



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

Title

Juvenile Law: Intercounty Placements

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556

Effective Date

January 1, 2019

Date of Report

August 14, 2018

Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of the California Rules of Court, repealing and adopting one rule, and approving two Judicial Council forms to conform to recent statutory changes regarding who a child welfare agency must notice when moving a foster child to a different county.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Amend rule 5.610(c) of the California Rules of Court to delete the specific findings drawn from sections 375 and 750 and replace them with cross-references to those code sections;
2. Repeal rule 5.614 of the California Rules of Court because it simply restates the text in sections 380 and 755;
3. Adopt rule 5.614 of the California Rules of Court governing intercounty placements;

4. Approve *Notice of Intent to Place Child Out of County* (form JV-555) for optional use; and
5. Approve *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556) for optional use.

The text of the amended rules and the new forms are attached at pages 7–15.

Relevant Previous Council Action

The Judicial Council adopted what are now rules 5.610 and 5.614, effective January 1, 1990 as rules 1425 and 1427 respectively. Both rules were renumbered effective January 1, 2007. Rule 5.610 has been amended four times to reflect amendments in the statutory text that it restates.

Analysis/Rationale

Assembly Bill 1688 (Rodriguez; Stats 2016, ch. 605) amends Welfare and Institutions Code section 361.2¹ to require the county to provide notice to the child’s attorney and to the child, if 10 years of age or older, before moving the child to a placement outside the county, and to allow for the child and child’s attorney to object to the move. To that end, the committee recommends rule 5.610 be amended and rule 5.614 be repealed and adopted to ensure that they conform to the requirements in Welfare and Institutions Code section 361.2(h) and to provide court process for notice of, and objection to, an out-of-county placement.

The committee also recommends removing any language that is repetitive of statute. Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s, when access to statutory materials via electronic devices and online resources was far more limited by judicial officers than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year because of the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily and at no cost. This major change in the information infrastructure for juvenile courts warranted a reexamination of the roles of the rules of court in these proceedings. Effective January 1, 2017, the Judicial Council amended 21 rules and repealed three to delete language that duplicated statute. This approach streamlines the rules and reduces the frequency with which the rules need to be amended to reflect changes in the statutory text.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

Rule 5.614. Intercounty placements

The committee recommends replacing rule 5.614 with a rule governing intercounty placements. The streamlined rule cross-references section 361.2(h), obviating the need to amend the rule again if this code section is amended in the future. The rule also identifies the optional forms that can be used for notice and objection.

Notice. Although section 361.2(h) requires that notice of the agency's intent to place the child out of county be provided to the child's parent or guardian, the child's attorney, and the child, if the child is 10 years of age or older, section 361.2(h) does not provide for notice to two important groups: the child's identified Indian tribe and the child's Court Appointed Special Advocate (CASA) volunteer. The committee recommends that rule 5.614 include notice to these two additional participants.

Federal and state law protect the relationship between an Indian child and the child's tribe.² In particular, the law requires that whenever an Indian child is removed from his or her home for placement or further placement is made, the placement must comply with the placement preferences of the Indian Child Welfare Act.³ Furthermore, the child's tribe must be consulted on any placement or change in placement.⁴ A child's identified Indian tribe is entitled to receive notice of every hearing in a dependency case.⁵

Because of the significant role a dependent child's CASA volunteer plays in the child's life, CASA volunteers are entitled to notice of all hearings under the California Rules of Court.⁶ Given the potentially life-changing importance of an out-of-county placement, the CASA volunteer should receive notice of the agency's request to place the child out-of-county, just as the volunteer receives notice of other important court events regarding the child.

The committee recommends that the Judicial Council approve two optional forms for use to notice and object to a planned out-of-county placement. One benefit to form JV-555 is that it contains a statement informing the person notified that if he or she does not agree with the proposed placement, he or she may request a court hearing.

Burden of Proof. Section 362.1(h) is silent about the burden of proof for the hearing on the proposed out-of-county placement. Evidence Code section 115 establishes that, except as otherwise provided by the law, the burden of proof requires proof "by a preponderance of the evidence." The committee recommends that rule 5.614 clarify that the agency must show by a preponderance of the evidence that the standard in section 361.2(h) is met.

² 25 U.S.C. §§ 1901–1903; Welf. & Inst. Code, § 224.

³ 25 U.S.C. § 1915; 25 C.F.R. §§ 23.129–23.132 (2018); Welf. & Inst. Code, §§ 224(b), 361.31.

⁴ Welf & Inst. Code, § 361.31(g).

⁵ Welf. & Inst. Code § 224.2(b).

⁶ Cal. Rules of Court, rules 5.708, 5.725, 5.726, 5.728, 5.730, 5.740.

Policy implications

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal, in addition to providing procedural guidance for proposed out-of-county placements, amends the rules of court to include statutory references rather than a paraphrase of the full statutory text.

This approach should decrease the frequency of rule amendments because the rules would remain current even when these code sections are amended again.

Comments

This proposal circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April 9 to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Ten organizations provided comment: two agreed with the proposal, five agreed with the proposal if modified, no commenters opposed the proposal, and three did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 16–34.

Notice to CASA program. The committee sought specific comment on whether the child's CASA program should receive notice of the agency's intent to move the child. As circulated for public comment, the rule required notice to the CASA program and listed the CASA program as a participant that could object to the move and thereby cause a hearing to be set.⁷ Of the four commenters who addressed this question, only one disagreed with the CASA program receiving notice. Two of the commenters agreed that the CASA should receive notice, but should not be allowed to object and thereby cause a hearing to be set.

The committee recommends that the rule maintain the requirement to provide notice to the child's CASA program, but that the child's CASA program be removed from the list of participants that can object to the proposed placement and thereby cause a hearing to be set. In all instances where the CASA program receives notice of a court hearing, the CASA program is not a party and therefore cannot request a contested hearing on the agency's recommendation.

Notice of Hearing. The Family and Juvenile Law Advisory Committee considered possibilities regarding who should have the duty of providing notice of the hearing. Options included requiring the clerk of the court to provide notice and requiring the agency requesting out-of-county placement to provide notice. Workload concerns arose about both options. Another option was to have the party requesting the hearing provide notice. This option caused concern because children are unlikely to have the necessary procedural knowledge.

⁷ A hearing on an objection to a proposed out-of-county placement is automatic per statute. (§ 361.2(h).)

As circulated for public comment, the proposed rule took a hybrid approach. It required that if the party objecting is represented by counsel, that counsel must provide notice. The clerk would be required to give notice of a hearing requested by a participant not represented by counsel. The committee's intention was to ensure proper notice and somewhat reduce the burden this new procedure places on court clerks.

The hybrid notice approach requires that the clerk determine whether the person objecting has an attorney who should notice the hearing, or whether the clerk should notice the hearing. The committee sought specific comment on whether this hybrid approach would put too much of a burden on the clerk or whether it would somewhat lessen the burden of notice on the clerk. Several commenters stated that the clerk should serve notice of the hearing on all requests. Several commenters stated that the hybrid approach would lessen the burden of service on the clerk. One commenter suggested that although the hybrid approach seemed like a decent compromise, the procedure for notice in section 827 petitions should be used and the court clerk should be responsible for notice only if the petitioner does not know the identity or address of a party who is required to be served.

The committee considered and discussed all these options and ultimately decided that the hybrid approach evenly distributed the workload of notice of a hearing and would lessen the clerk's workload.

Alternatives considered

In addition to the alternatives considered in response to the public comments, when AB 1688 was passed, the committee originally determined that rules and forms were not necessary to implement the changes to the intercounty placement notice requirements. However, both the California Department of Social Services and a large law office representing children have since asked Judicial Council staff to create forms for both the notice of and the potential objection to the proposed move. The committee now recognizes a potential need for optional forms to ensure the required written notice.

The committee considered not creating optional Judicial Council forms and only amending rule 5.614. Members questioned whether the forms were necessary. Ultimately, the committee decided to circulate the forms for public comment and sought specific comment on whether the forms would be helpful. All the commenters who answered this specific question stated that the forms would be helpful. One large county requested that the forms be optional because its department had already developed a form for this purpose. The committee recommends that both forms be approved for optional use so that counties that have developed their own local forms be able to continue to use them.

Fiscal and Operational Impacts

The recommended rule amendments and forms are intended to implement statutes that became effective January 1, 2017. Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload.

Similarly, the written notice requirements to parents and guardians have been in place for many years and those to the child's attorney and the child aged 10 or older have been in place since January 1, 2017; therefore this recommendation should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.

One large court commented that implementation of the notices would result in minimal operational impacts to the juvenile court and that training for sending notifications would be necessary but minimal in terms of costs. Another large court commented that staff training and changes to its case management system would be required and that procedures would also have to be developed. A third large court commented that staff of the clerk's office would need to be trained on how to process these types of documents and when to give notice; procedures would need to be created; and codes would need to be created in the case management system for processing the documents. Another large court commented that procedures would need to be updated and training conducted for staff regarding the new forms and noticing requirements and that these changes may affect the Intercounty Transfer Protocol that the Southern California region uses. A fifth large court commented that the implementation requirements would be training staff, advising attorneys that optional forms are available, and drafting or changing docket codes.

Of the courts that commented on whether the proposal would provide cost savings, one commented "No," one commented "unknown," and two commented that there would be "minimal" costs to the court.

Attachments and Links

1. Cal. Rules of Court, rules 5.610 and 5.614, attached at pages 7–10
2. Forms JV-555 and JV-556, at pages 11–15
3. Chart of comments, at pages 16–34
4. Link A: Assembly Bill 1688 (Stats 2016, ch. 605),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1688

Rule 5.610 of the California Rules of Court is amended, and rule 5.614 is repealed and adopted, effective January 1, 2019, to read:

Chapter 7. Intercounty Transfers and Placements; Interstate Compact on the Placement of Children

Rule 5.610. Transfer-out hearing

(a) Determination of residence—special rule on intercounty transfers (§§ 375, 750)

(1) For purposes of rules 5.610, ~~and 5.612, and 5.614,~~ the residence of the child is the residence of the person who has the legal right to physical custody of the child according to prior court order, including:

(A) A juvenile court order under section 361.2; and

(B) An order appointing a guardian of the person of the child.

(2)–(4) * * *

(b) * * *

(c) Transfer to county of child’s residence (§§ 375, 750)

(1) After making its jurisdictional finding, the court may order the case transferred to the juvenile court of the child’s residence ~~if:~~ as specified in section 375 or section 750.

~~(A) The petition was filed in a county other than that of the child’s residence; or~~

~~(B) The child’s residence was changed to another county after the petition was filed.~~

(2) If the court decides to transfer a delinquency case, the court must order the transfer before beginning the disposition hearing without adjudging the child to be a ward.

(3) If the court decides to transfer a dependency case, the court may order the transfer before or after the disposition hearing.

1 (d)–(j) * * *

2
3 **~~Rule 5.614. Courtesy supervision (§§ 380, 755)~~**

4
5 ~~The court may authorize a child placed on probation, a ward, or a dependent child to live~~
6 ~~in another county and to be placed under the supervision of the other county's county~~
7 ~~welfare agency or probation department with the consent of the agency or department.~~
8 ~~The court in the county ordering placement retains jurisdiction over the child.~~
9

10 **Rule 5.614. Intercounty Placements**

11
12 **(a) Procedure**

13
14 Whenever a social worker intends to place a dependent child outside the child's
15 county of residence, the procedures in section 361.2(h) must be followed.
16

17 **(b) Participants to be served with notice**

18
19 Unless the requirements for emergency placement in section 361.4 are met, before
20 placing a child out of county, the agency must notify the following participants of
21 the proposed removal:
22

23 (1) The participants listed in section 361.2(h);

24
25 (2) The Indian child's identified Indian tribe, if any;

26
27 (3) The Indian child's Indian custodian, if any; and

28
29 (4) The child's CASA program, if any.
30

31 **(c) Form of notice**

32
33 The social worker may provide the required written notice to the participants in (b)
34 on *Notice of Intent to Place Child Out of County* (form JV-555). If form JV-555 is
35 used, the social worker must also provide a blank copy of *Objection to Out-of-*
36 *County Placement and Notice of Hearing* (form JV-556).
37

38 **(d) Method of Service**

39
40 The agency must serve notice of its intent to place the child out of county as
41 follows:
42

- 1 (1) Notice must be served by either first-class mail, sent to the last known
2 address of the person to be noticed; electronic service in accordance with
3 section 212.5 of the Welfare and Institutions Code; or personal service at
4 least 14 days before the placement, unless the child's health or well-being is
5 endangered by delaying the action or would be endangered if prior notice
6 were given;
7
8 (2) Notice to the child's identified Indian tribe and Indian custodian must comply
9 with the requirements of section 224.2; and
10
11 (3) Proof of Notice (form JV-326) must be filed with the court before any
12 hearing on the proposed out-of-county placement.
13

14 **(e) Objection to proposed out-of-county placement**
15

16 Each participant who receives notice under (b)(1)–(3) may object to the proposed
17 removal of the child, and the court must set a hearing as required by section
18 361.2(h).
19

- 20 (1) An objection to the proposed intercounty placement may be made by using
21 Objection to Out-of-County Placement and Notice of Hearing (form JV-556).
22
23 (2) An objection must be filed no later than seven days after receipt of the notice.
24

25 **(f) Notice of hearing on proposed removal**
26

27 If an objection is filed, the clerk must set a hearing, and notice of the hearing must
28 be as follows:
29

- 30 (1) If the party objecting to the removal is not represented by counsel, the clerk
31 must provide notice of the hearing to the agency and the participants listed in
32 (b);
33
34 (2) If the party objecting to the removal is represented by counsel, that counsel
35 must provide notice of the hearing to the agency and the participants listed in
36 (b);
37
38 (3) Notice must be by either first-class mail, sent to the last known address of the
39 person to be noticed; electronic service in accordance with section 212.5 of
40 the Welfare and Institutions Code; or personal service; and
41
42 (4) Proof of Notice (form JV-326) must be filed with the court before the hearing
43 on the proposed removal.

1
2 **(g) Burden of proof**
3

4 At a hearing on an out-of-county placement, the agency intending to move the child
5 must prove by a preponderance of the evidence that the standard in section 361.2(h)
6 is met.
7

8 **(h) Emergency placements**
9

10 If the requirements for emergency placement in section 361.4 are met, the agency
11 must provide notice as required in section 16010.6.
12

Notice of Intent to Place Child Out of County

This notice must be served with a blank copy of form JV-556, Objection to Out-of-County Placement and Notice of Hearing, and must be provided 14 days before the proposed date of placement.

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 To:

a. Parent or guardian (name):

b. Parent or guardian (name):

c. Parent's attorney, if any (name):

d. Parent's attorney, if any (name):

e. Child's attorney (name):

f. Child, if 10 years of age or older (name):

g. Child's identified Indian tribe, if any (name):

h. Child's Indian custodian, if any (name):

i. Child's Court Appointed Special Advocate (CASA) program, if any (name of person notified):

2 Name of agency proposing move:

Address:

Phone number:

The agency intends to place the child out of county. The reasons why placement must be outside of the county are:

If you need more space, attach a sheet of paper and write "JV-555, Item 2—Reasons for Out-of-County Placement" at the top.

Number of pages attached: _____



Child's name: _____

Case Number:

- ③ **If you do not agree with the out-of-county placement, you may request a court hearing.** To do so, you can fill out form JV-556, *Objection to Out-of-County Placement and Notice of Hearing*, and file it with the court within **seven days** after the date you received this notice.

I declare under penalty of perjury under the laws of the State of California that the information in items 1 and 2 is true and correct, which means that if I lie on the form, I am committing a crime.

Date: _____

Type or print your name

▶ _____
Sign your name

Objection to Out-of-County Placement and Notice of Hearing

If you do not agree with the out-of-county placement of the child, you can request a court hearing by filling out this form. The following people can object to the placement: the child's parent or guardian, the child's attorney, the child (if 10 years of age or older), and the child's identified Indian tribe or custodian. After you complete and sign this form, bring it to the clerk of the court.

If you are not an attorney and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are an attorney in this matter and you requested the hearing, you must provide notice of the hearing to all other participants.

Clerk stamps date here when form is filed.

DRAFT
**Not approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

- 1 a. Name: _____
- b. I am the ☐ child ☐ child's attorney ☐ child's parent
☐ child's identified Indian tribe ☐ child's Indian custodian
☐ parent's attorney

c. ☐ Confidential address

d. Address: _____

2 **Notice of court hearing**

A court hearing is scheduled on the objection to out-of-county placement.

**Hearing
Date &
Time**

→ Date:
Dept.:

Time:
Room:

Name and address of court if different from above:

- 3 ☐ Parent or guardian (*name & address*): _____

☐ Confidential address in court file

- 4 ☐ Parent or guardian (*name & address*): _____

☐ Confidential address in court file

- 5 ☐ Parent or guardian's attorney (*name & address*): _____

- 6 ☐ Parent or guardian's attorney (*name & address*): _____



Child's name: _____

- [illegible]

If you need more space, attach a sheet of paper and write “JV-556, Item 12—Reasons Not to Place the Child Outside the County” at the top.

Number of pages attached:

Child's name: _____

Case Number:

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Sign your name

What if I am deaf or hard of hearing?



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for a *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

SPR 18-28

Juvenile Law: Intercounty Placements (Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556)

Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch Director of Governmental Affairs <i>San Francisco, CA</i>	AM	<p>The Executive Committee of the Family Law Section of the California Lawyers Association agrees with this proposal, with changes. We believe the proposal is generally sound. It expounds on the existing legal framework for a court’s handling of placement changes that will result in a dependent child living outside the county of jurisdiction. Having rules to govern notice and an opportunity to be heard when this type of placement is at issue is critical. The changes we ask for are as follows:</p> <p>a. Proposed rule 5.614(d) dictates the requirements for service of notice that are placed upon the child welfare agency prior to making the placement change. Subparagraph (1) allows for service to be made either by first class mail or personal service. However, it does not explicitly provide for electronic service. Given the movement being made across the state toward electronic filing and paperless case management, we believe electronic service should be allowed</p> <p>b. Proposed rule 5.614(f) would govern notice of a hearing on the proposed removal. Subparagraph (2) would place upon a party the burden of providing notice of the hearing, if that party is represented by counsel. We believe the requirement for providing notice should fall upon the clerk of the court, regardless of whether the party is represented by counsel. The narrative information accompanying the proposal</p>	<p>a. The committee has amended the rule to allow for electronic service of notice.</p> <p>b. The committee considered and discussed this option and ultimately decided that the “hybrid” approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk’s workload.</p>

SPR 18-28

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Simple comment chart template—your first choice in comment charts

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	Commenter	Position	Comment	Committee Response
			<p>suggests the recommendation is being made due to workload concerns expressed by both the courts and child welfare agencies. But workload concerns have also been expressed by law offices. In particular, placing this type of requirement on law offices at a time when half the counties across the state are experiencing significant reductions in their ability to fund court-appointed counsel is especially onerous. Further, rule 5.570 governing petitions to modify prior court orders requires the court clerk to provide notice of a hearing on all such requests, regardless of whether a party is represented by counsel. We see no reason to make a distinction with a request for hearing on a proposed intercounty placement move.</p> <p>c. Proposed rule 5.614(f) also sets forth the methods for providing notice. Similar to the point we make in connection with proposed rule 5.614(d), it allows only for service by first class mail or personal service. For the reasons stated above, we believe electronic service should be authorized under this rule.</p>	<p>c. The committee has amended the rule to allow for electronic service of notice.</p>
2.	Orange County Bar Association By: Nikki P. Miliband President Newport Beach, CA	AM	<p>The proposal addresses the stated purpose of facilitating compliance with Section 362.1(h) and allowing an opportunity to object to a proposed out-of-county placement.</p> <p>The JV-555 and JV-556 forms help provide guidance. However, the JV-555 should include</p>	<p>No response required.</p> <p>The committee has revised form JV-555 to include that notice must be provided 14 days before the proposed date of placement.</p>

SPR 18-28

Juvenile Law: Intercounty Placements (Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556)

Simple comment chart template—your first choice in comment charts

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	Commenter	Position	Comment	Committee Response
			that the notice must be provided 14 days prior to the proposed date of placement.	
3.	Orange County Social Services Agency By: Martin Raya Administrative Manager I		<p>“Should the child’s CASA be included in the list of those who should receive notice of the agency’s proposed placement of the child out of the county?”</p> <p>No, as this exceeds the requirement of WIC § 361.2(h) and consequently adds an undue burden to the Placing Agency. Additional thoughts/considerations:</p> <ul style="list-style-type: none">• Since CASAs do not have an assigned attorney, what is the recourse if a CASA disagrees with placement and a hearing is calendared? How is CASA objecting to placement legally actionable; do they have this authority?• Under the proposed noticing protocol suggested in SPR 18-28, the court clerk would be impacted to provide notice for all CASA-related objections, due to the CASA being the only involved party without an attorney.• In our experience, there is a correlation between youth assigned a CASA and youth being difficult-to-place, making out-of-county placements more likely for this population, which contributes to a concern over: the workload of noticing CASAs; the potential limiting of available placements (out-of-county options); further delays in expediting placement (particularly when we	<p>The committee has maintained the requirement to provide notice to the child’s CASA program, but has removed the child’s CASA program from the list of participants that can object to the proposed placement.</p>

SPR 18-28

Juvenile Law: Intercounty Placements (Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556)

Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
			<p>have youth we are trying to transition out of shelter care facilities within 10 days).</p> <ul style="list-style-type: none">• This addition could create an additional barrier to expediting out-of-county placement, when we do not have sufficient capacity in-county to accommodate: placement of special medical children; placement of sibling sets (of 3 or more); placement of children with complex needs (e.g., medical and behavioral needs, etc.) <p>“Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient?”</p> <ul style="list-style-type: none">• We have already developed county specific forms to notice parties of out-of-county placements. Would these forms be mandatory, for county use?• Mandatory use of the JV forms would eliminate the option of combining forms to meet the requirements of out-of-county notice and presumptive transfer of specialty mental health services.• JV-556: We have concern regarding CASA being able to legally object to an out-of-county placement and request a hearing, as this could create an additional barrier to expediting placement.• JV-556, item #7: Suggest replacing “social worker” with “Placing Agency” or “Child Welfare Agency” or similar language.	<p>The committee is recommending that these forms be adopted as optional forms. This would allow parties to continue to use local forms.</p> <p>The committee has maintained the requirement to provide notice to the child’s CASA program, but has removed the child’s CASA program from the list of participants that can object to the proposed placement.</p> <p>The committee has revised the form to replace “social worker” with “agency”.</p>

SPR 18-28

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Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
			Many counties have placement and case-carrying social workers, making the term “social worker” vague.	
4.	San Diego County Counsel By: Caitlin Rae Deputy	AM	Rule 5.614 section (b)(2) should be modified to say "An Indian child's identified Indian tribe, if any." The agency should only need to notice an Indian tribe for an Indian child. In some cases, the child is not Indian (under ICWA definitions) but may have some connection to a tribe. In those cases, the tribe does not have standing to object to the out of county transfer. The tribe only has standing to object in cases where the child has been defined as an Indian child for ICWA purposes.	The committee has amended the rule at (b)(2) and (b)(3) to specify that the notice requirements apply to an Indian child.
5.	Superior Court of Los Angeles By: Sandra Pigati-Pizano Management Analyst Los Angeles, CA	A	The implementation of the notices will result in minimal operational impacts to the Juvenile Dependency and Delinquency court. Training for sending notifications will be necessary but minimal in terms of costs.	No response required.
6.	Superior Court of Orange County By: Cynthia Beltran Administrative Analyst		Does the proposal appropriately address the stated purpose? <i>Yes</i> Should the child's CASA be included in the list of those who should receive notice of the agency's proposed placement of the child out of the county? <i>CASA should be noticed as a courtesy, but they do not have the right to set a contested hearing and should not be allowed to file an objection. An objection would require a hearing to be set.</i>	No response required. The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.

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Juvenile Law: Intercounty Placements (Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556)

Simple comment chart template—your first choice in comment charts

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	Commenter	Position	Comment	Committee Response
			<p>Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient?</p> <p><i>The forms somewhat provides guidance and consistency. If more than one child per family is being placed out of county, is the intent to file one form (JV-555) per child? From a practical standpoint, SSA would likely file one form if the children are part of the same family.</i></p> <p><i>It is also missing notice to the parent's attorneys (if any).</i></p> <p>The “hybrid” notice approach requires that the clerk determine whether the person objecting has an attorney who should notice the hearing, or whether the clerk should notice the hearing. Is this too much of a burden on the clerk? Will the “hybrid” notice approach help to somewhat lessen the burden of notice on the clerk?</p> <p><i>Yes, it would be easier to send all notices so a clerk doesn't have to make a decision on who should provide notice. Additionally, if the attorney fails to properly serve notice, what happens? It's safer not to delay the placement longer than necessary and require the court to serve notice using a form other than the JV-326. This form does not have an option for a hearing re: Out of County Placement. Also in regards to notice, does the objection have to be served upon the agency requesting out of county placement?</i></p>	<p>Counties should use the forms in the way that is easiest for their case management system.</p> <p>The committee has revised the form to include notice to the parents' attorneys, if any.</p> <p>The committee considered and discussed several options and ultimately decided that the “hybrid” approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk's workload.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Would the proposal provide cost savings? <i>No, it will require additional time and supplies (printing/postage) to process. However, the volume is not expected to be high and the cost to implement is likely to be minimal.</i></p> <p>What would the implementation requirements be for courts? <i>Staff training and changes to our case management system would be required. Procedures would also have to be developed. Approximately three months would be needed to implement.</i></p> <p>Would two months from JCC approval be sufficient? <i>We request minimum of 3 months to ensure CMS program changes are tested and complete.</i></p> <p>JV-555</p> <ul style="list-style-type: none"> ▪ <i>Section #3 should bold the seven day reference to clearly notify the party there is a timeframe to file an objection.</i> ▪ <i>Language should be added to notify that party objecting that they will be required to attend a hearing.</i> <p>JV-556</p> <ul style="list-style-type: none"> ▪ <i>The title should include “Request for Hearing” as the filing of the objection will require a hearing.</i> 	<p>No response required.</p> <p>No response required.</p> <p>All other courts responded that two months was sufficient.</p> <p>The committee has revised the form to bold the seven day reference.</p> <p>The committee has revised the title of form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing.</p> <p>The committee has revised the title of form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing.</p>

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> Remove reference to the child's CASA being able to object to out-of-county placement. Add a section to insert hearing date. Is it necessary for the person objecting to the placement to write out their reason if a hearing will be held? Why is the phone number field necessary for the child, CASA, Indian Tribe, and Indian Custodian necessary? We do not provide notice via telephone. 	<p>The committee has revised form JV-556 to remove the reference to the child's CASA being able to object to the proposed placement.</p> <p>The committee has revised form JV-556 to include a box for hearing date, time, and location.</p> <p>The committee has maintained the space to write out the reason the person is objecting to the place to put everyone on notice of what the hearing is about.</p> <p>The committee has revised the form to remove the request for telephone numbers.</p>
7.	Superior Court of Riverside County By: Susan D. Ryan Chief Deputy of Legal Services	A	<p>Does the proposal appropriately address the stated purpose? <i>Yes.</i></p> <p>Should the child's CASA be included in the list of those who should receive notice of the agency's proposed placement of the child out of county? <i>Yes.</i></p> <p>Are the forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? <i>Yes.</i></p> <p>The "hybrid" notice approach requires that the clerk determine whether the person objecting</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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	Commenter	Position	Comment	Committee Response
			<p>has an attorney who should notice the hearing, or whether the clerk should notice the hearing. Is this too much of a burden on the clerk? <i>No.</i></p> <p>Will the “hybrid” notice approach help to somewhat lessen the burden of notice on the clerk? <i>Yes.</i></p> <p>Would the proposal provide cost savings? <i>No.</i></p> <p>What would the implementation requirements be for courts? <i>Clerk’s office staff would need to be trained on how to process these types of documents and when to give notice. Procedures would need to be created. Codes would need to be created in the case management system for processing the documents.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes.</i></p> <p>How well would this proposal work for courts of different sizes? <i>The proposals should work well for courts of any size.</i></p>	<p>No response required.</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 San Bernardino County		The impact would fall on the child welfare agency as they must notice the minor when	The recommended rule amendments and forms are intended to implement statutes that became

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	Commenter	Position	Comment	Committee Response
			<p>moving them from foster care to a different county, including the notice to all parties.</p> <p>It could also impact the court if we start receiving objections and will then requires additional court time and hearings would have to be set.</p> <p>Does the proposal appropriately address the stated purpose? <i>Yes</i></p> <p>Should the child’s CASA be included in the list of those who should receive notice of the agency’s proposed placement of the child out of the county? <i>Yes</i></p> <p>Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? <i>Forms are helpful</i></p> <p>The “hybrid” notice approach requires that the clerk determine whether the person objecting has an attorney who should notice the hearing, or whether the clerk should notice the hearing. Is this too much of a burden on the clerk?</p>	<p>effective January 1, 2017. Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload. Similarly, the written notice requirements to parents and guardians have been in place for many years, and the written notice requirements to the child’s attorney and the child age 10 or older have been in place since January 1, 2017; therefore this should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.</p> <p>No response required.</p> <p>The committee has maintained the requirement to provide notice to the child’s CASA program, but has removed the child’s CASA program from the list of participants that can object to the proposed placement.</p> <p>No response required.</p> <p>The committee considered and discussed several options and ultimately decided that the “hybrid” approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not</p>

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	Commenter	Position	Comment	Committee Response
			<p><i>Yes</i></p> <p>Will the “hybrid” notice approach help to somewhat lessen the burden of notice on the clerk?</p> <p><i>Yes Somewhat. If CFS is moving a child(ren) from one placement to another, they submit a “Change of Placement Packet” and should send notice to the appropriate parties. The packet may contain that the child(ren)’s address is in a confidential placement, therefore, the court would not know if they are moved to a different county. CFS should be responsible for sending notice to the parties as required by law when submitting a “Change of Placement”, and the court clerk can send notice when an “Objection to Out of County Placement” when it is filed with the court.</i></p> <p>The additional parties that are notified could potentially raise the amount of court hearings, as CASA and the minor(s) could oppose the change in placement.</p> <p>Please clarify the amount of days prior to the court hearing that the “Proof of Notice Form JV -326) must be filed with the court.</p>	<p>represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk’s workload.</p> <p>See committee response above</p> <p>The committee has maintained the requirement to provide notice to the child’s CASA program, but has removed the child’s CASA program from the list of participants that can object to the proposed placement.</p> <p>The committee has amended the rule to indicate the Proof of Notice must be filed before <i>any</i> hearing on the proposed out-of-county placement.</p>

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	Commenter	Position	Comment	Committee Response
			Procedures will need to be updated and training conducted for staff regarding the new forms and noticing requirements. In addition, these changes may impact the Inter-County Transfer Protocol that the Southern California Region uses, based on the Rule changes and/or forms.	<p>The committee is not setting a deadline for filing form JV-326 to allow courts the most flexibility in hearing the matter.</p> <p>The recommended rule amendments and forms are intended to implement statutes that became effective January 1, 2017. Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload.. Similarly, the written notice requirements to parents and guardians have been in place for many years, and the written notice requirements to the child's attorney and the child age 10 or older have been in place since January 1, 2017; therefor this should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.</p>
9.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	<p>Does the proposal appropriately address the stated purpose? <i>Yes.</i></p> <p>Should the child's CASA be included in the list of those who should receive notice of the agency's proposed placement of the child out of the county? <i>Yes. The child's tribe and CASA should be given notice.</i></p> <p><i>What about electronic service? (See SPR 18-25.)</i></p>	<p>No response required.</p> <p>The committee has maintained the requirement to provide notice to the child's CASA program and Indian tribe, but has removed the child's CASA program from the list of participants that can object to the proposed placement.</p> <p>The committee has amended the rule to allow for electronic service of notice.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? <i>The forms are helpful and should be made available.</i></p> <p>The “hybrid” notice approach requires that the clerk determine whether the person objecting has an attorney who should notice the hearing, or whether the clerk should notice the hearing. Is this too much of a burden on the clerk? <i>Perhaps, but it is mitigated by requiring counsel for the objecting party to serve notice.</i></p> <p>Will the “hybrid” notice approach help to somewhat lessen the burden of notice on the clerk? <i>Yes, but should rule 5.614(f) be revised to require service of notice by an objecting party that is a tribe, Indian custodian, or CASA program, thereby relieving the court clerk of the burden of notice in such cases?</i></p> <p>The hybrid notice proposal seems like a decent compromise but would increase workload for court staff. Our court’s Juvenile Court Administration suggested that the procedure for notice of WIC 827 petitions in CRC 5.552(c) would be better. Under that procedure, the court clerk is only responsible for notice if the</p>	<p>No response required.</p> <p>The committee considered and discussed several options and ultimately decided that the “hybrid” approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk’s workload.</p> <p>See committee response above.</p> <p>See committee response above.</p>

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	Commenter	Position	Comment	Committee Response
			<p>petitioner does not know the identity or address of a party who is required to be served.</p> <p>Would the proposal provide cost savings? If so, please quantify. <i>Unknown.</i></p> <p>What would the implementation requirements be for courts? <i>Training staff, advising attorneys that optional forms are available, and drafting or changing docket codes.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes.</i></p> <p>How well would this proposal work in courts of different sizes? <i>It might be more burdensome in for courts that have higher numbers of unrepresented parties.</i></p> <p><u>General Comments:</u></p> <p style="text-align: center;"><u>Rule 5.614</u></p> <p>Rule 5.614(a) should say "dependent child", as WIC 361.2 applies only in dependency cases.</p> <p><u>(a) Procedure</u></p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.</p>

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Commenter	Position	Comment	Committee Response
		<p>Whenever a social worker <u>must intends to</u> place a <u>dependent</u> child outside the child’s county of residence, the procedures in section 361.2(h) must be followed.</p> <p><u>(b) Participants to be served with notice</u></p> <p><u>Unless the requirements for emergency placement in section 361.2 361.4 are met, before placing a child out of county, the agency must notify the following participants of the proposed removal:</u></p> <p><u>(d) Service of notice</u></p> <p><u>(1) The agency must serve notice either by first-class mail, sent to the last known address of the person to be noticed, or by personal service at least 14 days before the placement, unless the child’s health or well-being is endangered by delaying the action or would be endangered if prior notice were given;</u></p> <p>Comment: Although the phrase “at least 14 days before ...” repeats statutory language, it arguably bears repeating because the statutory deadline for ICWA notice (required by subd. (d)(2)) is different. (See WIC § 224.2(d) [10 days before proceeding]; see also subd. (e)(2) [repeating statutory deadline for objection].)</p>	<p>The committee has amended the rule to clarify that it applies to a dependent child. The committee has also amended the rule to make clarifying changes.</p> <p>The committee has amended the rule to reference section 361.4.</p> <p>The committee has amended the rule to include the phrase “at least 14 days before placement” and to repeat the standard for emergency placement.</p>

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Commenter	Position	Comment	Committee Response
		<p><u>(3) <i>Proof of Notice</i> (form JV-326) must be filed with the court before the hearing on the proposed out-of-county placement.</u></p> <p>Comment: The phrase “before the hearing on the proposed out-of-county placement” presumes there will be a hearing on the proposed placement, but the court need not set a hearing unless there an objection to the proposed placement. What should the deadline be for filing the <i>Proof of Notice</i> if no hearing is set?</p> <p><u>(e) Objection to proposed removal</u></p> <p><u>(1) An objection to the proposed intercounty placement can may be done made by using <i>Objection to Out-of-County Placement</i> (form JV-556).</u></p> <p><u>(2) A request for hearing on the proposed removal must be made no later than seven days of after receipt of the notice.</u></p> <p><u>(f) Notice of hearing on proposed removal</u></p> <p><u>(3) Notice must be by personal service or first-class mail; and</u></p> <p><u>(h) Emergency placements</u></p>	<p>The committee has amended the rule to indicate the Proof of Notice must be filed before <i>any</i> hearing on the proposed out-of-county placement. The committee is not setting a deadline for filing form JV-326 to allow courts the most flexibility in hearing the matter.</p> <p>The committee has amended the rule to improve grammar.</p> <p>The committee has amended the rule to improve grammar.</p> <p>The committee has amended the rule to require that mail notice be by first-class mail and to allow for electronic service.</p>

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Commenter	Position	Comment	Committee Response
		<p>If the requirements for emergency placement in section 361.2 361.4 are met, the agency must provide notice as required in section 16010.6.</p> <p><u>Form JV-555</u></p> <p>Page 1, Item 2: “The agency is placing intends to place the child out of county. ...”</p> <p>Page 1, left footer: Wrong WIC section cited at the bottom.</p> <p>Judicial Council of California, www.courts.ca.gov New January 1, 2019, Optional Form Welfare and Institutions Code, § 366.21(n) 361.2(h) California Rules of Court, rules 5.610, 5.614</p> <p>Page 2, Item 3: ... To do this, you can fill out form JV-556, <i>Objection to Out-of-County Placement</i>, and file it with the court within seven days from after the date you received this notice.</p> <p>Comment: The verification sentence (“I declare under penalty of perjury...”) looks like it is part of item 3. It should align with the left margin (i.e., do not match indentation of text in item 3) and perhaps be printed further down on the page.</p> <p><u>Form JV-556</u></p>	<p>The committee has amended the rule to cite section 361.4</p> <p>The committee has revised the form to indicate “intends to place”</p> <p>The committee has revised the form to cite the correct code sections and rules of court.</p> <p>The committee has revised the form to improve grammar.</p> <p>The committee has revised the form to move the verification sentence.</p>

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Commenter	Position	Comment	Committee Response
		<p>It is unclear why all those phone numbers are required if notice is supposed to be by personal service or mail.</p> <p>Page 1, first paragraph: Suggested edits.</p> <p>If you do not agree with the out-of-county placement <u>of the child</u>, you can request a court hearing by filling out this form. The following people can object to <u>removal the placement</u>: the child's parent or guardian, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. <u>After you complete and sign this form, b</u>Bring this form <u>it</u> to the clerk of the court.</p> <p>Page 1, Item 5:</p> <p>... Phone number of tribe, <u>if known</u>:</p> <p>Page 1, left footer: Wrong WIC section cited at the bottom.</p> <p>Judicial Council of California, www.courts.ca.gov New January 1, 2019, Optional Form Welfare and Institutions Code, § <u>366.21(n)</u> <u>361.2(h)</u> California Rules of Court, rules <u>5.610</u>, 5.614</p> <p>Page 2, underneath Item 7:</p>	<p>The committee has revised the form to remove the request for phone numbers.</p> <p>The committee has revised the form to improve grammar and clarity.</p> <p>The committee has revised the form to remove the reference to phone numbers, since phone notice is not allowed per statute.</p> <p>The committee has revised the form to cite the correct code sections and rules of court.</p>

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	Commenter	Position	Comment	Committee Response
			Comment: The verification sentence (“I declare under penalty of perjury...”) looks like it is part of item 7. It should align with the left margin (i.e., do not match indentation of text in item 7).	The committee has revised the form to move the verification sentence.
10.	Superior Court of Ventura County By: Hon. Tari Cody and Keri Griffith	AM	<p>Hearing on objection is automatic per statute. Rule and form need revisions to make this clear and provide a mechanism for scheduling the hearing.</p> <p>Revise the title of Form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing</p> <p>Revise JV-556 to include a box for hearing date, time, location.</p> <p>Revise Rule. 5.614 (d)(3) to read as follows: (3) Proof of Notice (form JV-326) must be filed with the court before any hearing on the proposed out-of-county placement.</p> <p>Revise Rule 5.614 (e)(2) to read as follows: (2) The Objection to Out-of-County Placement and Notice of Hearing (form JV-556) must be filed no later than seven days of receipt of the notice.</p> <p>Revise Rule 5.614(f) to read as follows: Upon filing the Objection to Out-of-County Placement and Notice of Hearing (JV-556), the clerk shall set a hearing and notice of the hearing must be as follows:</p>	<p>See committee responses below.</p> <p>The committee has revised the title of form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing.</p> <p>The committee has revised form JV-556 to include a box for hearing date, time, and location.</p> <p>The committee has amended the rule to indicate the Proof of Notice must be filed before <i>any</i> hearing on the proposed out-of-county placement.</p> <p>The committee has amended the rule to specify the form name, or local form.</p> <p>The committee has amended the rule to make this clarifying change, and to allow the objection to be made on local form.</p>