



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title	Agenda Item Type
Indian Child Welfare Act: Tribal Access to Court Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.552	January 1, 2017
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	July 11, 2017
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov
Tribal Court–State Court Forum	
Hon. Abby Abinanti, Cochair	
Hon. Dennis M. Perluss, Cochair	

Executive Summary

The Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum jointly recommend amending the rule regarding the confidentiality of juvenile court records to conform to the current statutory language in the Welfare and Institutions Code. These amendments will eliminate discrepancies between the rule and statutory requirements that practitioners and court staff advised were causing confusion.

Recommendation

The Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2018, amend rule 5.552 of the California Rules of Court as follows:

1. Delete subdivision (b) of the rule, which is duplicative of section 827(a) of the Welfare and Institutions Code. This deletion also addresses the inconsistency between the rule and section 827(f);
2. Reletter and amend subdivision (c) of the rule in light of the removal of subdivision (b);
3. Change references to “juvenile court records” in subdivision (c) to “juvenile case files” to be consistent with the rest of the rule. Effective 2009, this language was changed throughout the rule except in subdivision (c), which inadvertently remained unchanged;
4. Revise and reletter subdivision (d)(1)(C) of the rule to require notice to a child only when the child is 10 years of age or older, in conformity with sections 290.1 through 295;
5. Revise and reletter subdivision (f) of the rule to remove language that is duplicative of section 828;
6. Delete subdivision (g) of the rule, which is duplicative of section 827(b)(2); and
7. Revise and reletter subdivision (h) in light of the deletion of other subdivisions and to remove reference to Government Code section 13968 which was repealed.

The text of the proposed amendments to the rule is attached at pages 5–8.

Previous Council Action

Rule 5.552 of the California Rules of Court was originally adopted as rule 1423 effective July 1, 1992, and has previously been amended effective January 1, 1994, July 1, 1995, July 1, 1997, January 1, 2001, January 1, 2004, January 1, 2007, and January 1, 2009. Effective January 1, 2015, the Judicial Council sponsored legislation—Assembly Bill 1618 (Stats. 2014, ch. 57, § 1)—that added subdivision (f) to section 827 of the Welfare and Institutions Code to clarify the right of an Indian child’s tribe to have access to the juvenile case file of a case involving that child.¹ At that time, no changes were made to rule 5.552, which implements this section.

Rationale for Recommendation

The proposed revisions to rule 5.552 are recommended to conform the rule to the statutory language and avoid confusion, which has resulted in unnecessary court motions and costs of service.

Contrary to section 827 of the Welfare and Institutions Code as amended, rule 5.552 continues to require that representatives of an Indian child’s tribe petition the juvenile court if the tribe wants access to the juvenile court file. This inconsistency has created confusion and results in

¹ That proposal is available at <http://www.courts.ca.gov/documents/LEG13-03.pdf>.

unnecessary motions. In addition, court staff have noted that rule 5.552(d)(1)(C) requires that notice of a petition for disclosure be served on “[t]he child,” while the relevant statutes stipulate that notice be served on a child 10 years of age or older.² Commenters noted that serving notice on an infant or young child makes no sense and is a waste of resources.

In addition to these two inconsistencies, the Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum also recommend deleting language in the rule that is duplicative of statutory language. This follows the request of the Judicial Council’s Rules and Projects Committee that the Family and Juvenile Law Advisory Committee review rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate. Since repetitions of statutory text in the rules of court necessitate that they be amended whenever the underlying statutes are amended, deleting the duplicative language will reduce the frequency of rule amendments.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment to the standard mailing list for family and juvenile law proposals during the spring 2017 invitation-to-comment cycle from February 27 to April 28. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals. In addition, the proposal was circulated to tribal advocates, tribal leaders, and others with a particular interest in tribal issues.

Eight comments were received during the comment period. Five commenters supported the proposal, two supported it if amended, and one did not indicate whether he or she supported the proposal. The bulk of the substantive comments centered on the issue of whether the language in the rule that duplicates statutory language should be retained. Of the eight commenters, three indicated that the duplicative language should be stripped, three indicated that it should be retained, and two took no position on this question.

The commenters who indicated that the duplicative language should be taken out were California Indian Legal Services, the Orange County Bar Association, and the Superior Court of San Diego County. Those who indicated that the duplicative language should be retained were the State Bar of California’s Standing Committee on the Delivery of Legal Services, the Superior Court of Los Angeles County, and the Superior Court of Riverside County.

The commenters who urged that the language be retained argued that it is useful to litigants, particularly self-represented litigants, who may not have the access or capacity to seek out the statutory language and determine which category they fit in. Having the language in the rule is of assistance to them.

² See Welf. & Inst. Code, §§ 290.1–295.

In light of the comments, the Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum considered whether those portions of the rule that duplicate statutory language should be retained. While litigants and practitioners may prefer to have the statutory language repeated in the rule for ease of reference, ultimately the committee and forum decided that there was insufficient basis to outweigh the general policy that duplication of statutory language in the rules of court should be avoided. Such duplication risks creating uncertainty and confusion when there are minor inconsistencies in language, or where there is a lag time between statutory changes and rule revisions.

Alternatives Considered

The committee and forum considered taking no action at this time. However, as discussed above, rule 5.552 as currently drafted is inconsistent with statutory law. The inconsistency has caused confusion and results in unnecessary court motions and notices, which is an inefficient use of judicial and party resources. The committee and forum also considered whether to leave in the language that is duplicative of statutory law, as some commentators have observed that it helps explain and clarify the statutory requirements that are otherwise confusing.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs or operational impacts are anticipated. The rule revisions conform the rule to the statutory language. It is expected that this will reduce confusion and unnecessary court applications.

Attachments and Links

1. Cal. Rules of Court, rule 5.552, at pages 5–8
2. Chart of comments, at pages 9–16

Rule 5.552 of the California Rules of Court is amended, effective January 1, 2018, to read:

Rule 5.552. Confidentiality of records (§§ 827, 828)

(a) * * *

(b) General provisions

(1) ~~The following individuals and entities may inspect, receive, and copy the juvenile case file without an order of the juvenile court:~~

~~(A) Court personnel;~~

~~(B) The district attorney, a city attorney, or a city prosecutor authorized to prosecute criminal or juvenile cases under the law;~~

~~(C) The child who is the subject of the proceeding;~~

~~(D) The child's parents;~~

~~(E) The child's guardians;~~

~~(F) The attorneys for the parties, including any trial court or appellate attorney representing a party in the juvenile proceeding or related appellate proceeding;~~

~~(G) Judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child;~~

~~(H) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action;~~

~~(I) Members of child protective agencies as defined in Penal Code section 11165.9; and~~

~~(J) The California Department of Social Services in order to carry out its duty to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.~~

(2) ~~The following individuals and entities may inspect the juvenile case file without a court order and may receive a copy of the juvenile case file pursuant to a court order:~~

(A) ~~All persons and entities listed in Welfare and Institutions Code sections 827 and 828 who are not listed in (b)(1) above; and~~

(B) ~~An Indian child's tribal representative if the tribe has intervened in the child's case.~~

(3) ~~Authorization for any other person or entity to inspect, obtain, or copy juvenile case files may be ordered only by the juvenile court presiding judge or a judicial officer of the juvenile court.~~

(4) ~~Juvenile case files may not be obtained or inspected by civil or criminal subpoena.~~

(5) ~~When a petition is sustained for any offense listed in section 676, the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition that are contained in the juvenile case file must be available for public inspection, unless the court has prohibited disclosure of those records under that section.~~

(e)(b) Petition

Juvenile case files may only be obtained or inspected in accordance with sections 827 and 828. They may not be obtained or inspected by civil or criminal subpoena. With the exception of those persons permitted to inspect juvenile court records case files without court authorization under sections 827 and 828, every person or agency seeking to inspect or obtain juvenile court records case files must petition the court for authorization using *Petition Request for Disclosure of Juvenile Case File* (form JV-570).

(1) The specific ~~records~~ files sought must be identified based on knowledge, information, and belief that such ~~records~~ files exist and are relevant to the purpose for which they are being sought.

(2) Petitioner must describe in detail the reasons the ~~records~~ files are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the ~~records~~ files.

(d)(c) Notice of petition for disclosure

(1) * * *

(A)–(B) * * *

(C) The child if the child is 10 years of age or older;

(D)–(I) * * *

(2) * * *

(3) If the petitioner does not know the identity or address of any of the parties in ~~(d)~~(c)(1) above, the clerk must:

(A)–(B) * * *

(4) * * *

~~(e)~~(d) Procedure

(1) * * *

(2) If petitioner shows good cause, the court may set a hearing. The clerk must notice the hearing to the persons and entities listed in ~~(d)~~(c)(1) above.

(3)–(8) * * *

~~(f)~~(e) Reports of law enforcement agencies (§ 828)

~~Except for records sealed under section 389 or 781, or Penal Code section 1203.45, information gathered and retained by a law enforcement agency regarding the taking of a child into custody may be disclosed without court authorization to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for the purposes of official disposition of a case.~~

~~(1) If the law enforcement agency retaining the report is notified under section 1155 that the child has escaped from a secure detention facility, the agency must release the name of the child and any descriptive information on specific request by any agency or individual whose attempts to apprehend the child will be assisted by the information requested.~~

~~(2) In the absence of a specific request, the law enforcement agency retaining the report may release information about a child reported to have escaped from a secure detention facility if the agency determines that the information is necessary to assist in the apprehension of the child or the protection of members of the public from substantial physical harm.~~

1 (3) Except as authorized under section 828, all others seeking to inspect or obtain
2 such reports information gathered and retained by a law enforcement agency
3 regarding the taking of a child into custody must petition the juvenile court
4 for authorization, using *Petition to Obtain Report of Law Enforcement*
5 Agency (form JV-575).

6
7 **~~(g)~~ School notification**
8

9 ~~When a child enrolled in a public school is found to have committed one of the~~
10 ~~offenses described in section 827(b)(2), the court must provide written notice of the~~
11 ~~offense and the disposition to the superintendent of the school district within seven~~
12 ~~days. The superintendent must disseminate information to the principal of the~~
13 ~~school the child attends, and the principal may disseminate information to any~~
14 ~~teacher or administrator for the purposes of the rehabilitation of the child or the~~
15 ~~protection of other students and staff.~~

16
17 **~~(h)~~(f) Other applicable statutes**
18

19 Under no circumstances must this rule or any section of it be interpreted to permit
20 access to or release of records protected under any other federal or state law,
21 including Penal Code section 11165 et seq., except as provided in those statutes, or
22 to limit access to or release of records permitted under any other federal or state
23 statute, including Government Code section 13968.
24

SPR17-16**Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827**

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

	Commentator	Position	Comment	Committee Response
1.	California Indian Legal Services, By Jedd Parr, Directing Attorney Sacramento	A	<p>California Indian Legal Services agrees with the proposal to delete subsection (b) from Rule 5.552, which would achieve the stated purpose of eliminating the conflict between that subsection and WIC 827(f).</p> <p>We note that the Judicial Council has invited comment on whether practitioners prefer subsection (b) to be retained, in light of the complexity of WIC 827. If subsection (b) is indeed retained, it should be modified to comply with WIC 827(f), by stating that in cases where a child is a member of or eligible for membership in a tribe, persons serving the tribe, reservation, or tribal court in capacities similar to those listed at WIC 827(f) are entitled to inspect or receive a copy of the case file without a court order.</p>	<p>No response required.</p> <p>The committee and forum decided to remove the language that was duplicative of statute. As noted, this eliminated the conflict with WIC 827(f).</p>
2.	Executive Committee of the Family Law Section of the State Bar of California By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California	A	The Executive Committee of the Family Law Section supports this rule change as proposed.	No response required.
3.	Orange County Bar Association, By Michael L. Baroni, President Newport Beach	A	<p>Does the rule appropriately address the stated issue? Yes</p> <p>Given the complexity of Welfare and Institutions Code Section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and</p>	<p>No Response required.</p> <p>The committee and forum decided not to retain the statutory language.</p>

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			(g) even if it is duplicative of the statutory language? No. The existing language contains conflicts and different terms that are potentially confusing. The rule should be consistent throughout subdivisions, even if the language is duplicative.	
4.	State Bar of California, Standing Committee on the Delivery of Legal Services By Sharon Djemal, Chair,.	A	<p>Specific Comments</p> <ul style="list-style-type: none">• <u>Does the proposal appropriately address the stated purpose?</u> <p>Yes, the proposal appropriately addresses the stated purpose with respect to when a child that is the subject of the juvenile case file must be served with notice. However, removal of language that is duplicative of Welfare and Institutions Code section 827 creates confusion and causes potential additional barriers for self-represented litigants. When a rule is not clear on its face as to whom it applies, then it creates confusion. If the rule states that juvenile case files may only be obtained or inspected in accordance with sections 827 and 828, this would require everyone who is reading the rule to then look up those code sections to determine if they meet the statutory requirements to have access to the case files, whether they have the right to access the case files without a court order, or whether a court order is required before they may have access.</p> <p>For self-represented litigants (either people who</p>	<p>The committee and forum considered whether the statutory language should be retained in light of this comment and those of other commentators. In the end, the committee and forum concluded that the continuing risk of confusion caused by duplicating statutory language that is subject to change was more problematic than the concerns expressed by the commentator. The committee and forum did not feel there was sufficient basis to depart from the general policy of avoiding duplicating statutory language in the rules.</p>

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			<p>do not have access to a legal aid attorney, or people who choose to self-represent), removal of the language may create an unintended barrier if they do not have the ability to access the code sections. Self-represented litigants residing in rural areas may have the ability to travel to their local court to read the rules of court, but they may not have law libraries or even internet access to look up the code sections referenced in the rules of court. To prevent confusion for court staff, self-represented litigants and representatives of an Indian child's tribe, and to prevent unnecessary court motions and notices, rule 5.552 should contain the duplicative language from section 827. This would make rule 5.552 clear on its face as to which agencies and people have the right to access juvenile case files, when access is allowed without a court order, and when a court order is required before access is allowed.</p> <p>• <u>Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?</u></p> <p>Given section 827's complexity, rule 5.552 should retain the duplicative language in section 827.</p> <p>Additional Comments</p>	

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			The Invitation to Comment asks whether practitioners prefer the rule to retain the duplicative language from section 827, given that section's complexity. Self-represented litigants benefit from rules that are clear and easily understood; not rules that refer them to another code section that they have to look up.	
5.	Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit	AM	Comments: The duplication of the WIC § 827(a) portion in the rule is helpful and should remain rather than be eliminated (with updates to be consistent). The information is so dense that it is easier to review the rule with the entitled parties list rather than having to go back and forth between WIC § 827 and Rule 5.552 to piece it together. Suggested Modifications: Rule 5.552 Original (b) - Leave the duplicative language to allow for easy review of the list of entitled parties when reviewing the rest of the rule. New (b) - This section should stand out. Some are not aware of the subpoena not being applicable to juvenile records and often there are attempts to request records in this fashion. New (e) - Los Angeles County uses WIC § 827.9 for access to law enforcement reports and the JV-575 petition form. Request for Specific Comments:	See response to comments from the State Bar of California's Standing Committee on the Delivery of Legal Services above. See response to comments from the State Bar of California's Standing Committee on the Delivery of Legal Services above. This section applies only to Los Angeles County per subsection (p) and does not require rule revision.

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	Commentator	Position	Comment	Committee Response
			<p>Does the proposal appropriately address the stated purpose? Yes. Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language? Because WIC § 827 is complex, the duplicative language is helpful. It should, however, be updated to be consistent when there are changes to 827. Would the proposal provide cost savings? If so, please quantify. It is not likely that there would be cost savings. What would courts require in order to implement this proposal? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. The courts would require additional training of staff, revision of processes and procedures such as staff manuals. Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?</p>	

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	Commentator	Position	Comment	Committee Response
			Yes. How well would this proposal work in small courts? Large courts? The proposal should work well within small or large courts.	
6.	Superior Court of California, County of Orange By Cynthia Beltran, Administrative Analyst, Family Law and Juvenile Court.	NI	Q: What would the implementation requirements be for courts? In order to implement, information regarding amendment would need to be communicated to staff and judges. Procedures would also need to be revised. Q: Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, an effective date of six months would be sufficient time for implementation.	No response required. No response required.
7.	Superior Court of California, County of Riverside By Susan D. Ryan, Chief Deputy of Legal Services	A	<u>Does the proposal address the stated purpose?</u> Yes. <u>Given the complexity of WIC 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?</u> Yes. Practitioners would prefer consistency in the code, even if it means the language is duplicative.	No response required. See response to State Bar of California of California's Standing Committee on the Delivery of Legal Services above.

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	Commentator	Position	Comment	Committee Response
			<p><u>Would the proposal provide cost savings?</u></p> <p>No.</p> <p><u>What would the implementation requirements be for courts?</u></p> <p>Minimal time needed to inform bench officers and staff of the changes.</p> <p><u>Would six months be sufficient time to implement?</u></p> <p>Yes.</p> <p><u>How well would this proposal work in courts of different sizes?</u></p> <p>No difference.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
8.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer	AM	<ul style="list-style-type: none"> • The old subdivision (b) is not necessary. It is a good idea to remove it and avoid having to make changes every time the statutes change. • In addition to WIC 827, there are other statutes that address the confidentiality and release of juvenile case files, most notably WIC 827.10. WIC 828 addresses the law enforcement report (not the case file) and is covered later in rule 5.552. Our court recommends removing WIC 828 from the new subdivision (b) and adding at least WIC 827.10. 	<p>The old subdivision (b) has been removed.</p> <p>Article 22 of Chapter 2, Part 1, Division 2 of the Welf. & Inst. Code §§ 825-832 contain various provisions governing the records of children who are wards or dependents. Section 827 specifically addresses court case files and who can have access. Section 827.10 addresses when the child welfare agency is authorized to permit access to its files and records and §828 addresses sharing of information related to information gathered by a</p>

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	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none">• Government Code section 13968 was repealed many years ago.	law enforcement agency, including by court order. Reference to this section has been removed in response to this comment.