



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: Proceedings Before a Referee	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.538	January 1, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 9, 2015
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Contact Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending California Rules of Court, rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248(b)(1).

The text of the proposed amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rule 5.538, effective January 1990, as rule 1416. This rule was renumbered effective January 1, 2007, as part of a comprehensive reorganization of the rules of court, but no substantive changes were made.

Rationale for Recommendation

Rule 5.538(b)(3) is inconsistent with Welfare and Institutions Code section 248(b)(1) and must be amended to conform to existing law and to prevent unnecessary appellate delays.

Welfare and Institutions Code section 248(b)(1) was amended by Senate Bill 179, effective January 1, 2011, to provide that if the parent, guardian, or child is present in court at the time the referee's findings and orders are made, then the orders and rehearing rights may be personally served. Otherwise, under rule 5.538(b)(3), service must be by mail to the last known or designated address; it states: "Serve the parent and guardian, and counsel for the child, parent, and guardian, a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. Service must be by mail to the last known address and is deemed complete at the time of mailing."

To reconcile this discrepancy, the committee proposes amending rule 5.538(b)(3) by replacing the final sentence with the following:

Serve the parent and guardian—and counsel for the child, parent, and guardian—a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge.

- (A) Service is deemed complete at the time of personal, in-court service as provided in Welfare and Institutions Code section 248, subdivision (b)(1).
- (B) If personal, in-court service as in (A) is not possible, service must be by mail to the last known address and is deemed complete at the time of mailing as provided in subdivision (b)(2) of that section.

Comments, Alternatives Considered, and Policy Implications

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, and other juvenile law professionals. Three organizations provided comment; all three agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at page 5.

No alternatives were considered because the rule is inconsistent with statute.

Implementation Requirements, Costs, and Operational Impacts

Implementation will require some changes in court procedures and training, but costs should be minimal given that many courts already comply with Welfare and Institutions Code section 248. In addition, once court practices are changed, this amendment should result in savings because the statutory change allows for service in court, a less costly method of service than service by mail. In addition, implementation should prevent delays in appeals from orders terminating parental rights. The legislative history of Senate Bill 179 indicates that the purpose of the amendment allowing for personal courtroom service of a referee's orders was to prevent such delays.¹

Attachments and Links

1. Cal. Rules of Court, rule 5.538, at page 4
2. Chart of comments, at page 5
3. Attachment A: Senate Bill 179 (Stats. 2010, ch. 66), at page 6-7

¹ Sen. Rules Com., Off. of Sen. Floor Analyses, unfinished business analysis of Sen. Bill No. 179 (2010–2011 Reg. Sess.) as amended May 20, 2010.

Rule 5.538 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 5.538. Conduct of proceedings held before a referee not acting as a temporary**
2 **judge**

3
4 (a) * * *

5
6 (b) **Furnishing and serving findings and order; explanation of right to review**
7 **(§ 248)**

8
9 After each hearing before a referee, the referee must make findings and enter an
10 order as provided elsewhere in these rules. In each case, the referee must cause all
11 of the following to be done promptly:

12
13 (1) Furnish a copy of the findings and order to the presiding judge of the juvenile
14 court.

15
16 (2) Furnish to the child (if the child is 14 or more years of age or, if younger, as
17 requested) a copy of the findings and order, with a written explanation of the
18 right to seek review of the order by a juvenile court judge.

19
20 (3) Serve the parent and guardian; ~~—~~and counsel for the child, parent, and
21 guardian; ~~—~~a copy of the findings and order, with a written explanation of
22 the right to seek review of the order by a juvenile court judge. ~~Service must~~
23 ~~be by mail to the last known address and is deemed complete at the time of~~
24 ~~mailing.~~

25
26 (A) Service is deemed complete at the time of personal, in-court service as
27 provided in Welfare and Institutions Code section 248, subdivision
28 (b)(1).

29
30 (B) If personal, in-court service as in (A) is not possible, service must be by
31 mail to the last known address and is deemed complete at the time of
32 mailing as provided in subdivision (b)(2) of that section.
33

SPR15-23**Juvenile Law: Proceedings Before a Referee** (amend Cal. Rules of Court, rule 5.538)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber	A	<p>The proposed amendment to rule 5.538(b)(3) would make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.</p> <p>The proposed amendment to rule 5.538(b)(3) would make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1), which went into effect over 4 years ago. The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.</p> <p>California Judges Association supports the amendment. In addition to bringing the rule in compliance with state law, that law reduces workload placed on court staff.</p>	No response required.
2.	Orange County Bar Association Ashleigh Aitken, President	A	No specific comment.	No response required.
3.	Superior Court of California, County of San Diego Mike Roddy	A	No specific comment.	No response required.



SB-179 Juvenile law: referee. (2009-2010)

Senate Bill No. 179

CHAPTER 66

An act to amend Section 248 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor July 09, 2010. Filed with Secretary of State July 09, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 179, Runner. Juvenile law: referee.

Existing law requires a referee to hear cases assigned to him or her by the presiding judge of the juvenile court. Existing law requires the referee to furnish to the presiding judge and the minor, if the minor is 14 years of age or older or makes that request, and to serve upon the minor's attorney and the minor's parent, guardian, or adult relative and that person's attorney, a written copy of the referee's findings and order, and to furnish to the minor and the parent, guardian, or adult relative, with the findings and order, a written explanation of the right of those persons to seek review of the order by the juvenile court. Existing law requires that service made pursuant to these provisions be made by mail, as specified.

This bill would allow service to be made in court on a minor, parent, or guardian who is present in court on the date that the findings and order of the referee are made. The bill would require service of the findings and order by mail to a minor, parent, or guardian who was not present in court when those findings and order were made, except as specified, and would require the mailing to include the written explanation of the right to seek review of the order, as required pursuant to the provision described above.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 248 of the Welfare and Institutions Code is amended to read:

248. (a) A referee shall hear those cases that are assigned to him or her by the presiding judge of the juvenile court, with the same powers as a judge of the juvenile court, except that a referee shall not conduct any hearing to which the state or federal constitutional prohibitions against double jeopardy apply unless all of the parties thereto stipulate in writing that the referee may act in the capacity of a temporary judge. A referee shall promptly furnish to the presiding judge of the juvenile court and the minor, if the minor is 14 or more years of age or if younger has so requested, and shall serve upon the minor's attorney of record and the minor's parent or guardian or adult relative and the attorney of record for the minor's parent or guardian or adult relative a written copy of his or her findings and order and shall also furnish to the minor, if the minor is 14 or more years of age or if younger has so requested, and to the parent or guardian or adult relative, with the findings and order, a written explanation of the right of those persons to seek review of the order by the juvenile court.

(b) Service, as provided in this section, shall be made as follows:

(1) If a minor, parent, or guardian is present in court at the time the findings and order are made, then the findings and order may be served in court on any minor, parent, or guardian who is present in court on that date and a written explanation of the right to seek review of the order as required pursuant to subdivision (a) shall be furnished at that time.

(2) If paragraph (1) is not applicable, service shall be made by mail, within the time period specified in Section 248.5, to the last known address of those persons or to the address designated by those persons appearing at the hearing before the referee and the mailing shall include, if applicable, the written explanation of the right to seek review of the order. If the parent or guardian does not have a last known address designated, then service by mail shall be to that party in care of his or her counsel.