



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 14–15, 2016

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Title	Agenda Item Type
Family Law: Special Immigrant Juvenile Findings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Cal. Rules of Court, rule 5.130; Judicial Council forms FL-356, FL-357, FL-358	July 1, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	March 25, 2016
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Corby Sturges, 415-865-4507 <a href="mailto:corby.sturges@jud.ca.gov">corby.sturges@jud.ca.gov</a>

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting one new rule of court and one new family law form and revising two existing family law forms to guide litigants and courts in filing and adjudicating requests for Special Immigrant Juvenile findings in family law custody proceedings. The rule and forms are needed for effective implementation of section 155 of the Code of Civil Procedure (Sen. Bill 873; Stats. 2014, ch. 685, § 1). The rule also responds to specific requests from the courts and the public relating to a previous invitation to comment.

### Recommendation

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

1. Adopt rule 5.130 of the California Rules of Court to establish a procedural framework for requesting, responding to a request, and adjudicating a request for Special Immigrant

Juvenile (SIJ) findings and to implement the confidentiality requirements of section 155(c) of the Code of Civil Procedure in the context of family law custody proceedings;

2. Revise *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) to clarify that it is confidential, to convert it into a standalone form, to clarify the requirements for requesting SIJ findings, and to make technical changes;
3. Revise *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357) to indicate that it should be kept in a confidential part of the case file; and
4. Adopt *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358) to provide a confidential vehicle for attorneys and self-represented litigants to respond to requests for SIJ findings.

The text of the amended rules and the new and revised forms are attached at pages 10–17.

### **Previous Council Action**

In spring 2015, the Family and Juvenile Law Advisory Committee collaborated with the Probate and Mental Health Advisory Committee to develop and circulate forms to implement section 155 of the Code of Civil Procedure, along with rule 7.1020 of the California Rules of Court to establish a procedural framework for filing and adjudicating a request for Special Immigrant Juvenile (SIJ) findings in a probate guardianship proceeding.<sup>1</sup> The forms included a *Petition for Special Immigrant Juvenile Findings* (form GC-220) for use in probate guardianship proceedings, a *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) for use in family law custody proceedings, and a *Request for Special Immigrant Juvenile Findings* (form JV-356) for use in juvenile dependency and delinquency proceedings. Each form provides a distinct format suitable for requesting SIJ predicate findings in the proceedings to which it applies. All three forms solicit the information necessary for the superior court to determine whether the SIJ findings are warranted in the circumstances of the case before it. The committees also developed a joint SIJ findings form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357). The Judicial Council adopted rule 7.1020 and the forms discussed above at its October 27, 2015, business meeting. The rule and the forms took effect January 1, 2016.

### **Rationale for Recommendation**

As noted above, this recommendation is intended to implement section 155 of the Code of Civil Procedure by promoting the timely and effective adjudication of requests for SIJ findings in family law custody proceedings. Rule 5.130 also responds to requests from courts and attorneys, in response to a previous invitation to comment, for a rule of court addressing SIJ findings in family law custody proceedings. Section 155<sup>2</sup> affirms the superior court's authority to issue SIJ

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

<sup>2</sup> Sen. Bill 873; Stats. 2014, ch. 685, § 1.

findings—specifically in proceedings under the Family Code, the Juvenile Court Law,<sup>3</sup> and the Guardianship-Conservatorship Law<sup>4</sup>—states the findings themselves; establishes confidentiality requirements; and incorporates the procedures and requirements for sealing court records in rules 2.550 and 2.551. But section 155 addresses the procedures for seeking and making the SIJ findings only in broad generalities and directs the Judicial Council to adopt the rules and forms necessary to implement its requirements. (Code Civ. Proc., § 155(e).) The council first acted to implement section 155 last year, adopting a rule for requesting SIJ findings in probate guardianship proceedings, three mandatory forms for requesting the findings, and a joint form for issuing the findings if warranted. Further developments over the past year have highlighted the need for a rule for requests in family law proceedings, a response form, and revisions to the family law request form and the joint findings form.

### **Background**

SIJ status was created by federal law in 1990 to protect undocumented court-dependent abused, neglected, and abandoned children from the additional disruption and risk posed by deportation from the United States to their countries of origin. Congress amended the Immigration and Nationality Act (INA)<sup>5</sup> to include these children within the class of “special immigrants,” who are eligible for temporary admission to the United States and authorized to apply for adjustment to lawful permanent resident status.<sup>6</sup>

After several further amendments, the INA currently defines an SIJ as an immigrant child<sup>7</sup> present in the United States (1) “who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States”; (2) whose reunification with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law; and (3) who is the subject of a juvenile court or administrative determination that it would not be in his or her best interest to be returned to his or her country of nationality or last habitual residence.<sup>8</sup>

To apply for SIJ classification, a child must obtain and attach to his or her application a “juvenile court order” finding that the applicant satisfies each of the three elements of the statutory SIJ definition.<sup>9</sup> Recognizing that federal immigration agencies are neither authorized to make child custody and child welfare decisions nor competent to resolve issues of abuse, neglect,

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<sup>3</sup> Welf. & Inst. Code, §§ 200–987.

<sup>4</sup> Prob. Code, §§ 1400–2893.

<sup>5</sup> Pub.L. No. 82-414 (June 27, 1952) 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 et seq.

<sup>6</sup> Immigration Act of 1990 (Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978), § 153.

<sup>7</sup> For purposes of the INA, a child is an unmarried person under 21 years old.

<sup>8</sup> INA, 8 U.S.C. § 1101(a)(27)(J).

<sup>9</sup> See 8 C.F.R. § 204.11(d)(2).

abandonment, or a child's best interest, the INA relies on predicate findings regarding these elements by state courts, made in proceedings under state law.

The federal SIJ regulations define a "juvenile court" broadly as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of" children.<sup>10</sup> In California, the superior courts are courts of general jurisdiction. Any duly sworn superior court judge may hear and determine any action over which a statute has granted the court subject matter jurisdiction.<sup>11</sup> But only in the context of certain actions or proceedings does the court hold authority to make a determination about the custody or care of a child. These proceedings include juvenile dependency and delinquency proceedings, custody proceedings under the Family Code,<sup>12</sup> and guardianship proceedings under the Probate Code.<sup>13</sup>

### **Rule 5.130**

Rule 5.130(a) specifies the rule's applicability to any request for SIJ findings filed in a proceeding under the Family Code. Subdivision (b) states that rules 5.90–5.125, governing requests for court orders, also apply to requests for SIJ findings unless otherwise required (rule 5.130(b)). The rule identifies the persons who may file a request for SIJ findings (rule 5.130(b)(1)), specifies that the request must be filed on *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), and requires either prior or concurrent filing of a request for sole physical custody of the child who is the subject of the requested SIJ findings (rule 5.130(b)(2)). It further requires that form FL-356 be filed as a separate document, not as an attachment, and that a separate form FL-356 be filed for each child for whom SIJ findings are requested (rule 5.130(b)(3)–(4)). The rule also authorizes a request for SIJ findings to be filed at the same time as a request for other orders regarding the same child.

In response to comments and recent case law, the committee added subdivision (c) to the recommended rule to clarify the requirements for serving a notice of hearing and copy of the request for SIJ findings.<sup>14</sup> This subdivision requires notice to be served in the appropriate manner specified in rule 5.92(a)(6)(A)–(C) on all parties to the underlying action; all alleged, biological, and presumed parents of the child who is the subject of the requested findings; and any other person who has physical custody or is likely to claim a right to physical custody of the child. Rule 5.130(d) authorizes any person entitled to notice under subdivision (c) to file a response to

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<sup>10</sup> *Id.*, at § 204.11(a), 58 Fed.Reg. 42843, 42850 (Aug. 12, 1993).

<sup>11</sup> See, e.g., *In re Chantal S.* (1996) 13 Cal.4th 196. In smaller courts, a single judge will hear and determine actions arising under several different codes. Larger courts are organized as a matter of convenience into divisions, each of which hears actions authorized under a specific code or codes.

<sup>12</sup> See Fam. Code, §§ 200, 3020–3048.

<sup>13</sup> See Prob. Code, §§ 800, 1510–1516, 2351.

<sup>14</sup> See *Bianka M. v. Superior Court* (Mar. 2, 2016, B267454) \_\_\_ Cal.App.4th \_\_\_ [pp. 26–27 & n.13] [2016 WL 815525]. Remittitur is scheduled to issue on May 2, 2016. (Cal. Rules of Ct., rule 8.490(d).) The committee intends rule 5.130(c) to be consistent with, but not dependent on, the Court of Appeal's emphasis on the need for proper notice to an absent parent of a request for SIJ findings alleging parental abuse, neglect, or abandonment.

the request using the new *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358).

The rule requires that, to obtain a hearing on a request for SIJ findings, a person must file and serve a separate form FL-356 for each child with respect to whom SIJ findings are requested (rule 5.130(e)). The rule does, however, permit consolidation into one hearing of a request for custody and a request for SIJ findings with respect to the same child, as well as separate requests for SIJ findings for multiple siblings or half-siblings (rule 5.130(e)(1)–(2)). Courts in which proceedings related to siblings or half-siblings were pending would be permitted to communicate about consolidation and proper venue consistent with the procedures and limits in section 3410(b)–(e) of the Family Code (rule 5.130(e)(3)).

In a case involving requests for SIJ findings for more than one child, the rule would require the court to issue separate findings for each qualified child in the case and document those findings on a separate form FL-357 for each such child (rule 5.130(f)). Separate findings and documentation are necessary to implement section 155(b) because each child must apply individually to the U.S. Citizenship and Immigration Services (USCIS) for SIJ classification. In addition, the Immigration Court determines each child’s petition for relief from removal (deportation) on an individual basis.

Rule 5.130(g) specifies procedures to implement section 155(c), which requires that any information about the immigration status of the child who is the subject of the request for SIJ findings “remain confidential and . . . be available for inspection only by the court” and certain specified persons. The rule requires that any *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form FL-357) be kept in a confidential part of the case file. Furthermore, the rule requires that any information about the immigration status of a child who is the subject of a request for SIJ findings be redacted from all records kept in a publicly accessible part of the court file.<sup>15</sup>

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<sup>15</sup> The committee also considered proposing a rule to implement Assembly Bill 899 (Stats. 2015, ch. 267), but declined to do so because of uncertainty over the reach of the statute. AB 899 added section 831 to the Welfare and Institutions Code to clarify that juvenile court records “should remain confidential regardless of the juvenile’s immigration status.” (Welf. & Inst. Code, § 831(a).) Section 831 goes on to state that nothing in article 22 (beginning with section 825) of chapter 2 of division 2 of the Welfare and Institutions Code, which governs access to juvenile court records, authorizes disclosure to, dissemination to or by, or attachment to documents given to or provided by “federal officials” of “juvenile information” without a court order in response to a petition filed under section 827(a)(1)(P) or 827(a)(4). (Welf. & Inst. Code, § 831(b)–(d).) The statute then defines “juvenile information” to include not only the court file, but also “information related to the juvenile, including, but not limited to, name [and] date or place of birth,” regardless of its origin or source, as long as it is “maintained by any government agency.” (Welf. & Inst. Code, § 831(e).) Despite the Legislature’s express intent only to declare existing law, AB 899 may be interpreted to extend confidentiality to information not currently protected. Given multiple plausible yet conflicting interpretations of the legislation, the committee chose to defer action pending legislative or judicial guidance.

***Confidential Request for Special Immigrant Juvenile Findings—Family Law (form FL-356)***

The Judicial Council originally adopted form FL-356 as an attachment to *Request for Order* (form FL-300) because the determination of a request for SIJ findings in a family law proceeding depends on the court’s prior or contemporaneous grant a request for order of sole physical custody of the child who is the subject of the SIJ findings.<sup>16</sup> The form’s initial status as an attachment is consistent with regular family law procedure, in which form FL-300 serves as a cover sheet for almost all requests for court orders. It has become apparent, however, that filing form FL-356 as an attachment to other forms presented serious logistical problems for court staff in light of section 155(c)’s confidentiality requirements. Specifically, staff must develop procedures to separate an attached FL-356 from any other filing that must be kept in the publicly accessible part of the court file. Recognizing the workload impact on court staff, the committee recommends revising form FL-356 to serve as a standalone request. The revisions include adding a caption box and a notice of hearing to page one, inserting a confidentiality notice to court staff in the file stamp box, and renaming the form *Confidential Request for Special Immigrant Juvenile Findings—Family Law*.

***Special Immigrant Juvenile Findings (form FL-357/GC-224/JV-357)***

The committee recommends revising form FL-357 to insert a notice of confidentiality in the file stamp box to remind court staff to keep the form in a confidential part of the court file. Because section 155(c) of the Code of Civil Procedure applies to requests for SIJ findings submitted in any suitable proceeding regarding the care or custody of a child, the maintenance of the form in a confidential file is also appropriate in juvenile and guardianship proceedings.

***Confidential Response to Request for Special Immigrant Juvenile Findings (form FL-358)***

In response to a number of comments, the committee recommends adoption of a separate form, *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), for use to respond to a request for SIJ findings in a family law proceeding. This form is needed to give parties and other interested persons entitled to notice of a request for SIJ findings a simple, confidential vehicle with which to file a response.

**Comments, Alternatives Considered, and Policy Implications**

As part of the winter 2016 invitation-to-comment cycle (December 11, 2015, to January 22, 2016), the proposal was sent out for public comment to the standard mailing list for family and juvenile law proposals, which includes judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations, as well as to the regular rules and forms mailing list. In addition, committee staff sent the proposal to immigration attorneys, nonprofit immigrants’ rights organizations, and the USCIS Office of Policy and Strategy. Ten comments were received; all

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<sup>16</sup> See Judicial Council of Cal., Advisory Com. Rep., *Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings* (Aug. 27, 2015), pp. 2, 6–7.

commentators supported the proposal in principle.<sup>17</sup> Four commentators agreed with the proposal as circulated, while six commentators suggested modifications.

Several commentators emphasized the difficulty that court staff would experience trying to file the existing *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) confidentially if it remained an attachment to other forms kept in the public file. Commentators also noted that rule 5.130(f) as circulated could be interpreted to expand the confidentiality requirements in section 155(c) to apply to all records of a proceeding related to SIJ findings rather than only to “information regarding the child’s immigration status,” as required by the statute. This expansion was inadvertent.

In considering modifications to the proposal, the committee attempted to strike a proper and practical balance between making court records accessible to the public under section 68150(I) of the Government Code and protecting the confidentiality of information about the child’s immigration status as required by section 155(c). The committee recommends that the rule require only *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form FL-357) to be kept in a confidential file or part of the file. Because SIJ findings are available only to an undocumented child, filing any of these forms indicates that the child named on them is undocumented. Public access to any of these forms would therefore reveal “information regarding the child’s immigration status.” The rule would also require the redaction of any information about the child’s immigration status from records of a proceeding in response to a request for SIJ findings that are kept in a publicly accessible part of the case file. These requirements are intended to make as much as possible of the case file accessible to the public while eliminating any risk that information about the child’s immigration status might be revealed to persons not authorized by section 155(c).

To facilitate keeping the forms in a confidential file, as well as to simplify the procedures for filing a request for SIJ findings, the committee also recommends making form FL-356 a standalone form. Although the proposal that circulated for comment did not include any form revisions, most commentators and virtually all of the courts requested that form FL-356 be detached from form FL-300 and filed separately. To make the form independent, the committee recommends the revisions discussed on page 6 of this report, above. The committee also recommends a modified version of rule 5.130(b)(3) to specify that form FL-356 must be filed separately from other papers, even when all are filed concurrently.

Several commentators requested that the rule be amended to indicate that a request for SIJ findings may be made only if a party has requested sole physical custody of the child. Form FL-356 already indicates this requirement. Because SIJ findings require that reunification with at least one parent not be legally viable, an order of joint physical custody would not, as a matter of law, support SIJ findings. The committee has therefore modified its recommendation to add

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<sup>17</sup> A chart providing the full text of the comments and the complete committee responses is attached at pages 18–37.

language to rule 5.130(b) and its subparts specifying that a request for SIJ findings may be filed only in the context of a proceeding in which at least one person has requested sole physical custody of the child.

The committee included a provision on sealing the record of a proceeding in response to a request for SIJ findings in the proposal circulated for comment. That subdivision was intended to implement section 155(d) by specifying that such a record may be sealed if the requirements of rules 2.550 and 2.551 are met. The lone commentator who addressed this subdivision pointed out that it did not significantly clarify the statute or establish a procedure for sealing records of a proceeding in response to a request for SIJ findings. The committee agrees that the statutory reference to rules 2.550 and 2.551 and the standards and procedures describe in those rules provide sufficient guidance to courts and litigants and has therefore removed that language from its recommendation.

At one commentator's suggestion, the committee considered whether to specify the fee to file a request for SIJ findings in a proceeding under the Family Code. The commentator speculated that parties would seek to file requests for SIJ findings in Domestic Violence Prevent Act cases because the courts may not charge a filing fee for requests for protective orders in proceedings under that act. The committee does not recommend specifying fees for filing a request for SIJ findings separate or different from the fees set by section 70677 of the Government Code for motions or requests for orders. To the extent that the legislation has left open the possibility of requesting SIJ findings in any action under the Family Code that supports a request for custody, the committee must defer to that choice. If the filing fee poses a hardship for the requesting person, a fee waiver may be available under section 68630 et seq. of the Government Code. A party who applied for a fee waiver would be entitled under section 68634 to file the paper immediately without paying the fee.

One commentator asked whether proceedings in response to requests for SIJ findings must be closed to comply with the confidentiality requirements in section 155(c). Beginning from the premise that civil judicial proceedings must be open to the public under section 124 of the Code of Civil Procedure unless otherwise specified, staff examined section 155(c). That section provides that, in a judicial proceeding in response to a request for SIJ findings, "information regarding the child's immigration status" must "remain confidential" and "be available for inspection only by the court" and specified persons.

The committee does not believe that section 155(c) clearly requires that SIJ hearings be closed. One interpretation of "information" would, obviously, include information conveyed orally at a hearing. However, the qualification that such information be "available for inspection" only by specified persons implies that the statute protects only written information. Because of the presumption in section 124 of the Code of Civil Procedure that judicial proceedings are open to the public, the committee does not believe it is authorized to close these proceedings by rule without more explicit guidance from the Legislature. Section 214 of the Family Code, however, permits the court to close proceedings on a case-by-case basis in "the interests of justice and the



persons involved.” The family court has discretion to apply these considerations in proceedings in response to requests for SIJ findings.

One commentator suggested that the rule specify who holds the burden of proving facts in support of the SIJ findings and the standard for meeting that burden. The committee considered whether to address these issues in the rule, but concluded that the default rules established by the Evidence Code apply to requests for SIJ findings. Stating the standards in the SIJ rule is therefore not necessary. Moreover, doing so might cause confusion in other cases in which the same standards apply but are not stated in statute or rule.

The text of section 155(b)(1) requires the court to make requested SIJ findings if “there is evidence to support those findings.” The Evidence Code governs the general presentation of evidence in California courts. Unless otherwise provided by statute, the Evidence Code applies in every superior court proceeding. (Evid. Code, § 300.) Section 155 does not indicate any intent to exempt proceedings in response to a request for SIJ findings from the code’s application. Sections 500 and 550 of the Evidence Code place the burden of producing evidence and proving facts essential to a claim for relief on the party asserting the claim. Here, that is the party requesting SIJ findings. Section 155(b) shows no intent to allocate these burdens differently.

The quantum of evidence sufficient to support SIJ findings is less clear. Evidence Code section 115 requires proof by a preponderance of the evidence except as otherwise provided by law. The statutory language requiring findings if “there is evidence” opens the possibility that less than a preponderance might be sufficient. However, the committee concluded that if the Legislature had intended to establish a lower standard of proof, it would have indicated that intent more clearly.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will require some implementation and training costs. These costs are necessary to comply with section 155. In particular, the proposed rule will require training for court staff members who receive and process filings in family law proceedings. The committee intends the modification of rule 5.130 in response to comment, the revision of forms FL-356 and FL-357, and the adoption of form FL-358 to reduce the training and workload required to implement section 155’s procedural and confidentiality requirements.

### **Attachments and Links**

1. Cal. Rules of Court, rule 5.130, at pages 10–12
2. Forms FL-356, FL-357, and FL-358, at pages 13–17
3. Chart of comments, at pages 18–37
4. Code of Civil Procedure section 155 is available online at:  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=155](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=155).



1  
2 (B) At the same time as, or any time after, a Request for Order (form FL-  
3 300) or a Responsive Declaration to Request for Order (form FL-320)  
4 requesting sole physical custody of the child; or

5  
6 (C) In an initial action under the Domestic Violence Prevention Act, at the  
7 same time as, or any time after, a Request for Domestic Violence  
8 Restraining Order (Domestic Violence Prevention) (form DV-100) or  
9 Response to Request for Domestic Violence Restraining Order  
10 (Domestic Violence Prevention) (form DV-120) requesting sole  
11 physical custody of the child.

12  
13 (3) Separate filing

14  
15 A request on form FL-356 filed at the same time as any of the papers in (A),  
16 (B), or (C) must be filed separately from, and not as an attachment to, that  
17 paper.

18  
19 (4) Separate form for each child

20  
21 A separate form FL-356 must be filed for each child for whom SIJ findings  
22 are requested.

23  
24 (c) **Notice of hearing**

25  
26 Notice of a hearing on a request for SIJ findings must be served with a copy of the  
27 request and all supporting papers in the appropriate manner specified in rule  
28 5.92(a)(6)(A)–(C) on the following persons:

29  
30 (1) All parties to the underlying family law case;

31  
32 (2) All alleged, biological, and presumed parents of the child who is the subject  
33 of the request; and

34  
35 (3) Any other person who has physical custody or is likely to claim a right to  
36 physical custody of the child who is the subject of the request.

37  
38 (d) **Response to request**

39  
40 Any person entitled under (c) to notice of a request for SIJ findings with respect to  
41 a child may file and serve a response to such a request using *Confidential Response*  
42 *to Request for Special Immigrant Juvenile Findings* (form FL-358).

1 **(e) Hearing on request**

2  
3 To obtain a hearing on a request for SIJ findings, a person must file and serve a  
4 *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form  
5 FL-356) for each child who is the subject of such a request.

6  
7 (1) A request for SIJ findings and a request for an order of sole physical custody  
8 of the same child may be heard and determined together.

9  
10 (2) The court may consolidate into one hearing separate requests for SIJ findings  
11 for more than one sibling or half sibling named in the same family law case  
12 or in separate family law cases.

13  
14 (3) If custody proceedings relating to siblings or half siblings are pending in  
15 multiple departments of a single court or in the courts of more than one  
16 California county, the departments or courts may communicate about  
17 consolidation consistent with the procedures and limits in Family Code  
18 section 3410(b)–(e).

19  
20 **(f) Separate findings for each child**

21  
22 The court must make separate SIJ findings with respect to each child for whom a  
23 request is made, and the clerk must issue a separate *Special Immigrant Juvenile*  
24 *Findings* (form FL-357) for each child with respect to whom the court makes SIJ  
25 findings.

26  
27 **(g) Confidentiality (Code Civ. Proc., § 155(c))**

28  
29 The forms *Confidential Request for Special Immigrant Juvenile Findings—Family*  
30 *Law* (form FL-356), *Confidential Response to Request for Special Immigrant*  
31 *Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form  
32 FL-357) must be kept in a confidential part of the case file or, alternatively, in a  
33 separate, confidential file. Any information regarding the child’s immigration status  
34 contained in a record related to a request for SIJ findings kept in the public part of  
35 the file must be redacted to prevent its inspection by any person not authorized  
36 under Code of Civil Procedure section 155(c).



PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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- 8. After the court has made final orders in this case, identified in item 6, the child will be legally placed under the custody of an individual appointed by the court. The court will have jurisdiction to determine requests to modify or terminate these orders, unless another court acquires valid jurisdiction, until the child reaches 18 years of age.
- 9. I understand that section 3026 of the Family Code prohibits the court from ordering reunification services as part of a child custody proceeding. After the court has issued final orders giving sole physical custody to one parent, return of the child to the physical custody of another parent (i.e., reunification) will not be legally possible while those orders are in effect.

**I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:**

- 10. The child has been placed in the custody of *(name)*:  
 who is an individual appointed by the court as described in the orders referred to in 7, 8, and 9.
- 11. Reunification of the child with  the mother  the father  the other legal parent is not viable under California law because of *(check all that apply)*:
  - abuse
  - neglect
  - abandonment
  - another legal basis *(specify)*:

Facts supporting this finding *(specify)*:

Continued on Attachment 11.

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

Continued on Attachment 12.

- 13.  Additional documents in support of the request are attached and incorporated into this form. Number of pages attached: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Date: \_\_\_\_\_

  
 (SIGNATURE)



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

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

Continued on Attachment 5.

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

for the following reasons:

Continued on Attachment 6.

Date:

\_\_\_\_\_  
 JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT





## W16-11

### Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

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

	Commentator	Position	Comment	Committee Response
1.	Virginia Johnson Staff Attorney Superior Court of San Diego County	NI	<p><b><i>Does the proposal appropriately address the stated purpose?</i></b> No. CCP § 155(e) requires the Judicial Council to adopt a rule that implements the statute. As I read the rule, it basically restates the statute rather than adopting procedures for implementation. Restating the statute but using slightly different wording creates ambiguity, confusion, and, in some provisions, conflicts with the statute. As written, the rule overcomplicates the SIJS findings procedure. Consider a very simple rule about the use of the forms for each child attached to an RFO.</p> <p><b><i>Subd. (a)</i></b> Arguably, the family court can only order sole custody to an individual and find reunification with one or both parents is not viable because of abuse, neglect, or abandonment unless there is a contested custody issue before the court, even if it is by default or an unopposed RFO.</p> <p><b><i>Subd. (b)(2)</i></b> See comments in section (a).</p> <p>Consider limiting the request and attachment to only an RFO in a contested custody proceeding. Allowing the FL-356 to be attached to anything but an RFO in an action that involves contested custody would seem to conflict with the typical finding in family court that the child was placed</p>	<p>The committee understands these initial comments to refer to subdivision (f), regarding confidentiality, and subdivision (g), regarding sealing of records. No other provisions of this rule paraphrase statutory language or restate it verbatim. The committee struggled to interpret and implement section 155(c) and (d) of the Code of Civil Procedure in a way that would protect the confidentiality of information about a child's immigration status in court records while maintaining public access to court records to the greatest possible extent. For specific modifications, please see the committee's responses to comments on individual subdivisions, below.</p> <p>Assuming for the purpose of discussion that the family court may issue a final order awarding sole custody only in a contested proceeding (but see <i>Burchard v. Garay</i> (1986) 42 Cal.3d 531, 535), the committee does not believe that the rules of court should require a litigant to predict whether his or her request will be contested at the time of filing.</p> <p>See response to comments on subdivision (a).</p> <p>The committee intends the rule to apply to all plausible circumstances in which a request for SIJ findings may be filed and considered in a family law proceeding. In response to comments pointing out the practical difficulties of maintaining confidentiality, the committee has reconsidered its</p>

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			<p>in the custody of an individual (usually one parent) and that reunification with the other party is not viable due to abandonment. I realize that my recommendations would require another revision of the newly adopted FL-356.</p> <p><i>(A) As an attachment to a petition or response in a family law proceeding <u>only if the party is seeking sole custody of the minor child</u>; or This revision will match form FL-356 and support the necessary SIJS finding.</i></p> <p><i>(B) As an attachment to a Request for Order (form FL-300) or a Responsive Declaration to Request for Order (form FL-320) <u>in a proceeding involving contested custody of a minor child.</u></i></p> <p>The only scenario I have ever seen in our family court is that Dad is long gone and no one even has an address for him. Mom serves the summons and petition by publication and the RFO is served on the clerk of the court. The SIJS is based on “abandonment.” There is never a response from Dad. If there is a response to the RFO by another parent seeking sole custody, the court could grant sole custody to one parent, but if you have two parents battling for sole custody, arguably there would be no basis for finding that reunification with the other parent is not viable.</p> <p><i>(C) <del>In an initial action under the Domestic</del></i></p>	<p>decision to make form FL-356 an attachment to a request for order on form FL-300. Form FL-356 has been modified to serve as a standalone form.</p> <p>The committee agrees that the request for SIJ findings should be brought only in a proceeding in which at least one party is seeking sole physical custody of the child and has modified its recommendation accordingly. Although the committee anticipates that, in most cases, the party requesting sole physical custody will also file the request for SIJ findings, it does not recommend precluding other parties from doing so.</p> <p>The committee intends the rule to apply to all plausible circumstances in which a request for SIJ findings may be filed and considered in a family law proceeding.</p> <p>Form FL-356 specifies that the DVPA action must</p>

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			<p><del>Violence Prevention Act, as an attachment to Request for Domestic Violence Restraining Order (Domestic Violence Prevention) (form DV 100) or Response to Request for Domestic Violence Restraining Order (Domestic Violence Prevention) (form DV 120).</del></p> <p>This avenue needs to be given serious reconsideration. Allowing FL-356 to be attached to an RFO in a DV without further explanation could cause multiple problems.</p> <p>Custody orders in a DV are only temporary which, arguably, does not satisfy the intent of the SIJS law. It would create confusion as to how and when the SIJS findings would be made. Conceivably the findings could not be made at the DVRO hearing unless the party filed the SIJS/RFO with the DVTRO which is set on the same date and time as the DVRO and the RFO is timely served on CCP §1005.</p> <p>What if the DVRO is not based on abuse of the child or does not include the child as a protected party?</p>	<p>include a request for sole physical custody to serve as a predicate for a request for SIJ findings. The committee has modified its recommendation to add that requirement in the rule as well.</p> <p>The committee reads section 6340(a) of the Family Code to require that a custody order made after a hearing in a DVPA action remain in force after the termination of the protective order. If the hearing was conducted under the procedures and requirements of division 8 (beginning with section 3000) of the Family Code, then section 6345(b) would appear to permit a custody order issued in a DVPA action to become a final order subject to modification only in the event of a substantial change of circumstances if a change is in the best interests of the child under the standard articulated by the Supreme Court in <i>Burchard v. Garay</i> (1986) 42 Cal.3d at pp. 534–536.</p> <p>The committee understands that, if the DVRO is granted, but not based on abuse of the child or the child is not named as a protected party, the court nevertheless holds the authority to award sole physical custody to the protected parent. The party requesting SIJ findings would then need to show that reunification of the child with the restrained</p>

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			<p>What happens if the DVTRO is denied and the applicant waives their right to a hearing? Under normal circumstances the case would be dismissed. Does the case remain open to allow the party to premise their SIJS/RFO on neglect or abandonment? What happens if the permanent DVRO is denied? Again, does the court allow the party to premise their SIJS/RFO on neglect or abandonment?</p> <p>Parties will likely expect no fee to be charged for filing the separate RFO in a DV case. Parties should not be treated differently because the FL-356 is in a DV case, particularly if the DV is denied. If parties know the SIJS/RFO will go forward regardless of the results of the DVRO, parties will be able to use the free filing of the DV case to manipulate the system for their SIJS request.</p> <p><i>Subd. (b)(4)</i> Requests for multiple orders  <i>A party filing a request under this rule may combine that request with a request for other orders relating to the child under the Family Code.</i>            What does this language mean? If it means child</p>	<p>parent is not legally viable because of abuse, neglect, or abandonment.</p> <p>The committee understands that a request for SIJ findings depends on the disposition of the underlying request for sole physical custody. This state law relief serves as a necessary predicate to the SIJ findings. If the state law action results in circumstances under which the law and the facts support all three SIJ findings, then the court must make the findings. If not, then the court may not make the findings. If the underlying action is dismissed, all requests for orders filed in that action, including the request for sole physical custody and the request for SIJ findings, would also be dismissed.</p> <p>The committee does not recommend using the rules of court to address the filing fee for a request for SIJ findings. The statutory fee for filing a request for order, all exceptions, and all eligibility requirements for a waiver of fees would appear to apply to a request for SIJ findings or a response.</p> <p>The committee agrees that the language used is confusing. The committee intended this language to indicate that a party may file a request for SIJ findings at the same time as but separate from requests for other orders under the Family Code. The recommendation has been modified to</p>

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			<p>support or visitation, this subsection appears to be in conflict with section (a).</p> <p>Also, see comments in section (a).</p> <p><b>Subd. (d)(1)</b> Theoretically, there will never be an order of “parenting time” concurrent with an SIJS finding that reunification with one or both parents is not viable.</p> <p><b>Subd. (f)</b> By including the conjunctive “and” in the first line, the language becomes ambiguous. It could be read as requiring that both “all records that pertain to the request” and “information regarding the child’s immigration status” be confidential. This would broaden the scope of CCP §155(c) which limits confidentiality to “the child’s immigration status.” It would also cause confusion and complications on the confidentiality of the RFO itself and any other pleadings submitted with the RFO on custody issues and DV. Moreover, this subsection is simply a restatement of the statute.</p>	<p>express this intent more clearly. The committee does not intend to imply that a request for a child support order, without more, would serve as a valid basis for the court to make SIJ findings. On the other hand, the committee does not intend to preclude the concurrent filing of a request for a support order, a request for sole physical custody, and a request for SIJ findings.</p> <p>See responses to comments on subd. (a).</p> <p>The committee does not wish to preclude by rule the possibility of a court finding that a final custody order granting sole physical custody to one parent and supervised visitation or parenting time to another parent might serve as a valid basis for SIJ findings. Please note also that subd. (d) is now designated subd. (e).</p> <p>The committee agrees that the addition of “and” to the specified sentence introduced one ambiguity in an effort to eliminate another. The committee recommends modifying the sentence, consistent with the recommended revisions to forms FL-356 and FL-357 and the adoption of form FL-358, to require the confidential filing and storage of those specific forms and the redaction of all information about the child’s immigration status from publicly accessible filings. The committee does not intend the rule to expand the scope of section 155(c). The committee does not, however, recommend the elimination of subdivision (f). The committee</p>

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			<p><i>Subd. (g)</i> As written, this rule is also ambiguous and appears to broaden the scope of CCP §115(d). I interpret CCP §115(d) as limited to the option to seal only those records of the immigration portion of the hearing. To interpret the statute otherwise and give parties the ability to request that all records pertaining to the custody or DV hearing be sealed could incentivize parties to file motions to seal all records which, in all likelihood, would be denied. Most litigants and attorneys are not familiar with the high burden of proof for a sealing order. This would create an undue burden on the court's time and resources. Moreover, this subsection is simply a restatement of the statute.</p>	<p>intends the subdivision to specify a process by which a court may comply with the confidentiality requirement in section 155(c). Please note that subd. (f) is now designated subd. (g).</p> <p>The committee agrees that subdivision (g) of the circulated rule does not add materially to the requirement in section 155(d) and has deleted that subdivision from the proposed rule.</p>
2.	Orange County Bar Association by Todd G. Friedland, President	A	No specific comment.	Thank you for your comment. No further response required.
3.	State Bar of California Family Law Section, Exec. Comm. by Saul Bercovitch, Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar supports this proposal.	Thank you for your comment. No further response required.
4.	State Bar of California Standing Comm. on the Delivery of Legal Services by Phong S. Wong, Chair	A	<p><i>(Agree with proposal in its entirety)</i></p> <p><b>Specific Comments</b> <u>Does the proposal appropriately address the stated purpose?</u> Yes. The proposed rules are clear and concise as to who may file for an SIJ finding, how to file,</p>	Thank you for your comment. No further response required.

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			and when to file. Also, confidentiality and sealing of the record are adequately covered. The filing of the forms for the SIJ filing falls within the family law framework and would be eligible for fee waivers.	
5.	Superior Court of Los Angeles County	AM	<p>The language at 5.130(b)(1) is ambiguous. As written it seems to suggest that anyone who could file a response to a petition or a response to request for order may file for SIJS findings. But, who may file a Response to a Petition or RFO depends on who files the petition and what is alleged. Under the present wording a non-parent/non-guardian, non-GAL could file for SIJS findings on the theory that they could file a response to a hypothetical petition.</p> <p>5.130(c) is also ambiguous. It allows someone who is entitled to notice of an RFO under CRC 5.92 to object to the SIJS petition. But, who is entitled to notice is not determined by CRC 5.92 rather, that is determined by the petition and the Constitution.</p> <p><b>Does the proposal appropriately address the stated purpose?</b> The proposal would be improved significantly by creating a stand-alone petition specifically to address SIJ findings as opposed to creating the FL-356 as an attachment. Additionally, this would provide greater insurance that the</p>	<p>The committee intends the rule to permit any person entitled to be a party to the underlying proceeding, as well as the child if authorized by statute, to file a request for SIJ findings. The committee intends the proposed modification of rule 5.130(b)(1), along with changes to other subdivisions that clarify that a request for SIJ findings must be filed in the context of a proceeding in which at least one party is requesting sole physical custody of the child and that the request may only be file at the same time as or later than the first paper, to limit abuses of the process.</p> <p>The committee agrees. In addition to adding a new subdivision (c) to clarify the persons on whom notice and a copy of the request must be served, the committee has clarified in newly designated subdivision (d) that only a person entitled in (c) to notice of a request for SIJ findings may file an opposition to such a request.</p> <p>The committee agrees and has modified its recommendation to include revising form FL-356 to be a standalone form. The committee also recommends the adoption of form FL-358 as a response to a request for SIJ findings.</p>



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			<p>confidentiality of these documents is maintained.</p> <p>Rule 5.130(b)(2)(A) states that the Request for Special Immigrant Juvenile Findings (FL-356) may be attached to a petition or a response in a family law proceeding. However, a court hearing is required for the court to make findings, so it is unclear what the purpose of attaching it to a petition may be. Attaching it to a petition, may give a self-represented litigant the impression that the findings will be granted without the filing of an RFO or setting of a hearing.</p> <p>Rule 5.130(d)(1) indicates that, if filed at the same time as a request for determination of custody or parenting time, a request for SIJS findings and the request for order determining custody or parenting time may be heard and determined together. Are two separate RFOs required or can the Request for SIJF be attached to the RFO requesting custody?</p> <p>The confidentiality requirement in section (f) indicates that all records that pertain to a request under this section, including information about the child's immigration status, must be kept in a confidential. This becomes problematic if the SIJF is attached to a Petition or RFO for custody which do not have the same confidentiality requirements.</p>	<p>The committee agrees in part and has modified its recommendation to indicate that the request for SIJ findings may be filed at the same time as or any time after the petition or response. In addition, the committee has proposed adding language to paragraph (b)(2) and subparagraph (b)(2)(D) to clarify that the request must be filed separately, not attached, and may be filed only in a proceeding in which at least one party is seeking sole physical custody of the child.</p> <p>The committee intends that, even when they are filed concurrently, the request for SIJ findings be filed as a separate document to simplify the process of keeping it confidential. Please note also that subd. (d) is now designated subd. (e).</p> <p>The committee intends the proposed amendments to rule 5.130(f), now 5.130(g), and the revision of form FL-356 as a standalone form to resolve this issue.</p>

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			<p><b>Would the confidentiality requirements in the proposed rule impose specific or logistical record-keeping burden?</b> The confidentiality requirements would impose specific record keeping burdens on courts. As noted above, having confidential and non-confidential documents filed as one document will present problems. The proposed rule does not address how to handle documents when the FL-356 is attached to documents that are not confidential. Guidance should be provided to avoid inconsistent practices.</p> <p><b>Would this proposal have different effect on courts of different sizes?</b> Larger courts will have more of a workload depending on the volume of filings.</p> <p><b>Does the proposal provide cost savings?</b> The proposal does not appear to provide cost savings. To the extent paper files are maintained, the use of confidential envelopes will increase. Access to otherwise public records by parties seeking to view confidential documents in these type of cases will require additional file management resources.</p>	<p>The committee intends the revision of form FL-356 as a standalone form to reduce or eliminate the logistical burden on court staff. The forms associated with a proceeding in response to a request for SIJ findings could be handled in the same manner as other confidential documents, such as a custody evaluation, filed in a family law case.</p> <p>The committee agrees in part. Larger courts may see a proportionally larger number of filings, but courts in specific locations, such as Los Angeles, Orange County, and the San Francisco bay area, are likely to see a disproportionate number of SIJ filings based on their larger populations of undocumented immigrants from Central America. To the extent that larger courts do see a proportionally larger number of filings, the Workload Allocation Funding Model is intended to address the identified workload disparity.</p> <p>The committee agrees, but has no authority to recommend confidentiality requirements less stringent than those required by statute. The recommended modifications to rule 5.130(g) and forms FL-356, FL-357, and FL-358 are intended to minimize the need for new or additional procedures and associated costs.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><b>Would two months be sufficient time to implement the proposal?</b>  Two months is not enough time to implement the proposal. The handling of confidential documents attached to non-confidential documents would require a court to address record keeping procedures, update and or modify existing practices and procedures and train staff prior to implementation. If a stand-alone petition specifically to address SIJ findings, instead of using FL-356 as an attachment, would be easier to implement.</p>	<p>The committee does not recommend the delaying implementation of the rule and forms. Consistent with the commentator's suggestion, the committee intends the modifications to rule 5.130(g) and the revision of form FL-356 to make it a standalone form to simplify the filing process enough to eliminate confusion, logistical issues, and the need for longer processing times and to permit implementation within the normal, two-month time frame.</p>
6.	<p>Superior Court of Orange County  Family Law &amp; Juvenile Court  Operations  by Blanca Escobedo  Principal Administrative Analyst</p>	AM	<p>The proposed purpose is met as it pertains to Family Law. However, we would like to recommend the following revisions:</p> <p>CRC 5.130 (b)(2)(B) should reflect that there must be an existing family law case or initiating document filed with the family law court. Perhaps utilizing wording from item #5 of the FL-356 would be helpful.</p> <p>CRC 5.130 (b)(2)(C) should reflect the DV-100/DV-120 with custody issues.</p> <p>According to the proposed rule, all SIJ records should be confidential. However, the FL-356 is an attachment to other filings that are not</p>	<p>No response required.</p> <p>The committee agrees that a request for SIJ findings may not be filed independent of a family law proceeding in which at least one party is requesting sole physical custody of the child. Modifications to proposed subdivision (b) are intended to clarify that the request may only be filed in the context of such a proceeding, but allow for concurrent filing of the request with the first paper in the proceeding.</p> <p>The committee agrees and has modified its recommendation accordingly.</p> <p>The committee has modified its recommendation to revise form FL-356 to be a standalone form in part to permit courts to keep that form confidential</p>

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			<p>confidential (e.g., Petition, Response, etc.). Courts would need to develop procedures to separate documents when they are filed and imaged. For courts that provide remote access to records, this might be confusing to the public because there will be references to attachments in the underlying filing and no attachments available on a court’s public website. In addition, clarification is requested on the following issues:</p> <p>Are courts required to redact any SIJ references on the underlying filings?</p> <p>Should SIJ hearings be closed proceedings?</p>	<p>without needing to develop special procedures to separate the FL-356 from other documents.</p> <p>Under section 155(c) of the Code of Civil Procedure, in a judicial proceeding in response to a request for SIJ findings, “information regarding the child’s immigration status” must “remain confidential” and “be available for inspection only by the court” and specified persons. Because SIJ findings with respect to an undocumented, child, the existence of a request for those findings and any proceedings in response to such a request necessarily reveals that the child is undocumented. The committee therefore understands the statutory language to require the redaction of any information referring to the child’s request for SIJ findings maintained in the public case file. The committee has modified the recommended language in subdivision (f), now (g), to reflect this requirement.</p> <p>The committee does not believe that section 155(c) clearly requires that SIJ hearings be closed. One interpretation of “information” would include information conveyed orally at a hearing.</p>

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			<p>Are there special considerations the courts should follow when a party requests copy work for SIJ filings?</p> <p>Lastly, there appears to be a discrepancy between the proposed rule and CCP 155(c) as it pertains to confidentiality. CCP 155(c) states, “In <i>any judicial proceedings in response</i> to a request that the superior court...” The proposed whereas the</p>	<p>However, the qualification that such information be “available for inspection” only by specified parties implies that the statute applies only to <i>written</i> information. Because of the presumption in section 124 of the Code of Civil Procedure that judicial proceedings are open to the public, the committee does not believe it is appropriate to close these proceedings by rule without more explicit guidance from the Legislature. Section 214 of the Family Code, however, permits the court to close proceedings on a case-by-case and issue-by-issue basis “in the interests of justice and the persons involved.” Courts may wish to consider whether section 214 applies to issues related to a child’s immigration status.</p> <p>The committee does not intend rule 5.130 to authorize the dissemination of copies of SIJ filings. Section 155(c) of the CCP authorizes only inspection, not copying or dissemination, of SIJ filings. If the comment refers to copying for distribution within the court and to persons required to be served under rule 5.130(c), courts should follow existing procedures for copying and distributing confidential documents, such as financial declarations or custody evaluations.</p> <p>The committee agrees and has modified its recommendation to specify that only the request for SIJ findings, any response to the request, and the findings themselves must be kept in a confidential part of the case file. As noted above, information regarding the child’s immigration</p>

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			<p>proposed rule states “<i>All records</i> that pertain to a request under this rule...”</p> <p>We don’t believe there would be a cost savings. The new confidentiality rules may create additional work if filings need to be separated and/or SIJ references need to be redacted.</p> <p>Implementation requirements for our court includes training for judges and staff. Depending on the confidentiality decision, minor case management changes may be required.</p> <p><b>Additional Questions/Comments:</b> Are there exceptions to the service of process for SIJ filings if a parent lives outside the country?</p> <p>We recommend an SIJ information sheet be created to help the public understand where they should file their SIJ petitions.</p>	<p>status contained in other documents related to the request that are kept in the public part of the file must be redacted to prevent the inspection of that information by persons not authorized by section 155(c).</p> <p>The committee intends that modifications to require filing form FL-356 alone, not as an attachment, will mitigate any increase in workload to the greatest extent permitted by statute.</p> <p>No response required.</p> <p>The committee is not aware of, and does not intend the rule to create, any exceptions to the requirements for service of process that ordinarily apply in the underlying family law proceeding. The committee has added a new subd. (c) to rule 5.130 to clarify the notice and service requirements associated with a request for SIJ findings.</p> <p>The committee agrees that an information sheet would be helpful and, if time and resources are available, will consider developing one. In the meantime, the California Courts Online Self-Help Center currently includes a webpage with information on SIJ status for self-represented</p>

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			<p>Are there recommended processing time standards?</p> <p>Are courts required to provide interpreters for these hearings?</p> <p>Should courts use the same service of process requirements for the FL-356 the same as the underlying filing?</p>	<p>litigants. The webpage will be updated to reflect current law.</p> <p>The committee does not intend to set standards for case processing times in the rule. The court should adhere to existing processing time standards for custody proceedings. If exigent circumstances or the interests of justice require expedited processing, the court has sufficient authority to grant a request for it on a case-by-case basis.</p> <p>Under section 757 of the Evidence Code, the court has the same authority to provide an interpreter in a proceeding in response to a request for SIJ findings as it has in any civil proceeding. The Judicial Council's Language Access Plan includes standards and priorities for provision of interpreters in these proceedings, and the governor's proposed budget for 2016 includes additional funds for court interpreters.</p> <p>The committee has new subd. (c) to rule 5.130 to .</p>
7.	Superior Court of Riverside County by Marita Ford Senior Management Analyst	A	The confidentiality requirement in proposed rule 5.130(f) would create logistical issues for courts that use electronic filing and image court records. Because the FL-356 is an attachment form, it would be difficult for courts that image court records to only make the attachment page confidential. Currently, to keep the attachment page confidential the entire document it is attached to ( <i>i.e. petition, response, RFO, DVRO,</i>	The committee agrees and has modified its recommendation to amend subd. (f), now (g), and to make FL-356 a standalone form. The committee intends this revision to simplify the filing process enough to eliminate confusion, logistical issues, and the need for longer processing times.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>etc.</i>) would have to be made confidential, thereby limiting public access to those documents.</p> <p>Since the FL-357 is a separately filed document, there are no logistical issues in maintaining the confidentiality of that document in electronic systems.</p> <p>However, it is difficult to keep the court minutes pertaining to a request for SIJ findings confidential in electronic case management systems; especially if the request for SIJ findings is heard along with custody and parenting time issues.</p>	<p>The committee has nevertheless revised form FL-357 to clarify that it must be filed confidentially.</p> <p>The committee agrees and has modified its recommendation to require that information about the child’s immigration status included in documents that are kept in a publicly accessible file be redacted from those documents. The committee intends this requirement to apply to the minutes of proceedings on SIJ findings as well.</p>
8.	Superior Court of Sacramento County by Rebecca Reddish Business Analyst	AM	<p>Page 9, (f) Confidentiality—What if the Request is part of an RFO that includes other issues? How will we separate or must all of the documents filed with the Request be deemed confidential?</p>	<p>The committee has modified its recommendation to amend subd. (f), now (g), to clarify the confidentiality requirements. It has also made form FL-356 a standalone form to relieve the court of the need to separate it from other documents. The committee intends this revision to reduce or eliminate the practical challenges of keeping the request confidential.</p>
9.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	<p>In answer to the request for specific responses, our court provides the following:</p> <p>Q: Would the proposal provide cost savings? <b>No.</b></p> <p>Q: What are implementations requirements for courts? <b>Training business office staff on new forms</b></p>	<p>No response required.</p> <p>The committee intends revising form FL-356 to be a standalone form to reduce training requirements for court staff.</p>



## W16-11

### Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

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	Commentator	Position	Comment	Committee Response
			<p>(FL-356 &amp; FL-357).</p> <p>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation?  <b>Yes.</b></p> <p>Q: How well would this proposal work in courts of different sizes?  <b>Greater impact on larger courts based on number of staff and filings.</b></p> <p>Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs?  <b>Yes.</b></p> <p>Q: Does the proposal appropriately address the stated purpose?  <b>Yes, the proposal addresses the stated purpose.</b></p> <p><b>General comments:</b> In working on these requests, we have not found anything that specifies who has the burden of proof and what that burden is. CCP 155 just says there must be evidence to support the findings. It would be</p>	<p>No response required.</p> <p>The committee agrees in part. Larger courts may see a proportionally larger number of filings, but courts in specific locations, such as Los Angeles, Orange County, and the San Francisco bay area, are likely to see a disproportionate number of SIJ filings based on their larger populations of undocumented immigrants from Central America. To the extent that larger courts do see a proportionally larger number of filings, the Workload Allocation Funding Model should address the identified workload disparity.</p> <p>No response required.</p> <p>No response required.</p> <p>In the absence of a statute establishing an exception to sections 500 and 550 of the Evidence Code or setting a heightened standard of proof, the committee understands that the person requesting the findings would have the same</p>

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	Commentator	Position	Comment	Committee Response
			<p>helpful to address the burden of proof in the rules of court.</p> <p>If this rule is implemented, the Juvenile Division will be the only division that does not have its own rule of court addressing Special Immigrant Juvenile status. A juvenile rule would be helpful to point people to the appropriate forms and to address the burden of proof.</p> <p><b>Comments regarding specific CRC amendments:</b> Page 4 paragraph 2 of the Invitation to Comment references 5.130(a)(1). However, there is no (a)(1) in the attached rule.</p>	<p>burden of establishing the facts and circumstances supporting the findings as in any other civil proceeding, that is, by a preponderance of the evidence. The committee contemplates that, in most cases, the facts and circumstances in support of the underlying order for sole physical custody would be sufficient to support the SIJ findings. If not, the requesting person would be entitled to present additional evidence at the hearing on the request for SIJ findings.</p> <p>The committee does not recommend adopting a rule of court for requesting SIJ findings in juvenile proceedings at this time, but may consider developing such a rule in the future. When the SIJ findings forms were circulated for comment last year, the committee sought specific comment on whether a rule for seeking SIJ findings in juvenile court proceedings was desirable. No commentators indicated that such a rule would be desirable. Two commentators indicated that it was not needed. The juvenile dependency courts are accustomed to determining requests for SIJ findings, as these requests have applied to dependency proceedings since 1990. Recent case law has included extensive discussion of SIJ findings in delinquency proceedings. The committee will continue to monitor the need for a juvenile SIJ rule.</p> <p>The committee will try to avoid similar errors in the future.</p>

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			<p>Proposed rule 5.130, subsection (b)(2)(C): The proposed rule as written in conjunction with proposed rule 5.130(d) may create confusion as to what hearing the requested SIJ status findings should be addressed, particularly if a FL-300 is never filed. Typically the issues on the DV-100 and/or the DV-120 are addressed at the noticed hearing on the DV-110 unless continued. If a litigant is allowed to file the FL-356 as an attachment to a DV-100 (presumably under item 22) or DV-120 (unclear where the form would be attached) but then must also file an FL-300 with an attached FL-356 to obtain a hearing on the SIJ status request, notice about filing the FL-300 to obtain the actual hearing on the request should be somewhere else besides this rule of court, perhaps on the FL-356?</p> <p>Proposed rule 5.130, subsection (f): The proposed rule as written may be misread or could be found confusing in regards to the scope exactly what documents are confidential as set forth in Code of Civil Procedure section 155, subsection (c). It is the child’s immigration status that must be kept confidential under this subsection. Consider deleting the word “and” from the proposed rule as follows:</p> <p>“All records that pertain to a request under this rule <del>and</del> that include information about the child’s immigration status must be kept in a confidential part of the case</p>	<p>The committee has modified its recommendation to make form FL-356 a standalone form. Notice of the hearing has been included on page one of the revised FL-356. Therefore, no FL-300 and no additional FL-356 would need to be filed to obtain a hearing. Furthermore, the committee has proposed amendments to rule 5.130(b)(2)(C) to clarify that the request for SIJ findings may be filed in a DVPA action only if there is also a request for sole physical custody. The committee intends these changes to resolve the concerns identified in this comment.</p> <p>The committee agrees and has modified its recommendation to specify in rule 5.130(f), now (g), which documents must be kept in a confidential portion of the file and how to treat documents in the public part of the file. The committee has also revised form FL-356 to be standalone form to simplify keeping it confidential.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			file, or alternatively, in a separate, confidential file.”	
10.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	AM	<p>Modify the proposal by creating a stand-alone petition specifically to address SIJ findings as opposed to creating a document (FL-356) to be attached to a petition or response in a family law proceeding. If the form is attached to a petition, as proposed by this proposal, a self-represented litigant may not understand that he/she needs to file an RFO or set a hearing to obtain the SIJS relief.</p> <p>Also, subsection (f) states that all records that pertain to a request under this section must be kept confidential. However, if the SIJF is attached to a Petition or RFO for custody, which does not have confidentiality requirements, court staff will have great difficulty in processing the document so that some parts are kept confidential and others are not.</p> <p>The proposed date for implementation is not feasible or is problematic: Unless modified, the proposal will take more than two months to implement in order to provide local procedures for processing confidential documents that will be required to be separated from non-confidential parts of the same submission. Accordingly, the JRS requests that the effective date of this proposal be extended to three months (90 days) from Judicial Council approval.</p>	<p>The committee agrees with the comment and has modified its recommendation to make form FL-356 a standalone form that includes a notice of hearing.</p> <p>The committee agrees with the comment and has modified its recommendation to revise form FL-356 to be a standalone form and to specify that, even when filed concurrently with other papers, the form must be filed separately, not attached to the other papers. These changes are intended to eliminate the need to separate confidential from non-confidential filings.</p> <p>The committee does not recommend extending the proposal’s effective date. The committee intends that amending subd. (f), now (g), and revising form FL-356 to be a standalone form will simplify the filing process enough to eliminate the need for new procedures and permit implementation within the normal two-month time frame.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			Other major fiscal or operational impacts: The proposal will cause confusion for court staff and it will be difficult to implement because there is not a stand-alone petition to obtain the requested relief. In addition, confidential documents would be attached to non-confidential documents, causing substantial additional staff time to process. See proposed modification.	The committee has modified its recommendation to make FL-356 a standalone form. The committee intends this revision to simplify the filing process to eliminate confusion, logistical issues, and the need for longer processing times.