



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15–16, 2016

Title	Agenda Item Type
Rules: Miscellaneous Technical Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.24, 5.340, 8.304, 8.528, and 10.701	January 1, 2017
Recommended by	Date of Report
Judicial Council staff	October 24, 2016
Susan R. McMullan, Senior Attorney Legal Services	Contact
	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Executive Summary

Various Judicial Council advisory committees, members of the public, and Judicial Council staff have identified errors in rules resulting from typographical errors, and changes resulting from legislation and previous rule amendments. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

Recommendation

The staff to the Judicial Council recommends that the council, effective January 1, 2017:

1. Effective January 1, 2013, the Judicial Council adopted rule 5.24. *Joinder of persons claiming interest*, as part of the restructured and reorganized title V of the California Rules of Court. The council consolidated a series of joinder rules (rules 5.150, 5.152, 5.154, 5.156, 5.158, 5.160) under rule 5.24 and subsequently repealed them when rule 5.24 took effect. The Family and Juvenile Law Advisory Committee recently became aware of an error in the construction of subdivision (e)(1)(A) in rule 5.24. As currently written, subdivision (e)(1)(A) is an incomplete sentence, which has caused confusion about when a court must

join a person as a party to the proceeding. The committee recommends that subdivision (e)(1)(A), be clarified as provided in the attached.

2. Amend rules 5.340 and 10.701 of the California Rules of Court, which set forth the minimum education requirements of child support commissioners and of subordinate judicial officers respectively. The rules contain outdated references to rule 10.501. Rule 10.501, which replaced the former rule 970, effective June 30, 2006, as part of the council's reorganization of the rules, was repealed on October 20, 2006. At the August 31, 2007, and October 26, 2007, council meetings, a number of rules were adopted, amended, and/or renumbered to, among other things, address the minimum training requirements of subordinate judicial officers as laid out in the former rule 10.501. This included the adoption of rule 10.462, which contains the provisions previously addressed in former rule 10.501. The current rule 10.501, effective January 1, 2010, addresses the maintenance of budget and management information. Consequently, as rules 5.340 and 10.701 currently stand, they refer to an unrelated rule, which leads to confusion. As such, the references in rules 5.340 and 10.701 to rule 10.501 should be changed to reference rule 10.462.
3. Amend the advisory committee comment to rule 8.304 to correct a reference from "(rule 8.700 et seq.)" to "(rule 8.800 et seq.)"; and
4. Amend rule 8.528, which addresses disposition of a matter by the Supreme Court after grant of review. Prior to July 1, 2016, California Rules of Court, rule 8.1105(e) provided that when the Supreme Court granted review of a published Court of Appeal opinion, that opinion was automatically depublished: "Unless otherwise ordered . . . an opinion is no longer considered published if the Supreme Court grants review." Effective July 1, 2016, the Supreme Court amended rule 8.1105 to eliminate this automatic depublishing provision and add a new provision stating instead that "Unless otherwise ordered . . . [g]rant of review by the Supreme Court of a decision by the Court of Appeal does not affect the appellate court's certification of the opinion for full or partial publication." Additional new language was also added to rule 8.1105 providing that, "The Supreme Court may also order depublishing of part of an opinion at any time after granting review." Rule 8.528 was not modified in conjunction with the amendments to rule 8.1105. Subdivision (b)(3) of rule 8.528 should be amended to address what happens when the Supreme Court dismisses review of a case in which review is granted on or after July 1, 2016.

The revised rules are attached at pages 4–5.

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Rationale for Recommendation

The changes to these rules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rules 5.24, 5.340, 8.304, 8.528, and 10.701, at pages 4–5

Rules 5.24, 5.340, 8.304, 8.528, and 10.701 of the California Rules of Court are amended, effective January 1, 2017, to read:

1 **Rule 5.24. Joinder of persons claiming interest**

2
3 A person who claims or controls an interest in any matter subject to disposition in the
4 proceeding may be joined as a party to the family law case only as provided in this
5 chapter.

6
7 **(a)–(d) * * ***

8
9 **(e) Court order on joinder**

10
11 (1) *Mandatory joinder*

12
13 (A) The court must order that a person be joined as a party to the
14 proceeding if ~~any person~~ the court discovers that person has physical
15 custody or claims custody or visitation rights with respect to any minor
16 child of the marriage, domestic partnership, or to any minor child of the
17 relationship.

18
19 (B) * * *

20
21 (2)–(3) * * *

22
23 **Rule 5.340. Judicial education for child support commissioners**

24
25 Every commissioner whose principal judicial assignment is to hear child support matters
26 must attend the following judicial education programs:

27
28 (1)–(3) * * *

29
30 (4) *Other judicial education*

31
32 The requirements of this rule are in addition to and not in lieu of the requirements
33 of rule ~~10.501(e)~~ 10.462.

34
35 **Rule 8.304. Filing the appeal; certificate of probable cause**

36
37 **(a)–(c) * * ***

38
39 **Advisory Committee Comment**

40
41 **Subdivision (a).** Penal Code section 1235(b) provides that an appeal from a judgment or
42 appealable order in a “felony case” is taken to the Court of Appeal, and Penal Code section 691(f)
43 defines “felony case” to mean “a criminal action in which a felony is charged. . . .” Rule

1 8.304(a)(2) makes it clear that a “felony case” is an action in which a felony is charged *regardless*
2 *of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or
3 under the rules governing appeals to the appellate division of the superior court
4 (rule ~~8.700~~ 8.800 et seq.) is answered simply by examining the accusatory pleading: if that
5 document charged the defendant with at least one count of felony (as defined in Penal Code,
6 section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under
7 this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

8
9 * * *

10
11 **Rule 8.528. Disposition**

12
13 (a) * * *

14
15 (b) **Dismissal of review**

16
17 (1)–(2) * * *

18
19 (3) ~~After~~ An order dismissing review, does not affect the publication status of the
20 Court of Appeal opinion remains unpublished unless the Supreme Court
21 orders otherwise.

22
23 (c)–(f) * * *

24
25 **Rule 10.701. Qualifications and education of subordinate judicial officers**

26
27 (a)–(b) * * *

28
29 (c) **Education**

30
31 A subordinate judicial officer must comply with the education requirements of any
32 position to which he or she is assigned, even if it is not his or her principal
33 assignment. Such requirements include the following, as applicable: rules 5.30,
34 5.340, and ~~10.504~~ 10.462 of the California Rules of Court, and Welfare and
35 Institutions Code section 304.7.

36
37 (d) * * *