> Delete the requirements in numbers 4 and 5 that the petitioner must attach a copy of the underlying juvenile court order(s).</p>	<p>The committee agrees to delete the direction to attach copies of the applicable orders from items 4 and 5. Although the requesting party is advised to give the court as much information as possible to promote the fair and efficient determination of its request, the date of the jurisdictional findings is sufficient to enable the court to locate the relevant documents in its file. The committee takes no position on whether the child’s immigration attorney might be permitted access to a child’s juvenile court records without a court order under section 827(a)(1).</p>
<p>Legal Advocates for Children and Youth Neha Marathe, Senior Attorney</p>	<p>LACY supports ILRC’s comments to the proposed Form JV-[356]. Every effort must be made to protect the statutorily mandated confidentiality of juveniles, as required by Welfare and Institutions Code section 827 and Code of Civil Procedure section 155. Requiring minors to attach the juvenile court’s jurisdictional findings and/or order would violate provisions of these sections and is unnecessary because the court has access to its own files. Welfare & Institutions Code section 827 requires the filing of a petition to release these records, which could delay and ultimately deter the SIJS findings.</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>
<p>Legal Services for Children</p>	<p>Delete the Requirement in Number 3 That the Petitioner</p>	<p>See the committee’s response to the ILRC’s comment,</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
<p>San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Must Attach a Copy of the Court’s Jurisdictional Findings. Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the court’s jurisdictional findings. In dependency matters, the court-appointed counsel for the minor may be uncomfortable or unable to represent the child in the immigration petition before USCIS, and the child may instead be represented by outside immigration counsel, who would have to petition the court for access to a copy of the court’s jurisdictional findings through the JV-570 petitioning process. This process can often take a long time, and it would delay the filing of the SIJS request with the court. This is of particular concern if the child is close to aging out of court jurisdiction. This requirement seems particularly burdensome and unnecessary when the Court already has access to this document in its own files.</p> <p>Recommendation: Delete the requirement in number 3 that the petitioner must attach a copy of the court’s jurisdictional findings.</p> <p>If Numbers 4 & 5 Are Included in the Form, Delete the Requirements in Numbers 4 & 5 That the Petitioner Must Attach a Copy of the Underlying Juvenile Court Orders. Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the underlying juvenile court orders. If required, the child or his or her immigration attorney would have to petition the court for access to a copy of the underlying juvenile court orders through the JV-570 petitioning process. This seems particularly burdensome and</p>	<p>above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
	<p>unnecessary when the court already has access to these orders in its own files.</p> <p>Recommendation: If items 4 and 5 are included in the JV-[356], delete the requirements that the petitioner must attach a copy of the underlying juvenile court order(s).</p>	
<p>State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel</p>	<p>Should the form maintain, in any fashion, paragraphs 4 and 5, FLEXCOM recommends deleting the requirements that Petitioner attach certain documents to the JV-[356] form. This same request applies to the requirement in paragraph 3 that Petitioner attach a copy of the jurisdictional findings. It is rare in a juvenile case that a party is required to attach specific orders to requests for relief. As noted above, the court has easy access to these findings and orders. Further, immigration attorneys that might assist a minor in preparing the JV-[356] will not have access to the requested documents.</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>
Delete or revise items 4 and 5 because they are underinclusive		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Delete Numbers 4 & 5, Which Ask for Information Already Available to the Juvenile Court, and Which do Not Accommodate the Situations of All Youth, in Particular, Nonminor Dependents.</p> <p>We are concerned that the boxes set forth in numbers 4 and 5 do not cover the universe of all possible factual scenarios that children who are eligible for SIJS may fit into. For example, these provisions do not seem to accommodate nonminor dependents, nor would they work for orphans who are dependent upon the court, or 602 wards who are ordered home on probation. Further, the information requested in numbers 4 and 5 is all available to the court in its own files, and therefore much easier for the court to access than an outside attorney or pro se petitioner. Accordingly, we suggest that these boxes be eliminated.</p>	<p>The committee recommends retaining items 4 and 5. These items are intended to solicit information relevant to establishing a basis for the requested findings. Item 4 asks the requesting party to identify the court order that supplies the basis for the first SIJ finding. By using the language required for that finding, the committee intends to cover all possible legal bases for it. Item 5 asks the requesting party to specify the legal bases for the first part of the second finding, i.e., that reunification with one or both parents is not legally viable. A court order removing custody of the child from a parent, denying or terminating reunification services, appointing a guardian, and terminating parental rights may be a sufficient basis for determining that reunification is not legally viable. These items remind the requesting party to identify the</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
	<p>Recommendation: Delete Numbers 4 and 5 on page 1.</p> <p>If Number 5 is Included in the Form, Add a Box to Number 5 to Cover the Situation Where a Child Has Been Ordered Home on Probation With One Parent, and Add an “Other” Box to Accommodate Nonminor Dependents. If Number 5 is included in Form JV-[356], we strongly suggest the addition of a box to cover the situation where a child has been ordered home on probation with one parent. As was the case in the <i>In re Israel O.</i> decision, where a child has been ordered home on probation with one parent, he or she also satisfies the requirement of having been “committed to, or placed under the custody of,” a state agency or department or other court-appointed individual or entity. Accordingly, a box should be added to the list of selections in number 5 which accommodates this factual scenario. Further, we suggest the addition of an “other” box to number 5 to allow for the inclusion of nonminor dependents and other nontraditional situations.</p> <p>Recommendation: Make the following changes to Number 5 (deletions in strikethrough; additions <u>underlined</u>):</p> <p>5. The court (check all that apply): <input type="checkbox"/> ordered the child removed from the custody of (name(s) of parent(s)):... ... <input type="checkbox"/> <u>ordered the child home on probation with one parent:</u> <input type="checkbox"/> <u>mother</u> <input type="checkbox"/> <u>father</u> <input type="checkbox"/> <u>other (specify):</u></p>	<p>specific judicial actions it is relying on and direct the court to the relevant findings and orders.</p> <p>The committee does not recommend adding either suggested box to item 5, which is intended to indicate grounds for finding that reunification with one or both parents is not legally viable. While the juvenile court retains jurisdiction, an order placing the child with one parent, whether on probation or not, has no bearing on whether the child may be reunified with another parent. With respect to a nonminor dependent, the form already solicits sufficient information in items 3—that the court took jurisdiction when the youth was a child and currently has jurisdiction—and 5—that the nonminor dependent was removed from parental custody and may not currently reunify—to provide sufficient legal basis for a finding that reunification is not viable.</p>
Legal Advocates for Children and	[P]roposed form JV-[356] (numbers 4 & 5 on page 1) does	See the committee’s response to the ILRC’s comment,

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
<p>Youth Neha Marathe, Senior Attorney</p>	<p>not reflect the scope of juveniles eligible for SIJS, including nonminor dependents (Welf. & Inst. Code § 450), dual-status youth (Welf. & Inst. Code §241.1) or wards ordered home on probation with one parent (Welf. & Inst. Code § 602).</p>	<p>above.</p>
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Delete Numbers 4 & 5, Which Ask for Information Already Available to the Juvenile Court, and Which do Not Accommodate the Situations of All Youth, in Particular, Nonminor Dependents. We are concerned that the boxes set forth in numbers 4 and 5 do not cover the universe of all possible factual scenarios that children who are eligible for SIJS may fit into. For example, these provisions do not seem to accommodate nonminor dependents, nor would they work for orphans who are dependent upon the court, or 602 wards who are ordered home on probation. Further, the information requested in numbers 4 and 5 is all available to the court in its own files, and therefore much easier for the court to access than an outside attorney or pro se petitioner. Accordingly, we suggest that these boxes be eliminated.</p> <p>Recommendation: Delete Numbers 4 and 5 on page 1.</p> <p>If Number 5 is Included in the Form, Add a Box to Number 5 to Cover the Situation Where a Child Has Been Ordered Home on Probation With One Parent, and Add an “Other” Box to Accommodate Nonminor Dependents. If Number 5 is not removed from Form JV-[356], we strongly suggest the addition of a box to cover the situation where a child has been ordered home on probation with one parent. As was the case in the <i>In re Israel O.</i> decision, where a child has been ordered home on probation with one parent, he or she also satisfies the requirement of having been</p>	<p>See the committee’s response to the ILRC’s comment, above.</p> <p>See the committee’s response to the ILRC’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
	<p>“committed to, or placed under the custody of,” a state agency or department or other court-appointed individual or entity. Accordingly, a box should be added to the list of selections in number 5 which accommodates this factual scenario. Further, we suggest the addition of an “other” box to number 5 to allow for the inclusion of nonminor dependents and other nontraditional situations.</p> <p>Recommendation: Make the following changes to Number 5 (deletions in strikethrough; additions <u>underlined</u>):</p> <p>5. The court (check all that apply):</p> <p style="padding-left: 20px;"><input type="checkbox"/> ordered the child removed from the custody of (name(s) of parent(s)):...</p> <p style="padding-left: 20px;">...</p> <p style="padding-left: 20px;"><input type="checkbox"/> <u>ordered the child home on probation with one parent:</u></p> <p style="padding-left: 20px;"><input type="checkbox"/> <u>mother</u> <input type="checkbox"/> <u>father</u> <input type="checkbox"/> <u>other (specify):</u></p>	
<p>State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel</p>	<p>FLEXCOM recommends the deletion of proposed paragraphs 4 and 5 of the JV-[356]. Petitioners can include the requested information when citing facts in support of the findings requested in paragraphs 6 and 7.</p> <p>Additionally, paragraphs 4 and 5 call for information the court will readily have at its disposal or can easily ask the Petitioner to verify orally at a hearing.</p> <p>Lastly, these paragraphs call for certain items of information that are not relevant to the SIJS findings. For example, a Petitioner seeking the findings does not need to establish termination of parental rights. Nor would a petitioner in juvenile court request such findings after the finalization of an adoption, due to the termination of the court’s jurisdiction.</p>	<p>See the committee’s response to the ILRC’s comment, above.</p> <p>In addition, the committee agrees to delete the solicitation of a reference to final adoption orders.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
Add an item to indicate that supporting documents may be and are attached		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	<p>Add a Box for “Other Documents Attached,” Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request. Same comment as [submitted with respect to form FL-[356], above at page 44].</p> <p>Recommendation: Add a box that states “Additional Documents Attached (<i>specify</i>):” to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.</p>	The committee agrees with the suggestion and has added item 9 to the form to allow the requesting party to indicate that supporting materials, such as declarations or memorandums of points and authorities, are attached.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	<p>Add a Box for “Other Documents Attached,” Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request. Same comment as [submitted with respect to form FL-[356], above at page 44].</p> <p>Recommendation: Add a box that states “Additional Documents Attached (<i>specify</i>):” to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.</p>	See the committee’s response to the ILRC’s comment, above.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes that forms JV-[356] and FL-[356] should have a box indicating that additional forms can be attached. For example, a supporting declaration from the minor may be necessary in order to provide the facts necessary to support the predicate findings. Adding some type of indicator that such documents are acceptable should help avoid confusion among individuals petitioning the court.	See the committee’s response to the ILRC’s comment, above.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
Revise item 7’s presentation of a “similar basis under California law”		
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Revise Number 7 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law. Same comment as [submitted with respect to item 8 on form FL-356], above.</p> <p>Recommendation: Revise Number 7 to read (deletions in strikethrough; additions <u>underlined</u>):</p> <p>Reunification of the child...</p> <p><input type="checkbox"/> Abuse <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Neglect <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Abandonment <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> A similar basis under California law (specify):</p>	<p>The committee does not recommend combining the “similar basis” language with the three bases specified in federal law. Eliminating the “similar basis” as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the finding. The committee does recommend using simpler language and has revised the form accordingly.</p>
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>Revise Number 7 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law. Same comment as [submitted with respect to item 8 on form FL-356,] above.</p> <p>Recommendation: Revise Number 7 to read (deletions in strikethrough; additions <u>underlined</u>):</p> <p>Reunification of the child...</p> <p><input type="checkbox"/> Abuse <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Neglect <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> Abandonment <u>or a similar basis under California law</u></p> <p><input type="checkbox"/> A similar basis under California law (specify):</p>	<p>See the committee’s response to the ILRC’s comment, above.</p>
Miscellaneous comments on form JV-356		

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	Comment	Committee Response
Orange County Bar Association Ashleigh Aitken, President	In response to specific requests for comment: A JV form for petitioning the Court for SIJ findings would be beneficial. The existing procedural rules are adequate.	The committee agrees that a JV form for requesting SIJ findings from the juvenile court would be useful and have proposed form JV-356 to serve this function.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	The proposed JV-[356] provides juvenile courts with a Judicial Council form through which a petitioner may request the predicate findings for seeking SIJS relief. FLEXCOM applauds the Judicial Council for seeking to apply structure to the application process. However, FLEXCOM believes the form can be slimmed down in a way that balances the need for the court to have necessary information and the petitioner’s ability to expeditiously seek the appropriate findings.	The committee has revised the form to eliminate any identified excess and clarify the process for requesting SIJ findings in juvenile court.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 9, and JV-[356], No. 8, suggested edit: “It is not in the best interest of the child to be returned to the child’s or parent’s previous country of nationality or country of last habitual residence.” JV-[356], No. 7: There is not enough space to write/type a name here.	The committee agrees and has incorporated the suggested language into both forms. The committee agrees and has added space to item 7.
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Item #4, last selection item, add more space to section allotted to write names and relationship of the individuals with whom the child was placed.	The committee recommends striking that part of the item that requests the requesting party to specify the relationship of the custodian to the child. The relationship is not a necessary element of the SIJ findings. The deletion of this element will leave more space to write the custodians’ names.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	Comment	Committee Response
Do not identify the individual or entity that has custody of the child		
<p>Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney</p>	<p>Remove the portion of Item 3b. of the proposed form that calls for the identification of the individual or entity appointed by the court and their relationship to the child. As designed, the proposed form requires the submission of the identity of the individual or entity appointed by the court and their relationship to the child. This information is not required by federal law, nor is it necessary for United States Citizenship and Immigration Services officials to determine the child’s eligibility for SIJS or otherwise adjudicate the child’s application.</p> <p>Accordingly, we suggest deleting the portion of Item 3b. of the proposed form that calls for the identification the individual or entity appointed by the court and their relationship to the child.</p>	<p>The committees agree that there is no need to specify the relationship of the custodian to the child and recommends deleting that item from the form. However, the committees do not recommend removing the space for the custodian’s name. Inclusion of the custodian’s name plays an essential role in supporting a federal application for SIJ status by establishing a connection between the SIJ findings form and the underlying state court custody order, whether the underlying order originate in family, juvenile, or probate court.</p>
<p>Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney</p> <p>San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer</p>	<p>Delete the Field in 3.b on Page 1 that Requests the Name of the Individual or Entity Appointed By the Court. Practitioners commonly do not disclose the name of the child’s legal guardian or foster parent to immigration authorities, as this would have a chilling effect on the willingness of such guardians or foster parents to support the child in his or her application for Special Immigrant Juvenile Status. Further, this information is not necessary to demonstrate the child’s eligibility for SIJS, especially in light of the fact that the order will also include the relationship of the individual to the child.</p> <p>Recommendation: Delete the field in 3.b on page 1 that requests the name of the individual or entity appointed by the court. If it remains, then delete “foster care” from the parenthetical since it could be a “confidential” delinquency placement.</p>	<p>See the committees’ response to Bet Tzedek’s comment, above.</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	Comment	Committee Response
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	<p>Delete the Field in 3.b on Page 1 that Requests the Name of the Individual or Entity Appointed By the Court.</p> <p>At Legal Services for Children, we do not generally disclose the name of the child’s legal guardian or foster parent to immigration authorities, as this could have a chilling effect on the willingness of such guardians or foster parents to support the child in his or her application for Special Immigrant Juvenile Status. Further, this information is not necessary to demonstrate the child’s eligibility for SIJS, especially in light of the fact that the order will also include the relationship of the individual to the child.</p> <p>Recommendation: Delete the field in 3.b on page 1 that requests the name of the individual or entity appointed by the court. If it remains, then delete “foster care” from the parenthetical since it could be a “confidential” delinquency placement.</p>	See the committees’ response to Bet Tzedek’s comment, above.
Revise item 4’s presentation of “a similar basis under California law”		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	<p>Revise Number 4 on Page 1, Which Requests That the Petitioner List the Similar Basis Under California Law</p> <p>With respect to the similar basis under state law, we submit the same comment as [submitted with respect to item 8 on form FL-356,] above.</p> <p>Recommendation: Revise Number 4 to read (deletions in strike through; additions <u>underlined</u>):</p> <p>Reunification of the child with his or her (<i>check all that apply</i>): <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other parent is not viable because of parental <input type="checkbox"/> abuse <u>or a similar basis under California law</u> <input type="checkbox"/> neglect <u>or a similar basis under California law</u> <input type="checkbox"/> abandonment <u>or a similar basis under California law</u> or <input type="checkbox"/> a similar basis</p>	<p>With respect to identifying a similar basis under state law, the committees do not recommend the suggested change. In the absence of legislative or appellate guidance, the committees have no grounds to identify other legal bases similar to abuse, neglect, or abandonment.</p> <p>The committees also do not recommend combining the “similar basis” language with the three bases specified in federal law. Eliminating the “similar basis” as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the</p>

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	Comment	Committee Response
	under California law (specify): as established on...	finding. The committees do recommend using simpler language on the request forms and have revised those forms accordingly.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	<p>Revise Number 4 on Page 1, Which Requests That the Petitioner List the Similar Basis Under California Law With respect to the similar basis under state law, we submit the same comment as [submitted with respect to item 8 on form FL-356,] above.</p> <p>Recommendation: Revise Number 4 to read (deletions in striketrough; additions <u>underlined</u>):</p> <p>Reunification of the child with his or her (<i>check all that apply</i>): <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other parent is not viable because of parental <input type="checkbox"/> abuse <u>or a similar basis under California law</u> <input type="checkbox"/> neglect <u>or a similar basis under California law</u> <input type="checkbox"/> abandonment <u>or a similar basis under California law</u> or <input type="checkbox"/> a similar basis under California law (specify): as established on...</p>	See the committee’s response to the ILRC’s comment, above.
Delete or clarify references to “other parent” in item 4		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	<p>With respect to the “other parent” box, we submit the same comment as [submitted with respect to item 2 on form JV-356], above. In addition, we believe that the existence of the “other parent” box on this order (that will be submitted to U.S. Citizenship & Immigration Services (USCIS)) promises to confuse the agency, as USCIS may not understand this field or why it is used. As a result, the existence of this field may jeopardize the success of children’s applications for Special Immigrant Juvenile Status with the federal government.</p> <p>Recommendation: Revise Number 4 to read (deletions in striketrough; additions <u>underlined</u>):</p>	The committees recommend retaining an option for a third parent identified as “other legal parent.” Under California law, a child may have more than two parents. (See Fam. Code, § 7601(c), (d).) Furthermore, those parents may all be the same sex; some may not identify as a specific sex. The committee intends the format of item 5 to allow the identification of the parents no matter their number or identified sex.

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	Comment	Committee Response
	<p>Reunification of the child with his or her (<i>check all that apply</i>): <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other parent is not viable because of parental <input type="checkbox"/> abuse <u>or a similar basis under California law</u> <input type="checkbox"/> neglect <u>or a similar basis under California law</u> <input type="checkbox"/> abandonment <u>or a similar basis under California law</u> or <input type="checkbox"/> a similar basis under California law (specify): as established on...</p>	
<p>Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney</p>	<p>With respect to the “other parent” box, we submit the same comment as [submitted with respect to item 2 on form JV-356], above.</p> <p>Recommendation: Revise Number 4 to read (deletions in strikethrough; additions <u>underlined</u>):</p> <p>Reunification of the child with his or her (<i>check all that apply</i>): <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other parent is not viable because of parental <input type="checkbox"/> abuse <u>or a similar basis under California law</u> <input type="checkbox"/> neglect <u>or a similar basis under California law</u> <input type="checkbox"/> abandonment <u>or a similar basis under California law</u> or <input type="checkbox"/> a similar basis under California law (specify): as established on...</p>	
Add space for the court to use to deny a request for SIJ findings and give reasons		
<p>Superior Court of Orange County Family Law and Juvenile Court Operations Managers</p>	<p>Add a deny option along with a denial reasons section.</p>	<p>The committees do not recommend adding the suggested item. Because the primary purpose of the form is to document the SIJ findings for submission to the United States Citizenship and Immigration Services (USCIS) and the form will not be submitted to USCIS if the court declines to make even one of the findings, the addition of space for a denial or explanation is not warranted. If the court denies a request for one or more of the findings, reasons articulated on the form in the space under each finding or in the minute order will suffice to provide a basis for the requesting party to seek a writ.</p>
TCPJAC/CEAC Joint Rules	The JRS recommends that form FL-357 include a space for the	See the committees’ response to Orange County

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	Comment	Committee Response
Subcommittee (JRS)	court to explain a reason for the denial of relief.	Superior Court’s comment, above.
Miscellaneous Comments on Form FL-357/GC-224/JV-357		
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes it would be beneficial for the order to include a place where the court can indicate the youth’s date of birth.	The committees agree and have revised the form to include space for the child’s date of birth. Although the child bears the burden of establishing his or her age independently as part of the federal SIJ status application, the inclusion of the child’s date of birth on the findings may help to verify the child’s identity.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	<p>FL-357/GC-224/JV-357, Special Immigrant Juvenile Predicate Findings, facilitates the SIJS process by standardizing the format for the court’s predicate findings in family law, probate and juvenile court. The form would be most helpful for use by self-represented litigants in family law proceedings. Without the availability of this “form” proposed order, self-represented litigants would be tasked with crafting pleadings comprising a proposed order. The proposed Form also facilitates the duty of the court to provide in writing, and not simply on the record, its findings. Use of the form ensures the court’s order is sufficient to meet SIJS requirements by containing the following:</p> <ol style="list-style-type: none"> 1) that the court has jurisdiction under state law to make judicial determinations about custody and care of minors; 2) whether the minor is found to be a dependent of the court, legally committed to a state agency or department, or placed in the custody of an individual or entity; 3) that reunification with one or either parent of the child is not viable due abuse, abandonment, or neglect; and 4) that it is not in the minor’s best interest to be returned to his or her country of origin, or place of last habitual residence. 	The committees intend the form to be used by self-represented parties and those represented by counsel, as well as trial courts charged with determining requests for SIJ findings. Use of the form is intended to document the state court findings and the factual basis therefor in a form that will be acceptable and comprehensible to a USCIS adjudication officer.

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Recommend adding fields to capture information about the hearing, such as hearing date, judicial officer, hearing date/time, department, and appearances.	The committees agree and have added item 2 to the form to capture the suggested information.