



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	Agenda Item Type
Juvenile Law: Sibling Visitation	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.570, 5.708, and 5.810; revise forms JV-183, JV-185, and JV-403	January 1, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	September 23, 2015
Hon. Jerilyn L. Borack, Cochair	Contact
Hon Mark A. Juhas, Cochair	Kerry Doyle, 415-865-8791 kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules and revising three forms to conform them to recent statutory changes giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend rules 5.570, 5.708, and 5.810 of the California Rules of Court, and revise forms JV-183, JV-185, and JV-403 to ensure that they conform to the recently enacted provisions of Welfare and Institutions Code sections 361.2, 366, 366.3, 388, 778, and 16002.¹ Also, the committee

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

recommends amending rule 5.708 to specify the burden of proof and standard when requesting that a child be removed from the home.

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.570 with the new standard for granting or denying a request for sibling visitation with a nondependent sibling, to add the new grounds for granting a petition for modification of a prior court order, and to specify the burden of proof and standard when requesting that a child be removed from the home;
2. Amend rule 5.708 with new statutorily required findings;
3. Amend rule 5.810 with the new statutorily required finding to suspend sibling interaction, to clarify when a permanency hearing must be held, and to remove subdivision (f) regarding administrative reviews;
4. Further amend rules 5.708 and 5.810 to delete references to “youth;”
5. Amend rules 5.570, 5.708, and 5.810 with new references to code sections and subsections and with further clarifying changes;
6. Revise *Court Order on Form JV-180, Request to Change Court Order* (form JV-183) to include the new standard for granting a request for sibling visitation with a child who is not a dependent of the court, and to allow the court to deny a request for sibling visitation if the request is for visitation with a nondependent sibling who remains in the custody of a mutual parent who is not subject to the court’s jurisdiction;
7. Further revise form JV-183 to allow a court to set a hearing for the parties to argue whether an evidentiary hearing on a section 388 petition should be granted or denied;
8. Revise *Child’s Information Sheet—Request to Change Court Order* (form JV-185) to clarify, in plain language, that a child can request visitation with a sibling who lives with a mutual parent subject to the jurisdiction of the court; and
9. Revise *Sibling Attachment: Contact and Placement* (form JV-403) to include the new findings required by Senate Bill 1099 regarding siblings under the court’s jurisdiction who are not placed together in the same home.

The proposed text of the amended rules of court is attached at pages 10–19. The proposed revised forms are attached at pages 20–25.

Previous Council Action

The Judicial Council adopted rule 5.570, effective January 1, 1991, as rule 1431. It was amended five times to conform to statute and to ensure proper notice under the Indian Child Welfare Act. It was renumbered and amended effective January 1, 2007. It was amended four more times after it was renumbered to conform to statutory changes and to correct typographical errors.

The Judicial Council adopted rule 5.708, effective January 1, 2010. It was amended three times: twice effective July 1, 2010, to contain the correct cross reference to a rule that was renumbered and to ensure that tribal customary adoption is considered a permanent plan as required by statutory changes, and once, effective January 1, 2015, to clarify that subdivision (n) applies to any parent who has relinquished the child for adoption, regardless of that parent’s legal status.

The Judicial Council adopted rule 5.810, effective January 1, 1991, as rule 1496. It has been amended seven times to conform to statutory changes. It was renumbered, effective January 1, 2007.

The Judicial Council approved *Court Order on Form JV-180, Request to Change Court Order* (form JV-183), effective January 1, 2009.

The Judicial Council approved *Child’s Information Sheet—Request to Change Court Order* (form JV-185), effective January 1, 2006. It was revised one time to make a technical change, effective July 1, 2006.

The Judicial Council approved for optional use *Sibling Attachment: Contact and Placement* (form JV-403), effective July 1, 2010.

Rationale for Recommendation

In October 2008, Congress passed and President George W. Bush signed the Fostering Connections to Success and Increasing Adoptions Act to promote permanent families for children and youth in foster care by providing greater assistance to relative caregivers and improving incentives for adoption. Among other things, the act requires states to use “reasonable efforts” to place siblings together, unless such placement is contrary to their safety or well-being. If the siblings are not placed together, visitation between them must occur frequently, unless the visitation is contrary to their safety or well-being.²

² See 42 U.S.C. § 671(a).

Before passage of the act, California was one of the first states to pass legislation promoting sibling visitation for foster children—as early as 1999.³ Since then, California has enacted several additional statutes to expand legal protections for sibling relationships.

These laws have served to promote sibling relationships when both children are in the dependency system, but at least one recent unpublished case indicates that courts will not grant visitation in a case where one sibling is in the foster system and the other remains in the legal custody of the parent. Senate Bill 1099 (Steinberg; Stats. 2014, ch. 773) sought to address this situation by giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances. Additionally, SB 1099 created new requirements related to sibling visitation, such as requiring more detailed information in social worker reports and probation officer case plans and requiring courts to make a renewed finding that sibling interaction is contrary to the safety or well-being of either child when renewing any suspension of sibling interaction. SB 1099 also made current and new sibling placement and visitation requirements apply to children under the jurisdiction of the delinquency court.

Amend rule 5.570 with the new standard for granting or denying a request for sibling visitation with a nondependent sibling who remains in the custody of a mutual parent.

As introduced, the standard in section 388 for granting a request for visitation with a nondependent sibling was: “...a request for sibling visitation shall be granted unless it is shown by clear and convincing evidence that sibling visitation is contrary to the safety and well-being of any of the siblings.” Staff of the Senate Judiciary Committee had concerns that, “[i]n practice, the clear and convincing standard is a high evidentiary burden that many parties, especially self-represented parties, may have difficulty proving.”⁴ That committee worked with the sponsor of the bill, the California Youth Connection, to change the standard to: “a request for sibling visitation *may* be granted unless *it is determined by the court* that sibling visitation is contrary to the safety and well-being of any of the siblings.” [Emphasis added.]

Given this legislative history, the committee recommends adding this new standard to rule 5.570 (h)(1)(E) and (i)(2) but not specifying the burden of proof required, as the statute does not include the burden of proof.

Further amend rule 5.570 to add the new grounds for granting a petition for modification.

SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child’s sibling relationship so that when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court’s jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

³ See Assem. Bill 740; Stats. 1999, ch. 805.

⁴ Sen. Comm. on Jud. Analysis of SB 1099 (2013–2014 Reg. Sess.) April 22, 2014, p. 6.

Further amend rule 5.570 to specify the burden of proof and standard when requesting that a child be removed from the home.

In spring 2013, the committee recommended amending rule 5.570 to “[r]emove statutorily incorrect uses of a section 388 petition.”⁵ Because the subparagraphs removed addressed requests to remove a child from the child’s home and requests to move a child to a more restrictive placement, the committee decided that section 387, which addresses these requests when made by the child welfare department, governed these requests and they thus did not belong in the rule governing section 388 petitions. It has since, however, been pointed out to Judicial Council staff that children’s counsel sometimes make a request to remove the child from his or her home, and if so, that request would be governed by section 388 and rule 5.570. The committee therefore recommends that the language clarifying that a higher evidentiary standard is required to grant a request to remove a child from his or her home which was taken out of the rule effective January 1, 2014, be included in it again.

Amend rule 5.708 to require that the court make the findings required by section 16002(b).

Rule 5.708 governs the findings the court must make regarding siblings at dependency status review hearings. SB 1099 created a requirement in section 16002(b) that when sibling interaction has been suspended, in order for the suspension to continue, the court must make a renewed finding that sibling interaction is contrary to the safety or well-being of either child. The committee recommends using a cross-reference to recently amended section 16002(b). By referencing the statute, any future modification to section 16002(b) will not result in the need for changes to the rule.

Amend rule 5.810 with the finding required to suspend sibling interaction.

Rule 5.810 governs the findings the court must make at delinquency status review hearings. As stated above, SB 1099 created a requirement in section 16002(b) that when sibling interaction has been suspended, in order for the suspension to continue, the court must make a renewed finding that sibling interaction is contrary to the safety or well-being of either child. The committee recommends adding this newly required finding to the subdivisions governing each status review type: prepermanency, permanency, and postpermanency hearings.

Further amend rules 5.708 and 5.810 to delete references to “youth.”

Frequently, but not consistently, these rules refer to “child or youth” rather than “child.” “Youth” is not defined in the California Rules of Court. Rule 5.502 defines “child” as “a person under the age of 18 years.” It further defines both “nonminors” and “nonminor dependents.” These three definitions include all children and nonminors who are subject to the court’s jurisdiction. The committee recommends using the words that are defined in the rule and deleting any references to the undefined “youth.”

⁵ Judicial Council of Cal., Adv. Comm. Invitation to Comment, *Juvenile Law: Extended Foster Care* (spring 2013), p. 4.

Further amend rule 5.810 to clarify when a permanency hearing under rule 5.810(b) must be held.

Although a permanency hearing is required every 12 months under federal law,⁶ California complies with this requirement by holding postpermanency status review hearings every six months.⁷ The finding and order required by federal law to identify a permanent plan for a child are required by state law to be made at each postpermanency status review hearing, thus satisfying the federal requirement.⁸

Some courts have alternately held permanency hearings under rule 5.810(b) which governs permanency planning hearings, and rule 5.810(c) which governs postpermanency hearings. However, since the federal requirements for permanency hearings are met by holding postpermanency hearings under rule 5.810(c), the correct procedure—once a permanency hearing has been held under rule 5.810(b)—is to hold all subsequent postpermanency hearings under rule 5.810(c). The recommended amendments to this rule will clarify that this is the correct procedure.

Revise *Court Order on Form JV-180, Request to Change Court Order (form JV-183)* to include the new standard for granting a request for sibling visitation with a child who is not a dependent of the court, and to allow the court to deny a request for sibling visitation if the sibling remains in the custody of a mutual parent who is not subject to the court’s jurisdiction or if sibling visitation is contrary to the safety and well-being of any of the siblings.

As discussed above, SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child’s sibling relationship. Therefore, when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court’s jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

Further revise form JV-183 to allow a court to set a hearing for the parties to argue whether a hearing on a section 388 petition should be granted or denied.

In *In re G.B.* (2014) 227 Cal.App.4th 1147, the First Appellate District held, inter alia, that the failure to hold a hearing on modification requests did not amount to reversible error.⁹ In discussion, the appellate court stated that in checking a box on form JV-183,¹⁰ the juvenile court

⁶ See 45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C), (F).

⁷ Welf. & Inst. Code, § 366.3(a), (d).

⁸ Welf. & Inst. Code, § 366.3(e)(3).

⁹ The published opinion can be found at www.courts.ca.gov/opinions/archive/A140107.PDF.

¹⁰ Current form JV-183, item 3, which is to be completed by the trial court, reads, “The court orders a hearing on the form JV-180 request because the best interest of the child may be promoted by the request. The hearing will take place on (date): . . .”

was not deciding that a prima facie case had been made but was instead scheduling the matter for the parties to argue the issue. The appellate court further stated that setting a hearing for the parties to argue whether a prima facie case had been made was not an option on the form. In doing so, the appellate court implicitly approved the trial court's practice of setting a hearing for the purpose of giving the parties an opportunity to argue whether the section 388 petition stated a prima facie case and whether a hearing on the petition should be set.

The committee recommends revising the form to give courts the option of setting a hearing to allow argument by the parties before the court decides whether to grant or deny a hearing on the section 388 petition. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional: if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.

Revise *Child's Information Sheet—Request to Change Court Order* (form JV-185) to clarify, in plain language, that a child can request visitation with a sibling who lives with a mutual parent subject to the jurisdiction of the court.

As discussed above, SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

Revise *Sibling Attachment: Contact and Placement* (form JV-403) to include the new findings required by SB 1099 regarding siblings under the court's jurisdiction who are not placed together in the same home.

SB 1099 amended sections 366 and 366.3 to require findings regarding whether the visits are supervised or unsupervised and, if supervised, why and what needs to be accomplished in order for the visits to be unsupervised; a description of the location and length of the visits; and any plan to increase visitation between the siblings. The committee recommends adding these findings to the current item 3; this revision would make the one-page form a two-page form.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Seven individuals or organizations provided comment; three agreed with the proposal, three agreed if modified, and one did not indicate a position. No commentators disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 26–36.

One commentator, that agreed if modified, made suggested clarifications to limit the scope of both a rule and a form. The committee has revised both to clarify that they apply to requests for visitation by nondependent siblings.

Another commentator, that agreed if modified, expressed concern that the way the rules and forms described when the court could deny a request for sibling visitation was overly broad and could foreclose the court's granting other requests for sibling visitation.¹¹ The committee revised the rules and forms to track the statutory language. The rule reads:

If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

The committee concluded that the revised language would not preclude a court from ordering sibling visitation where a nondependent sibling lives with someone other than a mutual parent.

The third commentator, who agreed if modified, made suggested improvements to grammar and consistency which were incorporated into the rules and forms.

Alternatives

The committee considered not revising form JV-183 with the new standards for granting a request for sibling visitation. The committee, in its discussion of this proposal, expressed concern about the court's ability to order sibling visitation for a sibling living with a parent who is not subject to the court's jurisdiction.

While Welfare and Institutions Code sections 388 and 778, which govern the filing of petitions to request a modification of a court order, do not address the requirement that the parent be under the court's jurisdiction, section 16002(a)(2), which states the legislative intent of SB 1099, does address this requirement.

It is also the intent of the Legislature to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home or he or she has a sibling or siblings *who remain in the custody of a mutual parent subject to the court's jurisdiction*, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling. (Emphasis added.)

¹¹ As circulated for public comment, the rules specified that the court "may" grant a request for visitation with a nondependent sibling "unless the court determines that the sibling is not in the custody of a mutual parent subject to the court's jurisdiction."

Section 16002 is not in the parts of the Welfare and Institutions Code frequently used by juvenile court practitioners and bench officers, and the frequently used sections 388 and 778 do not contain this requirement. The committee therefore decided to recommend that the rules and forms be amended and revised to include this requirement to prevent confusion and to promote the legislative intent.

The committee also considered not revising form JV-183 to allow a court to set a hearing for the purpose of giving the parties an opportunity to argue whether the section 388 petition stated a prima facie case and whether a hearing on the petition should be set. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. Additionally, the committee concluded that allowing for the setting of this type of hearing would increase judicial discretion over how to hear these petitions. The setting of a hearing to give parties the opportunity to argue whether a hearing on the petition should be set would be optional; if courts prefer to just hold one hearing on the merits of the petition, they would remain free to do so.

Implementation Requirements, Costs, and Operational Impacts

This proposal could result in an increase in section 388 and 778 petitions filed requesting visitation with siblings who are not dependents of the court. This increase, however, is due to recent statutory changes authorizing such requests. In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Proposed Cal. Rules of Court, rules 5.570, 5.708, and 5.810, at pages 10–19
2. Proposed forms JV-183, JV-185, and JV-403, at pages 20–25
3. Chart of comments, at pages 26–36
4. Senate Bill 1099,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1099&search_keywords=

Rules 5.570, 5.708, and 5.810 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Rule 5.570. Request to change court order (petition for modification)**

2
3 **(a)–(c) * * ***

4
5 **(d) Denial of hearing**

6
7 The court may deny the petition ex parte if:

8
9 (1) The petition filed under section 388(a) or section 778(a) fails to state a
10 change of circumstance or new evidence that may require a change of order
11 or termination of jurisdiction or fails to show that the requested modification
12 would promote the best interest of the child, nonminor, or nonminor
13 dependent.

14
15 (2) The petition filed under section 388(b) fails to demonstrate that the requested
16 modification would promote the best interest of the dependent child; ~~or~~

17
18 (3) The petition filed under section 388(b) or 778(b) requests visits with a
19 nondependent child and demonstrates that sibling visitation is contrary to the
20 safety and well-being of any of the siblings;

21
22 (4) The petition filed under section 388(b) or 778(b) requests visits with a
23 nondependent sibling who remains in the custody of a mutual parent who is
24 not subject to the court’s jurisdiction; or

25
26 ~~(3)~~(5) The petition filed under section 388(c) fails to state facts showing that the
27 parent has failed to visit the child or that the parent has failed to participate
28 regularly and make substantive progress in a court-ordered treatment plan or
29 fails to show that the requested termination of services would promote the
30 best interest of the child.

31
32 **(e) Grounds for grant of petition (§§ 388, 778)**

33
34 (1) If the petition filed under section 388(a) or section 778(a) states a change of
35 circumstance or new evidence and it appears that the best interest of the
36 child, nonminor, or nonminor dependent may be promoted by the proposed
37 change of order or termination of jurisdiction, the court may grant the petition
38 after following the procedures in (f), (g), and (h), or (i).

39
40 (2) If the petition is filed under section 388(b) and it appears that the best interest
41 of the child, nonminor, or nonminor dependent may be promoted by the
42 proposed recognition of a sibling relationship ~~and~~ or other requested orders,

1 the court may grant the petition after following the procedures in (f), (g), and
2 (h).

3
4 (3) If the petition is filed under section 388(b), the request is for visitation with a
5 sibling who is not a dependent of the court and who is in the custody of a
6 parent subject to the court's jurisdiction, and that sibling visitation is not
7 contrary to the safety and well-being of any of the siblings, the court may
8 grant the request after following the procedures in (f), (g), and (h).
9

10 (4) If the petition is filed under section 778(b), the request is for visitation with a
11 sibling who is not a dependent of the court and who is in the custody of a
12 parent subject to the court's jurisdiction, and that sibling visitation is not
13 contrary to the safety and well being of the ward or any of the siblings, the
14 court may grant the request after following the procedures in (f), (g), and (i).
15

16 ~~(3)~~ (5) * * *

17
18 ~~(4)~~ (6) * * *

19
20 ~~(5)~~ (7) If the petition filed under section 388(a) is filed before an order terminating
21 parental rights and is seeking to modify an order that reunification services
22 ~~were not needed~~ need not be provided under section 361.5(b)(4), (5), or (6) or
23 to modify any orders related to custody or visitation of the child for whom
24 reunification services were not ordered under section 361.5(b)(4), (5), or (6),
25 the court may modify the orders only if the court finds by clear and
26 convincing evidence that the proposed change is in the best interests of the
27 child. The court may grant the petition after following the procedures in (f),
28 (g), and (h).
29

30 **(f) Hearing on petition**

31
32 If all parties stipulate to the requested modification, the court may order
33 modification without a hearing. If there is no such stipulation and the petition has
34 not been denied ex parte under section (d), the court must either:

35
36 (1) order that a hearing on the petition for ~~modification~~ be held within 30 calendar
37 days after the petition is filed; or
38

39 (2) order a hearing for the parties to argue whether an evidentiary hearing on the
40 petition should be granted or denied. If the court then grants an evidentiary
41 hearing on the petition, that hearing must be held within 30 calendar days after
42 the petition is filed.
43

1 (g) * * *

2
3 (h) **Conduct of hearing (§ 388)**
4

5 (1) The petitioner requesting the modification under section 388 has the burden
6 of proof.
7

8 (A) If the request is for the removal of the child from the child's home, the
9 petitioner must show by clear and convincing evidence that the grounds
10 for removal in section 361(c) exist.
11

12 ~~(A)~~(B) If the request is for termination of court-ordered reunification services,
13 the petitioner must show by clear and convincing evidence that one of
14 the conditions in section 388(c)(1)(A) or (B) exists and must show by a
15 preponderance of the evidence that reasonable services have been
16 offered or provided.
17

18 ~~(B)~~(C) If the request is to modify an order that reunification services were not
19 ~~needed~~ ordered under section 361.5(b)(4), (5), or (6) or to modify any
20 orders related to custody or visitation of the child for whom
21 reunification services were not ordered under section 361.5(b)(4), (5),
22 or (6), the petitioner must show by clear and convincing evidence that
23 the proposed change is in the best interests of the child.
24

25 ~~(C)~~ (D) All other requests require a preponderance of the evidence to show
26 that the child's welfare requires such a modification.
27

28 (E) If the request is for visitation with a sibling who is not a dependent of
29 the court, the court may grant the request unless the court determines
30 that the sibling remains in the custody of a mutual parent who is not
31 subject to the court's jurisdiction or that sibling visitation is contrary to
32 the safety and well-being of any of the siblings.
33

34 (2) * * *

35
36 (i) **Conduct of hearing (§ 778)**
37

38 (1) The petitioner requesting the modification under section 778(a) has the
39 burden of proving by a preponderance of the evidence that the ward's welfare
40 requires the modification. Proof may be by declaration and other
41 documentary evidence, or by testimony, or both, at the discretion of the
42 court.
43

1 (2) If the request is for sibling visitation under section 778(b), the court may
2 grant the request unless the court determines that the sibling remains in the
3 custody of a mutual parent who is not subject to the court’s jurisdiction or
4 that sibling visitation is contrary to the safety and well-being of any of the
5 siblings.
6

7 **(j) Petitions for juvenile court to resume jurisdiction over nonminors (§§ 388(e),**
8 **388.1)**

9
10 A petition filed by or on behalf of a nonminor requesting that the court resume
11 jurisdiction over the nonminor as a nonminor dependent is not subject to this rule.
12 Petitions filed under ~~subdivision (e) of section 388(e)~~ or section 388.1 are subject
13 to rule 5.906.
14

15 **Rule 5.708. General review hearing requirements**

16
17 **(a)–(b) * * ***

18
19 **(c) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)**

20
21 Before the hearing, the social worker must investigate and file a report describing
22 the services offered to the family, progress made, and, if relevant, the prognosis for
23 return of the child to the parent or legal guardian.
24

25 (1) The report must include:

26
27 (A) Recommendations for court orders and the reasons for those
28 recommendations;

29
30 (B) A description of the efforts made to achieve legal permanence for the
31 child if reunification efforts fail; ~~and~~

32
33 (C) A factual discussion of each item listed in sections 366.1 and
34 366.21(c); and

35
36 (D) A factual discussion of the information required by section 16002(b).
37

38 (2)–(3) * * *

39
40 **(d)–(e) * * ***

41
42 **(f) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)**
43

1 The court must consider the educational and developmental-services needs of each
2 child and nonminor or nonminor dependent ~~youth~~, including whether it is necessary
3 to limit the rights of the parent or legal guardian to make educational or
4 developmental-services decisions for the child ~~or youth~~. If the court limits those
5 rights or, in the case of a nonminor or nonminor dependent ~~youth~~ who has chosen
6 not to make educational or developmental-services decisions for him- or herself or
7 has been deemed incompetent, finds that appointment would be in the best interests
8 of the ~~youth~~ nonminor or nonminor dependent, the court must appoint a responsible
9 adult as the educational rights holder as defined in rule 5.502. Any limitation on the
10 rights of a parent or guardian to make educational or developmental-services
11 decisions for the child ~~or youth~~ must be specified in the court order. The court must
12 follow the procedures in rules 5.649–5.651.

13
14 **(g) Case plan (§§ 16001.9, 16501.1)**

15
16 The court must consider the case plan submitted for the hearing and must
17 determine:

18
19 (1) Whether the child ~~or youth~~ was actively involved, as age- and
20 developmentally appropriate, in the development of his or her own case plan
21 and plan for permanent placement. If the court finds that the child ~~or youth~~
22 was not appropriately involved, the court must order the agency to actively
23 involve the child ~~or youth~~ in the development of his or her own case plan and
24 plan for permanent placement, unless the court finds that the child is unable,
25 unavailable, or unwilling to participate.

26
27 (2)–(3) * * *

28
29 (4) For a child ~~or youth~~ 12 years of age or older in a permanent placement,
30 whether the child was given the opportunity to review the case plan, sign it,
31 and receive a copy. If the court finds that the child ~~or youth~~ was not given
32 this opportunity, the court must order the agency to give the child the
33 opportunity to review the case plan, sign it, and receive a copy.

34
35 **(h)–(i) * * ***

36
37 **(j) Sibling findings; additional findings (§§ 366, 16002)**

38
39 (1) The court must determine whether the child has other siblings under the
40 court’s jurisdiction. If so, the court must make the additional determinations
41 required by section 366(a)(1)(D); and
42

1 (2) The court must enter any additional findings as required by section 366 and
2 section 16002.
3

4 (k)–(m) * * *

5
6 (n) **Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**

7
8 The court must make the following orders and determinations when setting a
9 hearing under section 366.26:

10
11 (1) The court must terminate reunification services to the parent or legal guardian
12 and:

13
14 (A) Order that the social worker provide a copy of the child’s birth
15 certificate to the caregiver as consistent with sections 16010.4(e)(5) and
16 16010.5(b)–(c); and

17
18 (B) Order that the social worker provide a child ~~or youth~~ 16 years of age or
19 older with a copy of his or her birth certificate unless the court finds
20 that provision of the birth certificate would be inappropriate.

21
22 (2)–(6) * * *

23
24 (o) * * *

25
26 **Rule 5.810. Reviews, hearings, and permanency planning**

27
28 (a) **Six-month status review hearings (§§ 727.2, 11404.1)**

29
30 For any ward removed from the custody of his or her parent or guardian under
31 section 726 and placed in a home under section 727, the court must conduct a status
32 review hearing no less frequently than once every six months from the date the
33 ward entered foster care. The court may consider the hearing at which the initial
34 order for placement is made as the first status review hearing.

35
36 (1)–(2) * * *

37
38 (3) *Findings and orders (§ 727.2(e))*

39
40 The court must consider the safety of the ward and make findings and orders
41 that determine the following:

42
43 (A)–(E) * * *

44

- 1 (F) In the case of a child ~~or youth~~ who is 16 years of age or older, the
 2 services needed to assist the child ~~or youth~~ in making the transition
 3 from foster care to independent living;
 4
- 5 (G) Whether the child ~~or youth~~ was actively involved, as age- and
 6 developmentally appropriate, in the development of his or her own case
 7 plan and plan for permanent placement. If the court finds that the child
 8 ~~or youth~~ was not appropriately involved, the court must order the
 9 probation department to actively involve the child ~~or youth~~ in the
 10 development of his or her own case plan and plan for permanent
 11 placement, unless the court finds that the child ~~or youth~~ is unable,
 12 unavailable, or unwilling to participate; ~~and~~
 13
- 14 (H) Whether each parent was actively involved in the development of the
 15 case plan and plan for permanent placement. If the court finds that any
 16 parent was not actively involved, the court must order the probation
 17 department to actively involve that parent in the development of the
 18 case plan and plan for permanent placement, unless the court finds that
 19 the parent is unable, unavailable, or unwilling to participate; and
 20
- 21 (I) If sibling interaction has been suspended and will continue to be
 22 suspended, that sibling interaction is contrary to the safety or well-
 23 being of either child.
 24

25 (4) * * *

26
 27 (b) **Permanency planning hearings (§§ 727.2, 727.3, 11404.1)**
 28

29 A permanency planning hearing for any ward who has been removed from the
 30 custody of a parent or guardian and not returned at a previous review hearing must
 31 be held within 12 months of the date the ward entered foster care as defined in
 32 section 727.4(d)(4). ~~and periodically thereafter, but no less frequently than once~~
 33 ~~every 12 months while the ward remains in placement.~~ However, when no
 34 reunification services are offered to the parents or guardians under section 727.2(b),
 35 the first permanency planning hearing must occur within 30 days of disposition.
 36

37 (1) * * *

38
 39 (2) *Findings and orders (§§ 727.2(e), 727.3(a))*
 40

41 At each permanency planning hearing, the court must consider the safety of
 42 the ward and make findings and orders regarding the following:
 43

1 (A)–(C) * * *

2
3 (D) The permanent plan for the child ~~or youth~~, as described in (3);

4
5 (E) Whether the child ~~or youth~~ was actively involved, as age- and
6 developmentally appropriate, in the development of his or her own case
7 plan and plan for permanent placement. If the court finds that the child
8 ~~or youth~~ was not appropriately involved, the court must order the
9 probation officer to actively involve the child ~~or youth~~ in the
10 development of his or her own case plan and plan for permanent
11 placement, unless the court finds that the child ~~or youth~~ is unable,
12 unavailable, or unwilling to participate; and

13
14 (F) Whether each parent was actively involved in the development of the
15 case plan and plan for permanent placement. If the court finds that any
16 parent was not actively involved, the court must order the probation
17 department to actively involve that parent in the development of the
18 case plan and plan for permanent placement, unless the court finds that
19 the parent is unable, unavailable, or unwilling to participate; and

20
21 (G) If sibling interaction has been suspended and will continue to be
22 suspended, that sibling interaction is contrary to the safety or well-
23 being of either child.

24
25 (3) *Selection of a permanent plan (§ 727.3(b))*

26
27 At the first permanency planning hearing, the court must select a permanent
28 plan. At subsequent permanency planning hearings that must be held under
29 section 727.2(g) and rule 5.810(c), the court must either make a finding that
30 the current permanent plan is appropriate or select a different permanent plan,
31 including returning the child home, if appropriate. The court must choose
32 from one of the following permanent plans, which are, in order of priority:

33
34 (A) * * *

35
36 (B) A permanent plan of return of the child to the physical custody of the
37 parent or guardian, after 6 additional months of reunification services.
38 The court may not order this plan unless the court finds that there is a
39 substantial probability that the child will be able to return home within
40 18 months of the date of initial removal or that reasonable services
41 have not been provided to the parent or guardian.

42
43 (C)–(F) * * *

1 (4) * * *

2

3 (c) **Postpermanency status review hearings (§ 727.2)**

4

5 A postpermanency status review hearing must be conducted for wards in placement
6 ~~annually, 6 months after each permanency planning hearing~~ no less frequently than
7 once every six months.

8

9 (1) *Consideration of reports (§ 727.2(d))*

10

11 The court must review and consider the social study report and updated case
12 plan submitted for this hearing by the probation officer and the report
13 submitted by any CASA volunteer, and any other reports filed with the court
14 under section 727.2(d).

15

16 (2) *Findings and orders (§ 727.2(g))*

17

18 At each postpermanency status review hearing, the court must consider the
19 safety of the ward and make findings and orders regarding the following:

20

21 (A) Whether the current permanent plan continues to be appropriate. If not,
22 the court must select a different permanent plan, including returning the
23 child home, if appropriate; ~~The court must not order the permanent~~
24 ~~plan of returning home after 6 more months of reunification services, as~~
25 ~~described in (b)(3)(B), unless it has been 18 months or less since the~~
26 ~~date the child was removed from home;~~

27

28 (B) The continuing necessity for and appropriateness of the placement;

29

30 (C) The extent of the probation department's compliance with the case plan
31 in making reasonable efforts to complete whatever steps are necessary
32 to finalize the permanent plan for the child; ~~and~~

33

34 (D) Whether the child ~~or youth~~ was actively involved, as age- and
35 developmentally appropriate, in the development of his or her own case
36 plan and plan for permanent placement. If the court finds that the child
37 ~~or youth~~ was not appropriately involved, the court must order the
38 probation department to actively involve the child ~~or youth~~ in the
39 development of his or her own case plan and plan for permanent
40 placement, unless the court finds that the child ~~or youth~~ is unable,
41 unavailable, or unwilling to participate; and

42

1 (E) If sibling interaction has been suspended and will continue to be
2 suspended, sibling interaction is contrary to the safety or well-being of
3 either child.
4

5 (d) **Notice of hearings; service; contents (§ 727.4)**
6

7 No earlier than 30 nor later than 15 calendar days before each hearing date, the
8 probation officer must serve written notice on all persons entitled to notice under
9 section 727.4, as well as the current caregiver, any CASA volunteer or educational
10 rights holder, and all counsel of record. A *Notice of Hearing—Juvenile*
11 *Delinquency Proceeding* (form JV-625) must be used.
12

13 (e) **Report (§§ 706.5, 706.6, 727.2(c), 727.3(a)(1), 727.4(b), 16002)**
14

15 Before each hearing described above, the probation officer must investigate and
16 prepare a social study report that must include an updated case plan and all of the
17 information required in sections 706.5, 706.6, 727.2, ~~and 727.3,~~ and 16002.
18

- 19 (1) The report must contain recommendations for court findings and orders and
20 must document the evidentiary basis for those recommendations.
21
22 (2) At least 10 calendar days before each hearing, the ~~petitioner~~ probation officer
23 must file the report and provide copies of the report to the ward, the parent or
24 guardian, all attorneys of record, and any CASA volunteer.
25

26 (f) **Hearing by administrative panel (§§ 727.2(h), 727.4(d)(7))**
27

28 ~~The status review hearings described in (a) and (c) may be conducted by an~~
29 ~~administrative review panel, provided:~~
30

- 31 ~~(1) — The ward, parent or guardian, and all those entitled to notice under section~~
32 ~~727.4 may attend;~~
33
34 ~~(2) — Proper notice is provided;~~
35
36 ~~(3) — The panel has been appointed by the presiding judge of the juvenile court and~~
37 ~~includes at least one person who is not responsible for the case management~~
38 ~~of, or delivery of service to, the ward or the parent or guardian; and~~
39
40 ~~(4) — The panel makes findings as required by (a)(3) or (c)(2) above and submits~~
41 ~~them to the juvenile court for approval and inclusion in the court record.~~

The court will complete this form after reviewing the Request to Change Court Order (form JV-180) and either grant the request, deny the request, or set a hearing on the request.

After reading and considering the Request to Change Court Order (form JV-180) filed by:

Name: _____

on (date): _____

Clerk stamps date here when form is filed.

DRAFT

**NOT APPROVED
BY THE JUDICIAL
COUNCIL**

The Court Finds and Orders

- 1 All parties and attorneys agree to the request. The request is granted
 - a. as requested in item 8 of form JV-180.
 - b. as follows (state specific modifications):

- 2 The request is denied because
 - a. the request is not signed.
 - b. the request does not state new evidence or a change of circumstances.
 - c. the proposed change of order, recognition of sibling relationships, or termination of jurisdiction does not promote the best interest of the child.
 - d. the request is for sibling visitation with a dependent of the court and the proposed change of order does not promote the best interest of the child.
 - e. the request is for sibling visitation with a nondependent of the court and the proposed change of order is contrary to the safety or well-being of one or more of the siblings.
 - f. the request is for sibling visitation with a nondependent of the court who remains in the custody of a mutual parent who is not subject to this court's jurisdiction.
 - g. Other (state the specific reason): _____

- 3 The court orders a hearing on whether the court should grant or deny an evidentiary hearing. The hearing will take place on (date): _____ at (time): _____ (circle one) a.m./p.m.

in department _____ of the Superior Court of _____

County located at _____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name.

Name of Child or Nonminor dependent:

Clerk fills in case number when form is filed.

Case Number:



Name of child or nonminor dependent: _____

Case Number: _____

4 The court orders a hearing on the form JV-180 request because the best interest of the child may be promoted by the request. The hearing will take place on (date): _____
at (time): _____ (circle one) a.m./p.m. in department _____
of the Superior Court of _____ County located at _____

Date: _____

Judicial officer

CHILD'S NAME:

CASE NUMBER:

**CHILD'S INFORMATION SHEET—
REQUEST TO CHANGE COURT ORDER
(Welf. & Inst. Code, §§ 353.1, 388)**

TO THE CHILD: This information sheet tells you about your right to ask the court to change a decision the court has made about your life and the rules that must be followed when you want to ask the court to change a decision. It also explains your right to ask the court to make an order about your relationship with a brother or sister. If you are under 12 years of age, your attorney must talk with you about this information. If you are 12 years of age or older and in court at the dispositional hearing, the court must also talk with you about this information. The court must mail this information to you after a dispositional hearing.

- A. I have just made a decision about your life. I will be making other decisions about your life. You have a right to ask me to change a decision I have made. You have an attorney who will help you with this.

For me to change a decision I have made, you must talk with your attorney and have your attorney ask me to change my decision.

Your attorney will have to fill out a form called *Request to Change Court Order* (form JV-180).

The form will explain to me the changes that have happened in your life and why the changes you want me to make in the court order will make things better for you.

You may get a copy of the blank form from your attorney or from the court clerk's office at the courthouse to review so you know what information needs to be on the form.

1. You must tell your attorney the following information:
 - a. What has changed since I made the decision? If nothing has changed, what new information do you want to tell me?
 - b. What changes to my decision do you want me to make?
 - c. If I make the changes you want, will you be better off than if I do not make these changes? Tell me how the changes will make you healthier, safer, and happier.
2. After you speak with your attorney, your attorney will fill out the form.
 - a. I will read the form.
 - b. I may ask the other people involved with your case if they think you have given me the kind of information I must have in order to change my decision. Then I will decide if you told me anything new and if the change you want me to make is good for you.
 - c. If I believe you have not told me anything new or if I believe what you want me to change is not good for you, I will not make any changes. The court clerk will send to you and all the people involved with your case a written notice of my decision not to make any changes.
 - d. If I believe you did tell me something new and what you are asking me to change may be better for you, I will schedule a court date for you. The court clerk will send to you and all the people involved with your case a written notice of my decision to schedule a hearing and the date of the hearing.
 - e. At that court date, everyone involved in your case will be present and allowed to speak.
 - f. After everyone has spoken, I will make the final decision. I will make the changes you want only if I believe you have told me something new and what you are asking for is good for you.

- B. If you have a brother or sister who lives with the parent you were removed from, you may ask me to make an order allowing visits with him or her.

If you have a brother or sister who is or might become a dependent of the court, you may ask me to make an order allowing visits, to make an order placing you in the same home, to make other orders that may be in the best interest of you and your brother or sister, and to consider your relationship with your brother or sister when making decisions about him or her.

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

- B.
1. For me to make these orders, you must tell your attorney you would like to ask me to make an order about your brother or sister.
 2. Your attorney will fill out a form asking me to make the order about your brother or sister.
 - a. I will read the form.
 - b. The court clerk will send to you and all the people involved with your brother's or sister's case a written notice of my decision to schedule a hearing and the date of the hearing.
 - c. At that court date, everyone involved in the case will be present and allowed to speak.
 - d. After everyone has spoken, I will make the final decision. I will make the order about your brother or sister that you asked me to make only if I believe what you are asking for is good for you and your brother or sister.

If you have any questions, please ask your attorney. Your attorney will be able to answer your questions about court procedures and the laws I will use in making my decisions.

Date:

JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

1. The child has siblings under the court's jurisdiction.

a. The nature of the relationship between the child and the child's siblings is

- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (specify):

b. (1) Developing or maintaining the sibling relationship with the siblings named below is appropriate.

- (a) (name):
- (b) (name):
- (c) (name):
- (d) (name):
- (e) (name):
- (f) (name):

(2) Developing or maintaining the sibling relationship with the siblings named below is not appropriate.

- (a) (name):
- (b) (name):
- (c) (name):
- (d) (name):
- (e) (name):
- (f) (name):

(3) The basis for the finding in item 1b is

- (a) stated on the record.
- (b) described in the social worker's report.
- (c) other (specify):

c. The impact of the sibling relationships on the child's placement and planning for legal permanence is

- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (specify):

2. The child and all of the child's siblings under the court's jurisdiction are placed together in the same home.

3. The child and all of the child's siblings under the court's jurisdiction are not placed together in the same home.

a. Efforts are being made to place the child and the following siblings together.

(1) Child's siblings:

- (a) (name):
- (b) (name):
- (c) (name):
- (d) (name):
- (e) (name):
- (f) (name):

(2) The reasons the child and these siblings are not placed together and the efforts being made to do so are

- (a) stated on the record.
- (b) described in the social worker's report.
- (c) other (specify):

b. Efforts to place the child with the following siblings are not appropriate.

(1) Child's siblings:

- (a) (name):
- (b) (name):
- (c) (name):

(2) The reasons that efforts to place the child with these siblings are not appropriate are

- (a) stated on the record.
- (b) described in the social worker's report.
- (c) other (specify):

c. The frequency and nature of the visits between the child and the child's siblings who are not placed together are

- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (specify):

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

3. d. The reasons why the visits between the child and the child's siblings are supervised are
- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (*specify*):
- e. What needs to be accomplished in order for the visits to be unsupervised is
- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (*specify*):
- f. The location and length of the visits between the child and the child's siblings who are not placed together are
- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (*specify*):
- g. The plan to increase visitation between the child and the child's siblings who are not placed together is
- (1) stated on the record.
- (2) described in the social worker's report.
- (3) other (*specify*):

SP15-26

Juvenile Law: Sibling Visitation

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

	Commentator	Position	Comment	Committee Response
1.	<p>The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM)</p> <p><u>FLEXCOM:</u> David M. Lederman The Law Offices of David M. Lederman</p> <p><u>State Bar Legislative Counsel</u> Saul Bercovitch The State Bar of California</p>	AM	<p>The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modification. FLEXCOM recommends two modifications.</p> <p>Proposed Rule 5.570(d)(4) calls for the court to deny a petition on its face if the request is for visitation with a sibling who is not in the custody of a mutual parent under the court’s jurisdiction. This proposed change should include the word “nondependent” before “sibling” in order to clarify it has limited scope. Without the word “nondependent,” this proposal could be interpreted to apply to requests for visitation between two dependent siblings that are both out of the custody of their parents. This broad interpretation would not reflect the intent of Senate Bill 1099.</p> <p>Proposed Item 2(d) on the revised form JV-183 should be stricken. This language would authorize the court to deny a request to order visitation for any individual with a dependent of the court. Similar to our comment concerning proposed 5.570(d)(4), this language has the potential to be interpreted in an overly broad fashion. On its face, this would apply well beyond requests for sibling visitation. The court could check this box on a visitation request concerning the dependent and anyone, family or otherwise. Whereas SPR15-26 is proposed in response to SB 1099, the proposal should be limited to issues concerning sibling visitation. In addition, the ability to deny requests for</p>	<p>The committee has revised the rule to include the word “nondependent” before “sibling” to clarify it has limited scope.</p> <p>The committee has revised subitems 2(d)-(f) to clarify that the items apply to requests for sibling visitation.</p>

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Juvenile Law: Sibling Visitation

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	Commentator	Position	Comment	Committee Response
			visitation is encompassed in existing item 2(c) of the JV-183 form. The existing language allows the court to deny any “change in court order” if it fails to promote the best interests of the child. The language in proposed 2(d) would be duplicative.	
2.	California Judges Association President Joan P. Weber	A	<p>Rule and Form changes to conform to SB1099 and In Re G.B.</p> <p>These amendments pertain to three rules and three forms. Overall these changes would conform to recent case law and statutes that have been passed to make it easier for siblings to see siblings both dependent and nondependent.</p> <p>CA Rule of Court 5.570 would require a new standard for granting the sibling visit. It eliminates the ‘clear and convincing’ language to show detriment in order prevent the sibling visits and instead says that “ A request for sibling visitation may be granted unless it is determined by the court that sibling visitation is contrary to the safety and well being of any of the siblings”.</p> <p>This language conforms to the language of SB1099 which was sponsored by the California Youth Connection.</p> <p>CA Rule 5.570 to be amended to clarify that a judge may consider ordering visitation for a dependent child for a nondependent child when they have a mutual parent who is subject to the</p>	No response required.

SP15-26**Juvenile Law: Sibling Visitation**

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

	Commentator	Position	Comment	Committee Response
			<p>court’s jurisdiction.</p> <p>CA Rule 5.708 would be amended to require that if a court has found that sibling visits are suspended that the court must revisit that decision at the 6 month hearing in order for that suspension to remain in place.</p> <p>In CA Rule 5.708 and CA Rule 5.810 the amendments eliminate the reference to youth and only use the reference to “child” because the legal definition of a child is a person under the age of 18. The rule does define nonminor and nonminor dependents. So the term “youth” is deleted.</p> <p>CA Rule 5.810 changes also clarify that post permanency hearings are to be held every 6 months and not every 12 months as the Federal Law mandates.</p> <p>Forms: JV-183 (388) will add a box to check for the court to grant a hearing to argue whether to set a hearing. This is in lieu of checking the box that denies or grants a hearing on the requested action. It was felt that enough jurisdictions are granting a hearing to argue for a hearing so it would conform to practice.</p> <p>JV-185 and JV-403 will be changed to conform to SB1099. We support all of the changes.</p>	
3.	Dependency Advocacy Center Hilary Kushins	A	No comment	No response required.

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Juvenile Law: Sibling Visitation

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	Commentator	Position	Comment	Committee Response
4.	Office of the County Counsel County of Santa Clara Julie Fulmer McKellar Lead Deputy County Counsel	NI	The amendments proposed to 5.570, subd.(h)(1)(B) questionably imposes a clear and convincing standard burden of proof for a requested placement changes from foster home to a group home. The preponderance of the evidence standard is the accepted burden of proof for section 388 petitions. (SPR15-26)	The committee has revised the rule to remove subparagraph (h)(1)(B). Requests to remove a child to a more restrictive placement would fall under the general requirement in subparagraph (h)(1)(D) requiring a preponderance of the evidence standard. The clear and convincing standard will remain in the rule for a removal from parental custody.
5.	Superior Court of California, County of San Diego Mike Roddy Executive Officer	AM	<ul style="list-style-type: none"> • (4) is repeated twice in subdivision (d). • Consistency issues (well being v. well-being; section 388 or section 778 v. section 388 or 778; section v. subdivision; need not be provided v. were not needed; that sibling interaction is contrary v. no “that”). • Subdivision (f): hearing to determine whether there should be a hearing? The way the rule is currently drafted, it is difficult to understand and should be rephrased to specifically reference the two types of hearings being held. • Also, with the current caseload the courts have, it seems like a waste of resources and may be more expeditious to just hold one hearing on the merits of a petition. 	<p>The committee has revised the rule with the correct numbering.</p> <p>The committee has revised the rules and made improvements to consistency and grammar.</p> <p>The committee has revised the rule to improve readability.</p> <p>The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional—if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.</p>

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Juvenile Law: Sibling Visitation

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	Commentator	Position	Comment	Committee Response
			<p>JV-183: Why would the court order a hearing on whether to order a hearing? With the current caseload the courts have, it seems like a waste of resources and may be more expeditious to just hold one hearing on the merits of a petition.</p> <p>JV-185: Maybe set up B more like A, with numbered and lettered paragraphs.</p> <p>It would be better to state: “in the best interest of <i>you and your brother or sister</i>”?</p>	<p>The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional—if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.</p> <p>The committee revised the form so that B is set up more like A, with numbered and lettered paragraphs, to improve readability.</p> <p>The committee agrees with this comment and has revised the form to state “in the best interest of <i>you and your brother or sister.</i>”</p>
6.	Orange County Bar Association Ashleigh Aitken President	A	No comment	No response required.
7.	Youth Law Center Joy Singleton Staff Attorney	AM	<p>Rule 5.570(h)(2) and 5.570(i)(2): This proposed rule would specify that the court “may” grant a petition request for visitation with a nondependent sibling “unless the court determines that the sibling is not in the custody of a mutual parent subject to the court’s jurisdiction...” among other criteria. This proposed rule exceeds the scope of SB 1099 by adding a limitation on the court’s authority that does not appear in that legislation.</p> <p>As we know from the Judicial Council’s <i>Invitation to Comment</i> on these proposed rules, SB 1099 intended to address the issue of sibling</p>	The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court’s jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

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Juvenile Law: Sibling Visitation

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	Commentator	Position	Comment	Committee Response
			<p>visitation following an unpublished decision wherein the court found that the juvenile courts could not compel a parent subject to its jurisdiction to provide for visitation between dependent and nondependent siblings. This is a very narrow jurisdictional issue and the legislation addresses it narrowly: by stating that the court does in fact have discretion to order visits between dependent and nondependent siblings when the nondependent sibling is in the custody of a mutual parent subject to the jurisdiction of the court.</p> <p>Under Welfare & Institutions Code §362, “the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child...”. This is a broad grant of authority, and the court can order the child welfare agency to implement any visitation plan that is reasonable for the care and maintenance of the dependent child. SB 1099 did not restrict the authority of the court to order visits; it clarified and/or expanded the court’s authority to order parents subject to its jurisdiction to allow visits between dependent and nondependent children.</p> <p>We believe that the proposed rule is the product of confusion regarding 1) the jurisdictional authority of the juvenile court and 2) the court’s discretion to make certain sibling visitation orders that do not conflict with any sibling’s safety and well-being. While the court might not have the authority to order someone outside</p>	

SP15-26

Juvenile Law: Sibling Visitation

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	Commentator	Position	Comment	Committee Response
			<p>of its jurisdiction (e.g., an aunt, grandparent, or a parent not subject to the jurisdiction of the court) to provide visits between dependent and nondependent siblings, the court <i>does</i> have the authority to order a visitation plan that would benefit the dependent child. In other words, the court has the power to order that the child welfare agency facilitate visits for a dependent child with his or her nondependent siblings no matter where the nondependent siblings live. Granted, the guardian or caretaker of nondependent siblings who is not subject to the jurisdiction of the court might object to the visits; however, that is a separate issue and is not within the scope of this legislation.</p> <p>We simply do not want the proposed rule to foreclose inadvertently the opportunity for a judge to order a visitation plan for siblings where the nondependent sibling lives with someone other than a mutual parent subject to the court’s jurisdiction and the nondependent’s guardian is amenable to the visitation plan. If the court was not permitted to order such a plan, then that would be contrary to the intent of the SB 1099, which is to expand and protect foster children’s rights to visit with and maintain a bond with their siblings.</p> <p>Suggested Amendments to Proposed Rule 5.570(h)(2) and 5.570(i)(2)</p>	<p>The committee concluded that the revised language would not preclude a court from ordering sibling visitation where a nondependent sibling lives with someone other than a mutual parent subject to the court’s jurisdiction. The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court’s jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.</p>

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			<p>We propose that 5.570(h)(2) read, “If the request is for visitation with a sibling who is not a dependent of the court, the court has the authority to order a parent subject to the jurisdiction of the court to provide visitation between the child who is not a dependent and the dependent sibling(s) and to grant the request unless the court determines that sibling visitation is contrary to the safety and well-being of any of the siblings. Nothing in this rule limits or governs the authority of the court regarding sibling visitation other than as provided in 388(b).”</p> <p>We propose that 5.570(h)(2) read, “If the request is for visitation is under Section 778(b), the court has the authority to order a parent subject to the jurisdiction of the court to provide visitation between the child who is not a dependent and the dependent sibling(s) and to grant the request unless the court determines that sibling visitation is contrary to the safety and well-being of any of the siblings. Nothing in this rule limits or governs the authority of the court regarding sibling visitation other than as provided in 388(b).”</p> <p>Rule 5.570 (d)(3)-(4): This proposed rule would provide that the court may deny <i>ex parte</i> a petition filed under 388(b) or 778(b) if the petition requests either 1) visits “contrary to the safety and well-being” of any of the siblings or 2) “visits with a sibling who is not in the custody of a mutual parent subject to the court’s</p>	<p>The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court’s jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.</p> <p>The committee concluded that this comment is regarding rule 5.507(i)(2). The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court’s jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.</p>

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			<p>jurisdiction.”</p> <p>There is no authority in SB 1099 that provides for an <i>ex parte</i> denial of a petition for sibling visitation under W&I §388, and these proposed amendments should be deleted. There is no compelling reason to permit an <i>ex parte</i> denial for a petition that requests visits with a sibling not in the custody of a parent subject to the court’s jurisdiction, and there are many reasons that the court should not be permitted to issue such a denial. Similar to the reasons stated above in detail, these proposed amendments to the rule exceed the scope of the legislation and contradicts the intent of the law.</p> <p>Additionally, permitting a judge to deny the petition <i>ex parte</i> if the petition “demonstrates” that the visits would be contrary to the child’s safety and well-being is unnecessary and potentially confusing. It is very unlikely that the petition brought by a sibling requesting visits would, on its face, demonstrate that the visits would be contrary to the child’s safety or well-being.</p> <p>For reasons similar to those stated above, we</p>	<p>Amending rule 5.570 with the option for the court to deny a petition <i>ex parte</i> is within the Judicial Council’s purview. Article 6, section 6 of the California Constitution empowers the council to “adopt rules for court administration, practice and procedure, not inconsistent with statute.” Section 265 of the Welfare and Institutions Code requires the council to adopt rules governing practice and procedure in the juvenile court. Further, rule 5.501(b) (authority for and purpose of rules)^[1] clarifies that “[t]hese rules implement the purposes of the juvenile court law by promoting uniformity in practice and procedure and by providing guidance to judges, referees, attorneys, probation officers, and others participating in juvenile court.”</p> <p>See response above.</p>

^[1] Rule 1400 of the California Rules of Court can be found in Attachment B.

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			<p>ask that proposed Rule 5.570(d)(3) and (d)(4) be deleted.</p> <p>Form JV-183: Similarly, we believe that Form JV-183 should not be changed to allow the court to deny a request for visitation if the nondependent sibling is not in the custody of a mutual parent subject to the jurisdiction of the court for all of the reasons listed above. We propose that subdivisions (d-f) in Item 2 on Form JV-183 be deleted.</p> <p>Rule 5.570 (f): This proposed rule clarifies that the court has the discretion to order a hearing regarding whether the party bringing a petition under 388 has made a prima facie showing that they meet the conditions to merit an evidentiary hearing. The rule specifies that, if the court does find there is a prima facie showing that the requirements of 388 are met sufficient to require an evidentiary hearing, then the court must hold the evidentiary hearing within 30 days of the prima facie hearing. However, the rule does not make it clear that the court similarly must hold the evidentiary hearing within 30 days of finding that the petitioner made the requisite prima facie showing without a hearing but simply on the petition submitted to the court. This appears to be an oversight.</p> <p>Proposed Amendment: If there is no such stipulation and the petition has not been denied <i>ex parte</i> under section (d), the court must <u>either</u>: may 1) order a hearing for the parties to argue</p>	<p>The committee has revised the form to track the statutory language. Item 2(f) now reads: The request is denied because the request is for sibling visitation with a nondependent of the court who remains in the custody of a mutual parent who is not subject to this court’s jurisdiction.</p> <p>The committee has revised the rule to clarify that the evidentiary hearing must be held within 30 days of filing of the petition in either circumstance delineated in the rule.</p>

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			whether a hearing on the petition should be granted or denied or may <u>2</u>) order that a hearing on the petition for modification be held within 30 calendar days after the petition is filed.	