Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-162
For business meeting on September 19, 2023

Title
Family Law: Child Custody and Visitation Orders Involving Gender-Affirming Health Care

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.151

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy A. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 24, 2023

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of court, effective January 1, 2024, to implement Senate Bill 107 (Stats. 2022, ch. 810). Senate Bill 107 amends Family Code sections 3421 and 3424 and enacts a new public policy in Family Code section 3453.5 that supports a parent's ability to seek gender-affirming health care or gender-affirming mental health care for a child in the state of California without penalty. The amendments to the rule would provide procedures for situations in which a parent seeks emergency child custody or visitation orders in family court because the laws of another state prohibit that parent from providing gender-affirming health care or gender-affirming mental health care for their child.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend California Rules of Court, rule 5.151 to specify the procedures and forms that a parent or guardian must use to ask the court for temporary emergency orders when the issue relates to gender-affirming health care or gender-affirming mental health care—

care that is prohibited by the law of another state or unavailable in another state. In addition, the committee recommends replacing certain terms in a separate, relevant section of rule 5.51 to make the rule easier to understand.

The proposed revised rule is attached at pages 10–13.

Relevant Previous Council Action

The Judicial Council has not previously taken action on emergency orders relating to children who are in the state to receive gender-affirming health care or gender-affirming mental health care.

Analysis/Rationale

Changes to the Family Code

Senate Bill 107 adds subdivision (d) to Family Code section 3421 and extends the court's jurisdiction (under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)) to make initial child custody determinations if

> [t]he presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care, as defined by Section 16010.2 of the Welfare and Institutions Code, is sufficient to meet the requirements of paragraph (2) of subdivision (a).[1]

In addition, the bill amends Family Code section 3424 to provide that

> [a] court of this state has temporary emergency jurisdiction if the child is present in this state … because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care, as defined by Section 16010.2 of the Welfare and Institutions Code.

Further, it adds section 3453.5 to the Family Code, which provides (in part) that:

> (a) A law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to

[1] Under Welfare and Institutions Code section 16010.2, "gender-affirming health care" means "medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:

(i) Interventions to suppress the development of endogenous secondary sex characteristics.
(ii) Interventions to align the patient's appearance or physical body with the patient's gender identity.
(iii) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition."

The statue also defines "gender-affirming mental health care" as "mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance."

> receive gender-affirming health care or gender-affirming mental health care is against the public policy of this state and shall not be enforced or applied in a case pending in a court in this state.[2]

Cases with no out-of-state child custody orders

Under Family Code sections 3421(d) and 3424(c) the courts of this state have jurisdiction to make an initial child custody determination if (1) the child is in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care and (2) there is no previous child custody determination that is entitled to be enforced in this state. The party seeking child custody orders would file an action in family court and then seek this specific relief as part of a request for child custody orders.

Cases with out-of-state child custody orders

Generally, under Family Code section 3446(b), a California court must recognize and enforce a registered child custody determination of a court of another state but may not modify the order. The same statute, however, makes an exception: "except in accordance with Chapter 2 (commencing with Section 3421)."

The exceptions to the prohibition on modifying an out-of-state child custody order are noted in Family Code sections 3424, 3427, and in case law.

- Family Code section 3424(a) provides that a court of this state has temporary emergency jurisdiction if, among other reasons, the child is present in this state because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care.

- Under Family Code section 3424(c), if there is a previous child custody order or proceeding in another state having jurisdiction, a court of this state may issue a temporary emergency order, but the court must specify in the order a period of time that the court considers adequate until an order is obtained in the other state within the period specified or the period expires. There are different procedures for cases in which there are no previous child custody orders.[3]

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[2] As of July 17, 2023, 20 states in the United States have passed laws or policies banning gender-affirming health care for minors. Human Rights Campaign, *Map: Attacks on Gender Affirming Care by State,* https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map.

[3] Section 3424(b) provides:

> If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

- Under the new provisions of Family Code section 3427(f)(1), a California court cannot determine that this state is an inconvenient forum where the law or policy of the other state limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

- Under Family Code section 3424(d), a California court issuing a temporary emergency order will still have to communicate with the out-of-state court to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Based on the foregoing, a court of this state is authorized to modify a child custody order issued in another state, at least temporarily. [4]

Rule 5.151

Changes to rule 5.151 under SB 107

In response to SB 107's changes to the UCCJEA, the committee recommends that the Judicial Council amend rule 5.151 to specify the procedures and forms that a parent or guardian must use to ask the court for temporary emergency orders when the issue relates to gender-affirming health care or gender-affirming mental health care—care that is prohibited by the law of another state or unavailable in another state. The rule with proposed amendments is provided at pages 10–13.

The procedures specified in rule 5.151(d)(5) cover requests for temporary emergency orders involving child custody or visitation (parenting time) generally. The proposal would add subdivision (d)(6), titled "Applications for child custody or visitation (parenting time) when child is in the state for gender-affirming health care or gender-affirming medical care."

The proposed amendments to rule 5.151 would account for situations in which parties had not previously filed any action in family court involving custody or visitation of a child. In this situation, rule 5.151 would require the party to file a case in family court and then file the documents specified in subdivision (c) of the rule to ask that the California court issue temporary emergency orders to modify an out-of-state child custody order so that the child can obtain gender-affirming health care or gender-affirming mental health care in this state. In some situations, a party might decide to file a petition for dissolution of marriage or legal separation, a petition to determine a parental relationship, or a petition for custody and support and include the out-of-state child custody order with the initial filing.

The rule would also account for situations in which none of the previously mentioned petitions apply. For example, a party may simply want to register the out-of-state child custody orders in this state and then ask the court to issue temporary orders that modify those orders so that their

[4] However, "[e]ven though emergency jurisdiction ordinarily is intended to be short term and limited, [a court] may continue to exercise its authority as long as the risk of harm creating the emergency is ongoing." (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1139.)

child can obtain gender-affirming health care or gender-affirming mental health care in California. To provide a pathway for this type of action, the rule would require that the party file *Registration of Out-of-State Custody Order* (form FL-580) as the initial pleading. This would reflect the procedure that is currently used if there has already been a custody determination in another state.

In addition, the proposed rule (at subdivision (d)(6)(B) and (C)) references the forms, documents, and content that a party must provide to ask for temporary emergency orders that relate to children who are in California to obtain gender-affirming health care or gender-affirming mental health care. This subdivision is distinguished from subdivision (d)(5) (Applications regarding child custody or visitation (parenting time)) in that Family Code section 3064 does not apply to these cases. Therefore, a party would not have to show in the application immediate harm to a child or an immediate risk of a child's removal from the state of California before the court can issue a temporary order involving a child who is present in this state because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care. To reflect this, committee recommends that the rule specify that Family Code section 3064 does not apply to subdivision (d)(6) matters.

However, the proposed rule cross-references some of the requirements listed in (d)(5) that apply to these case types; for example, the requirement to (1) advise the court of the existing custody and visitation arrangements and how they will be changed by the request for emergency orders and (2) include a completed form FL-105 if the form was not already filed or has changed since it was filed (see proposed subdivision (d)(6)(C)).

Additional change to rule 5.151

Finally, the committee recommends amending rule 5.51(d)(5) as illustrated below:

> "Applications for emergency orders ~~granting or modifying~~ involving child custody or visitation (parenting time) under Family Code section 3064 must:…"

Replacing the two legal terms would simplify the language and make this section easier for all persons to understand, including self-represented litigants. This change supports the Judicial Council's strategic goal of ensuring that court procedures are understandable.

Policy implications

As described in the section "Alternatives Considered" below, before circulating this proposal for comment the committee discussed whether rules or forms were necessary to implement SB 107. The committee agreed that new procedures are needed for these cases, as existing emergency (ex parte) options regarding child custody and visitation (parenting time) do not apply to the kind of situations described in SB 107.

The comments received generally supported the proposal with a few requests for revisions. Furthermore, there was no controversy or intense debate within the committee on the proposal or the recommendations made after considering public comments received.

Comments

The proposal was circulated for public comment from March 31 to May 12, 2023, as part of the regular spring comment cycle. The committee received a total of eight comments. Commenters included five courts (the Superior Courts of Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties), two organizations (Family Violence Appellate Project and Orange County Bar Association), and one individual. The committee's specific responses to each comment are available in the attached comments chart at pages 14–21.

Five commenters agreed with the proposal (of these, three commenters had no additional comments or suggested no edits). One commenter agreed with the proposal, if amended. Another commenter did not indicate a position but stated the proposal appropriately addresses the stated purpose and suggested no changes to the rule. One individual commenter disagreed with the proposal based on the belief that gender-affirming health care for minors is a political situation.

Proposal implements the law and policy of the Legislature regarding gender-affirming health care and mental health care

One individual commenter wrote, in part, that "[g]ender-affirming care is not a life-threatening situation, it is merely a political situation. Family law needs to stay away from politics as much as possible because managing political issues in the courts delegitimizes the role of the courts in family life."

In response, the committee noted that the denial of gender-affirming health care or mental health care is recognized as an urgent situation under Family Code section 3424(a). Such a denial or inability of a child to obtain gender-affirming health care or gender-affirming mental health care in another state is treated on par with a child who is abandoned or who needs to be protected because the child is subjected to, or threatened with, mistreatment or abuse. In each of these situations, a court of this state has temporary emergency jurisdiction to protect that child.

As defined in the Welfare and Institutions Code, gender-affirming health care is that which is medically necessary. Thus, the issue is about providing a child continuity of care that is medically necessary and in the best interest of that child. In this way, a child who receives gender-affirming health care is, by law, similarly situated as a child who receives any number of other medically necessary health care treatments, such as chemotherapy, dialysis, or psychotropic or other medications. As such, the court of this state will need to address, on an emergency basis, the urgent need for the child's continuity of care if such treatment has been denied the child in another state.

Based on the foregoing, the committee does not recommend changes to the rule in response to the comment.

Comments requesting changes

The Superior Court of Riverside County stated that the proposed new language in rule 5.151 should be "a subsection of Section (d)(5) Applications regarding child custody or visitation

(parenting time)." This would "… avoid the appearance that pursuit of gender-affirming treatment constitutes an emergency categorically."

The committee does not recommend that the new section in (d)(6) be included under rule 5.151(d)(5) because—unlike applications under (d)(5)—a party does not need to demonstrate compliance with Family Code section 3064 to obtain emergency orders relating gender-affirming health care for the child under SB 107. Further, the first paragraph of the new section (d)(6) specifically identifies when a request for orders regarding gender-affirming health care or mental health care for a child constitutes an emergency. Thus, the rule avoids any appearance that gender-affirming treatment constitutes and emergency categorically.

The Family Violence Appellate Project agreed with the proposal and "express[ed] [their] appreciation for the Council in implementing this important legislation for the benefit of trans and gender non-conforming youth who will need it." Because rule 5.151 does not apply to cases under the Domestic Violence Prevention Act (DVPA), the Family Violence Appellate Project suggested that the council adopt a similar, new rule specifically for DVPA cases. The comment reflects the committee's discussion before the comment period to consider developing a rule or form proposal to specify the requirements of SB 107 as it relates to requests made in DVPA proceedings. In this respect, the committee responds that it will further consider creating such a rule in a future cycle.

The Superior Court of Riverside County suggested changes to proposed subdivision (d)(6)(B) because it is overinclusive— requiring documents listed in (c) that were not necessary. On further review, the committee did not agree to change the rule because (c) specifies that some documents are required only if they are relevant to the relief requested or if required by the court.

The Superior Court of Riverside County suggested that the "and" between "gender-affirming health care" and "gender-affirming mental health care" in the rule be replaced with "or" so that the phrase conforms with and is consistent with Family Code sections 3421, 3424, and 3453.5. The committee agreed with the commenter and that revision is reflected in the proposed amended rule.

Finally, the Superior Court of San Diego County suggested a change to proposed rule 5.151(d)(6)(A) to clarify that an application for emergency orders involving gender-affirming health care for a child must be filed with or after filing the first papers. The committee agreed with this suggestion and has incorporated it into the proposed amended rule.

Other general comments

Superior Court of Riverside County: "Apart from the suggested edits below, the proposed revisions provide clarity and comply with changes in law. The proposal provides the framework for the courts' assertion of jurisdiction over out of state families seeking gender-affirming health care in California."

Superior Court of Orange County: "This proposal would make it easier for self-represented litigants and attorneys to seek changes to an out-of-state child custody order to obtain gender-affirming health care or gender-affirming mental health care for a child" and "would make it easier for the courts in cases involving parties with out-of-state orders due to the requirement to file the request/application with or after filing the *Registration of Out-of-State Custody Order* (FL-580)."

Superior Court of San Diego County: "The proposal would make it easier for litigants and attorneys by providing specific documents that need to be filed" and "easier for courts to make orders in cases involving parties with out-of-state child custody orders who seek to modify the order and obtain gender-affirming health care or gender-affirming mental health care for [the] child."

Most of the remaining comments concerned fiscal and operational impacts. These comments are noted in "Fiscal and Operational Impacts."

Alternatives considered

The committee considered not proposing changes to rules of court or forms because SB 107 does not specifically require that the Judicial Council take any action to implement the changes to the UCCJEA. However, the committee determined that developing statewide, uniform rules in this subject area will (1) provide statewide consistency in practice and procedure, (2) provide clear processes that implement new laws under SB 107, and (3) support an important judicial branch strategic plan goal: access, fairness, diversity, and inclusion.[5]

The committee also considered whether to develop a separate rule of court and a new form set to implement SB 107. After review, the committee instead decided to propose amending rule 5.151 to include requests under SB 107. Rule 5.151 currently provides guidance to courts and to parties about the forms and procedures required to request temporary emergency orders specifically relating to child custody and visitation (parenting time). Requests for orders about a child who is in the state to obtain gender-affirming health care and gender-affirming mental health care will be a new category of temporary emergency orders that the child's parent could request because, as previously noted, under SB 107 a party does not need to demonstrate compliance with Family Code section 3064 to obtain these emergency orders. Therefore, the committee recommends that changes to the rule under SB 107 not be included under 5.151(d)(5), but instead be added as separate paragraph (d)(6).

Further, the committee considered two options to address the issue of SB 107 remedies also being applicable to cases filed under the DVPA, but DVPA cases not being applicable to rule 5.151. Option A was to include an advisory committee comment to rule 5.151. Option B was a proposal to adopt a new rule in chapter 11, article 1 (Domestic Violence Prevention Act Cases), to specify that applications for child custody or visitation (parenting time) involving gender-

[5] *The Strategic Plan for California's Judicial Branch* (July 19, 2019) is available at www.courts.ca.gov/documents/Strategic_Plan_Companion_2022.pdf.

affirming health care (including gender-affirming mental health care) for a child may also be requested under the Domestic Violence Prevention Act. The majority of members voted for option A rather than expand the proposal to two rules to address the changes in the Family Code under SB 107, as there would be insufficient time in the current cycle to develop such a rule. Therefore, the committee will further consider developing a new rule in a future cycle to specify the requirements of SB 107 as it relates to requests made in DVPA proceedings.

Fiscal and Operational Impacts

Comments from courts about the fiscal and operational impacts included the following:

One court commented that implementation of the amended rule would require courts to create new procedures for staff, create new event codes and hearing codes in the case management system, and update the system to standardize minute order language. Another court indicated that there would be minimal changes to processes because applicants would be required to either register an existing out-of-state custody order or file a new case in family court.

Another court noted that judicial officers would also need to develop a framework for resolving the dispute between parents on authorizing gender-affirming treatments for their child.

Two courts indicated that the proposal would not result in cost savings, that three months would provide sufficient time for implementation, and that the proposal would work in courts of different sizes.

Attachments and Links

1. Cal. Rules of Court, rule 5.151, at pages 10–13
2. Chart of comments, at pages 14–21
3. Link A: Senate Bill 107, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB107*
4. Link B: Fam. Code, § 3421, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3421*
5. Link C: Fam. Code, § 3424, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3424*
6. Link D: Fam. Code, § 3453.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3453.5*

Rule 5.151 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

(a)–(b) * * *

(c) Required documents

(1) *Request for order*

A request for emergency orders must be in writing and must include all of the following completed documents:

(A) *Request for Order* (form FL-300) that identifies the relief requested.

(B) When relevant to the relief requested, a current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160).

(C) *Temporary Emergency (Ex Parte) Orders* (form FL-305) to serve as the proposed temporary order.

(D) A written declaration regarding notice of application for emergency orders based on personal knowledge. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local court form, or a declaration that contains the same information as form FL-303 may be used for this purpose.

(E) A memorandum of points and authorities only if required by the court.

(2) *Request to reschedule hearing*

A request to reschedule a hearing must comply with the requirements of rule 5.95.

(d) Contents of application and declaration

(1) *Identification of attorney or party*

An application for emergency orders must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party, if known to the applicant.

(2) *Affirmative factual showing required in written declarations*

The declarations must contain facts within the personal knowledge of the declarant that demonstrate why the matter is appropriately handled as an emergency hearing, as opposed to being on the court's regular hearing calendar.

An applicant must make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief without notice or with shortened notice to the other party.

(3) *Disclosure of previous applications and orders*

An applicant should submit a declaration that fully discloses all previous applications made on the same issue and whether any orders were made on any of the applications, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

(4) *Disclosure of change in status quo*

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

(5) *Applications regarding child custody or visitation (parenting time)*

Applications for emergency orders ~~granting or modifying~~ involving child custody or visitation (parenting time) under Family Code section 3064 must:

(A) Provide a full, detailed description of the most recent incidents showing:

(i) Immediate harm to the child as defined in Family Code section 3064(b); or

(ii) Immediate risk that the child will be removed from the state of California.

(B) Specify the date of each incident described in (A);

(C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders;

(D) Include a copy of the current custody orders, if they are available. If no orders exist, explain where and with whom the child is currently living; and

(E) Include a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) if the form was not already filed by a party or if the information has changed since it was filed.

(6) *Applications for child custody or visitation (parenting time) when child is in the state for gender-affirming health care or gender-affirming mental health care*

Notwithstanding the requirements in Family Code section 3064, when a child is in the state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care, applications for emergency orders for child custody or visitation (parenting time) under Family Code sections 3427, 3428, and 3453.5 must:

(A) Be filed with, or after filing, either:

(i) A petition appropriate for the case type (for example, a petition for dissolution of marriage or legal separation, a petition to determine parental relationship, or a petition for custody and support); or

(ii) *Registration of Out-of-State Custody Order* (form FL-580) if there is a previous custody determination in another state and the party does not intend to file a petition under (i).

(B) Include the documents listed in (c) of this rule.

(C) Include the information specified in (d)(5)(C)–(E) of this rule.

(e) Contents of notice and declaration regarding notice of emergency hearing

(1) *Contents of notice*

When notice of a request for emergency orders is given, the person giving notice must:

(A) State with specificity the nature of the relief to be requested;

(B) State the date, time, and place for the presentation of the application;

(C) State the date, time, and place of the hearing, if applicable; and

(D) Attempt to determine whether the opposing party will appear to oppose the application (if the court requires a hearing) or whether ~~he or she~~ the opposing party will submit responsive pleadings before the court rules on the request for emergency orders.

(2) *Declaration regarding notice*

An application for emergency orders must be accompanied by a completed declaration regarding notice that includes one of the following statements:

(A) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 5.165, the applicant informed the opposing party where and when the application would be made;

(B) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or

(C) That, for reasons specified, the applicant should not be required to inform the opposing party.

Advisory Committee Comment

Applications for child custody or visitation (parenting time), including applications involving a child who is present in this state to obtain gender-affirming health care or gender-affirming mental health care under Family Code sections 3427, 3428, and 3453.5, may also be requested under the Domestic Violence Prevention Act (DVPA) (Fam. Code, §§ 6200–6460). Different forms and procedures apply to DVPA cases.

SPR23-16
Family Law: Child Custody and Visitation Orders Involving Gender-Affirming Health Care (amend Cal. Rules of Court, rule 5.151)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Lawyer's Association, Family Law Section Executive Committee (FLEXCOM) By Saul Bercovitch, Associate Executive Director, Governmental Affairs Sacramento	A	No additional comments.	No response required.
2.	Amanda de la Vega Carlsbad	N	Family law courts are already managing significant cases for current residents. Creating a forum for non-state residents to utilize courts for issues that are NOT threats to general safety and well-being is a waste of precious judicial resources. Many ex-parte options already exist and judicial officers are competent to discern when a true emergency exists.	The committee is not proposing creating a forum (or a form). Rather, the Legislature has made a change in the law giving courts authority to make emergency orders relating to gender-affirming health care for children and the committee is recommending the adoption of a new rule to provide processes that implement the law. New procedures are needed for these cases, as existing emergency (ex parte) option do not apply and are not as well targeted as the committee's proposal.
			Gender-affirming care is not a life-threatening situation, it is merely a political situation. Family law needs to stay away from politics as much as possible because managing political issues in the courts delegitimizes the role of the courts in family life.	California law does treat the denial of gender-affirming health care or mental health care as an urgent situation. In Family Code section 3424(a), the denial or inability of a child to obtain gender-affirming health care or gender-affirming mental health care in another state is treated on par with a child who is abandoned or who needs to be protected because the child is subjected to, or threatened with, mistreatment or abuse. In each of these situations, a court of this state has temporary emergency jurisdiction to protect that child. As defined in the Welfare and Institutions Code, gender-affirming healthcare is that which is

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
				"medically necessary." Thus, the issue is about providing a child continuity of care that is medically necessary and in the best interest of that child. In this way, a child who receives gender-affirming health care, by law, is similarly situated as a child who receives any number of other medically necessary healthcare treatments, such as chemotherapy, dialysis, psychotropic and other medications). As such, a court of this state is authorized to address, on an emergency basis, the urgent need for the child's continuity of care if such treatment has been denied the child in another state. Based on the foregoing, the committee recommends no changes to the rule in response to the comment.
3.	Family Violence Appellate Project By Jodi Lewis, Senior Managing Attorney and Cory Hernandez, Senior Staff Attorney	A	*We first want to express our appreciation for the Council in implementing this important legislation for the benefit of trans and gender non-conforming youth who will need it. We support the proposal and want to make the following recommendation:	No response required.
			We also want to suggest that, instead of doing just Option A or Option B, the Council adopt both Options: add the advisory committee comment to rule 5.151, and add the new rule for DVPA (Fam. Code, § 6200 et seq.) matters in Article 1 of Chapter 11 of Division 1 of Title 5 of the Rules of Court.	The comment reflects the committee's discussion before the comment period to consider developing a rule or form proposal to specify the requirements of SB 107 as it relates to requests made in DVPA proceedings. In this respect, the committee responds that it will further consider creating such a rule in a future cycle.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			This way parties, including self-represented litigants who may not have access to the advisory committee comments (e.g., a party may ask a court clerk about a rule of court and the clerk may print off the rule for them, but not the advisory committee comment), will know about this in a rule of court itself. This also keeps the advisory committee comment in rule 5.151, which is important because otherwise, given rule 5.151(a) says it does not apply to DVPA matters, courts and parties may think the new protections from SB 107 (in rule 5.151(d)(6)) do not apply to DVPA matters, even if there is another rule for DVPA matters specifically. Basically, we're advocating for a belt-and-suspenders approach to this important issue.	See above response. See above response.
4.	Orange County Bar Association By Michael A. Grepp, President Newport Beach	A	The proposal appropriately addresses the stated purpose. Forms make it easier to seek orders for all litigants.	No response required. No response required.
5.	Superior Court of Orange County By Family and Juvenile Law Division	NI	*The proposal appropriately addresses the stated purpose This proposal would make it easier for self-represented litigants and attorneys to seek changes to an out-of-state child custody order to obtain gender-affirming health care or gender-affirming mental health care for a child.	No response required. No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-16
Family Law: Child Custody and Visitation Orders Involving Gender-Affirming Health Care (amend Cal. Rules of Court, rule 5.151)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			This proposal would make it easier for the courts in cases involving parties with out-of-state orders due to the requirement to file the request/application with or after filing the *Registration of Out-of-State Custody Order* (FL-580).	No response required.
			The proposal would not provide cost savings.	No response required.
			The implementation requirements would include creating new procedures for staff, new event codes and hearing codes in the case management system and creating updates in the system to standardize minute order language.	No response required.
			Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.	No response required.
			This proposal would work well in courts of different sizes.	No response required.
6.	Superior Court of Riverside County By Susan Ryan Chief Deputy of Legal Services	A	Apart from the suggested edits below, the proposed revisions provide clarity and comply with changes in law.	No response required.
			The proposal provides the framework for the courts' assertion of jurisdiction over out of state families seeking gender-affirming health care in California.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			While the court would be able to find jurisdiction over a child who is present in the state and seeking such care, the best interest standard of review are not modified and CRC Rule 5.151 maintains that emergency orders are to prevent danger and irreparable harm to a party.	No response required.
			Thus, cases will likely arise where the jurisdiction is based on the child's presence in state while the emergency may or may not be related to the health care treatment. As a result of these gaps, judicial officers will need to develop a framework for resolving the dispute between parents on authorizing gender-affirming treatments, particularly as to whether treatment raises concerns of danger and irreparable harm to support emergency orders.	No response required.
			The proposal appropriately addresses the stated purpose, with the edits noted below. Other changes that would be needed to the new procedures proposed in rule 5.151 are as follows:	No response required. See responses below.
			To avoid the appearance that pursuit of gender affirming treatment constitutes an emergency categorically, the new section 6 should actually be a subsection of Section (d)(5) Applications regarding child custody or visitation (parenting time).	The committee appreciates the suggestion that another section would be more appropriate for the new language. The committee does not recommend that the new section in (d)(6) be included under rule 5.151(d)(5) because—unlike applications under (d)(5)—a party does not need to demonstrate compliance with Family Code section 3064 to obtain emergency orders relating gender-affirming health care for the child under SB 107.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
				Further, new section (d)(6) specifies when a request for orders regarding gender-affirming health care or mental health care for a child constitutes an emergency, and thus avoids any appearance that gender-affirming treatment constitutes and emergency categorically. Based on the foregoing, the committee recommends no changes to the rule in response to the comment.
			Rule 5.151 (d)(6) would be changed to (d)(5)(F) and retitled: "When child is in the state for gender-affirming health care or gender-affirming mental health care." The “and” between “gender-affirming health care” and “gender-affirming mental health care” should be replaced with “or” so that the phrase conforms with and is consistent with Family Code sections 3421, 3424, and 3453.5.	For the reasons stated above, the committee does not recommend amending the rule as the commenter suggested. The committee agrees with the commenter and recommends amending the rule, as suggested.
			Proposed subdivision (d)(6)(B) should be revised to state that the application must: "Include the documents listed in subdivision (c)(1) of this rule. Requiring all of subsection (c) is overinclusive as (c)(2) pertains to Requests to reschedule hearing.	The committee appreciates the commenter’s concern that the proposed rule could be overinclusive if all the documents in (c) were required. However, the language in (c) does not actually require that a party or their attorney complete all of the documents. For example, the *Income and Expense Declaration* (form FL-150) specified in (c)(1)B) must be

	Commenter	Position	Comment	Committee Response
			Would this proposal make it easier or more difficult for self-represented litigants and attorneys to seek changes to an out-of-state child custody order to obtain gender affirming health care or gender-affirming mental health care for a child? Yes, out of state parties have a clear basis for applying for custody orders related to this issue.	completed "[w]hen relevant to the relief requested." In addition, the memorandum of points and authorities in (c)(1)E) must be provided "only if required by the court." Further, a Request to Reschedule a hearing under (c)(2) would only apply if the party needed this relief. Therefore, the committee does not recommend changing the proposed rule as the commenter suggested. No response required.
7.	Superior Court of San Bernardino County By Anita Morales, Legal Processing Assistant II	A	No additional comments.	No response required.
8.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	AM	*The proposal appropriately addresses the stated purpose.	No response required.
			No additional changes would be needed to the new procedures proposed in rule 5.151 to assist parties seeking initial or modified orders for child custody and visitation.	No response required.
			The proposal would make it easier for litigants and attorneys by providing specific documents that need to be filed.	No response required.
			The proposal would be easier for courts to make orders in cases involving parties with out-of-state child custody orders who seek to modify the order	No response required.

	Commenter	Position	Comment	Committee Response
			and obtain gender-affirming health care or gender-affirming mental health care for child.	
			The proposal would not provide cost savings.	No response required.
			Regarding implementation requirements for courts, since applicants would be required to either register an existing out-of-state custody order or file a new family case at the time of the request for emergency orders is made, there would be minimal changes to existing processes.	No response required.
			Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.	No response required.
			This proposal would work for court of various sizes. Re: proposed rule 5.151(d)(6)(A). Since application for emergency orders must be filed concurrently with or after filing the appropriate Petition or a Registration of Out of Sate Order, it is proposed the language be modified for clarity, as follows: "Be filed with, or ~~include~~ after filing either…"	No response required. The committee agrees with this suggestion and has incorporated it into the revisions being recommended for adoption.