



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

Title	Agenda Item Type
Family Law: Transfer of Jurisdiction	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.97	January 1, 2019
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	September 5, 2018
Hon. Jerilyn Borack, Cochair	Contact
Hon. Mark Juhas, Cochair	Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends the adoption of a new rule of court to implement family law–specific transfer of jurisdiction procedures to comply with the requirements of Assembly Bill 712 (Bloom; Stats. 2017, ch. 316). The legislation requires the council to adopt a rule of court to establish time frames for the transfer and receipt of jurisdiction over family law actions.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019, adopt California Rules of Court, rule 5.97, to establish procedures to implement the family law–specific provisions of Code of Civil Procedure section 399 as required by recently enacted legislation.

The text of the new rule is attached at pages 5–6.

Relevant Previous Council Action

The council has never taken action relevant to this recommendation.

Analysis/Rationale

Background

In 2017 the Legislature enacted AB 712, which amended Code of Civil Procedure section 399 to enact specific change of venue provisions for family law actions and proceedings. In addition to granting a court that has ordered the transfer of an action jurisdiction to make specific orders to prevent immediate harm while a transfer is pending, the legislation also required the council to adopt a rule of court by January 1, 2019, to establish time frames for the transfer and assumption of jurisdiction in family law actions.

Policy implications

The Legislature enacted AB 712 to address concerns that cases subject to transfer of jurisdiction orders in family law were languishing with the result that there was no court with clear jurisdiction over the matter. To ensure that the rule would best address the underlying concerns, the committee sought to clarify some of the key procedural hurdles and establish realistic time frames that would not delay cases unnecessarily. Because a failure to pay the required transfer fees seemed to be a key obstacle to completing transfers, the rule of court is clear as to who is required to pay the fees, and that a fee waiver granted in the transferring court is valid in the receiving court for purposes of filing the case. In addition, in response to comments received from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the committee added a provision requiring the court to make a clear fee order when ordering the transfer, including any determination of a fee waiver. These provisions are intended to ensure that the parties understand what is required to complete the transfer, and can comply in a timely manner to prevent delays.

Comments

This proposal was circulated for public comment from April 9 to June 8, 2018, as part of the regular spring comment cycle. Eleven organizations submitted comments on this proposal. Four commenters agreed with the proposal. Five organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, agreed if the proposal was modified. One commenter did not express a position, but submitted comments on the fiscal impacts. A chart with the full text of the comments received and the committee's responses is attached at pages 7–20.

Clarifying emergency order process and jurisdiction

Commenters noted that both the sending and receiving courts need to know about the actions of the other to clarify which has jurisdiction and under what circumstance. To address this issue the committee modified the rule to ensure that the receiving court send notice to the sending court that the transferred case has been filed and that the sending court send notice to the receiving court when a request for an emergency order is filed, and when action is taken on that request. With these revisions the committee believes that each court will be aware of its jurisdictional authority over the cause of action.

Timing of transfer of case file

The committee sought specific comment on the question of whether the suggested time frames in the proposed rule were workable for the courts. The rule that circulated for comment provided the court transferring the case with five court days after the expiration of the 20-day writ period to transfer the case file, and the receiving court with 20 court days from the transmittal date to file the case and send notice. Four commenters agreed with these timeframes, while two suggested modifications. One suggested lengthening the time frames for sending and receiving courts, while the other suggested that sending and receiving courts both be provided with 20 court days. Because the rule is based on court days rather than calendar days—and includes the writ period in the time before the case file is sent—the committee determined that these modifications were not needed and would unnecessarily delay transfers in a manner inconsistent with the Legislature’s intent in enacting AB 712.

Defining proceedings that are subject to the limitation on action pending a transfer

Two commenters raised concerns about whether the rule would limit the court’s ability to take action in a Domestic Violence Prevention Act (DVPA) matter. One commenter appeared to assume that these actions would fall under the court’s emergency authority under Code of Civil Procedure section 399, and thus raised concerns that the standard for the court granting the transfer to take action during the pendency of the transfer was in conflict with the standard for granting a temporary restraining order under the DVPA, and proposed adding language to the rule excepting those actions. This proposed exception appears to be at odds with the plain language of the statute which expressly defines when a court can take action while a transfer is pending, and thus the committee opted not to add it to the rule. The committee also noted that a petition for relief under the DVPA would likely not be considered part of the cause of action subject to the transfer. This specific issue was raised by another commenter who questioned what the limits of the restriction might be. The language in the rule proposed by the committee tracks the statute that it implements, and the limits on filing apply only to the cause of action subject to the transfer and not to other causes of action that the parties might file.

Require transferring court to address fee issues/waiver before transfer

The Joint Rules Subcommittee of the TCPJEAC and CEAC requested that a paragraph be added to the rule requiring the court to take action on any fee issues and to ensure that any request for a fee waiver is ruled on before the transfer takes place. The committee agreed that fee issues are often the impediment to timely completion of a transfer of jurisdiction and thus modified the rule to include this exception.

Alternatives considered

The advisory committee considered alternative time frames based upon the comments but determined that the proposal struck the appropriate balance between accomplishing transfers in a timely manner and providing a reasonable time frame to accommodate the range of circumstances facing different courts. In addition, the committee considered expressly stating that the rule did not apply to separate DVPA actions including the same parties but determined that such a provision was outside the committee’s authority under section 399.

Fiscal and Operational Impacts

While courts are currently required by statute to effectuate transfers promptly, there is not a set time frame in current law. Because this proposal would implement a time frame, courts may face some costs to institute procedures to track these transfers to ensure compliance with the rule of court. Commenters identified a range of possible impacts on the court to implement the rule. However, other than extending the timeframes as discussed above, they did not suggest modifications to the rule to mitigate these impacts. The operational impacts cited in the comments include: training of staff, maintenance of files during the transfer to allow for emergency orders, possible changes to case management systems, and updating internal procedures and policies.

Attachments and Links

1. Cal. Rules of Court, rule 5.97, at pages 5–6
2. Chart of comments, at pages 7–20
3. Link A: Assembly Bill 712 (Stats. 2017, ch. 316),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB712

Rule 5.97 of the California Rules of Court is adopted, effective January 1, 2019, to read:

Rule 5.97. Time frames for transferring jurisdiction

(a) Application

This rule applies to family law actions or family law proceedings for which a transfer of jurisdiction has been ordered under Part 2 of title 4 of the Code of Civil Procedure.

(b) Payment of fees; fee waivers

Responsibility for the payment of court costs and fees for the transfer of jurisdiction as provided in Government Code section 70618 is subject to the following provisions:

(1) If a transfer of jurisdiction is ordered in response to a motion made under title 4 of the Code of Civil Procedure by a party, the responsibility for costs and fees is subject to Code of Civil Procedure section 399(a). If the fees are not paid within the time specified in section 399(a), the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause of action. Except as provided in subdivision (e), no other action on the cause may be commenced in another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs.

(2) If a transfer of jurisdiction is ordered by the court on its own motion, the court must specify in its order which party is responsible for the Government Code section 70618 fees. If that party has not paid the fees within five days of service of notice of the transfer order, any other party interested in the action or proceeding may pay the costs and fees and the clerk must transmit the case file. If the fees are not paid within the time period set forth in Code of Civil Procedure section 399, the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause or enter such other orders as the court deems appropriate. Except as provided in subdivision (e), no other action on the cause may be commenced in the original court or another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs.

(3) If the party responsible for the fees has been granted a fee waiver by the sending court, the case file must be transmitted as if the fees and costs were paid and the fee waiver order must be transmitted with the case file in lieu of the fees and costs. If a partial fee waiver has been granted, the party responsible for the fees and costs must pay the required portion of the fees and costs before the case will be transmitted. In any case involving a fee waiver, the court receiving the case file has the authority under Government

1 Code section 68636 to review the party’s eligibility for a fee waiver based on
2 additional information available to the court or pursuant to a hearing at final
3 disposition of the case.

- 4
5 (4) At the hearing to transfer jurisdiction, the court must address any issues
6 regarding fees. If a litigant indicates they cannot afford to pay the fees, a fee
7 waiver request form should be provided by the clerk and the court should
8 promptly rule on that request.

9
10 (c) **Time frame for transfer of jurisdiction**

11 After a court orders the transfer of jurisdiction over the action or proceeding, the
12 clerk must transmit the case file to the clerk of the court to which the action or
13 proceeding is transferred within five court days of the date of expiration of the 20-
14 day time period to petition for a writ of mandate. If a writ is filed, the clerk must
15 transmit the case file within five court days of the notice that the order is final. The
16 clerk must send notice stating the date of the transmittal to all parties who have
17 appeared in the action or proceeding and the court receiving the transfer.

18
19 (d) **Time frame to assume jurisdiction over transferred matter**

20 Within 20 court days of the date of the transmittal, the clerk of the court receiving
21 the transferred action or proceeding must send notice to all parties who have
22 appeared in the action or proceeding and the court that ordered the transfer stating
23 the date of the filing of the case and the number assigned to the case in the court.

24
25 (e) **Emergency orders while transfer is pending**

26 Until the clerk of the receiving court sends notice of the date of filing, the
27 transferring court retains jurisdiction over the matter to make orders designed to
28 prevent immediate danger or irreparable harm to a party or the children involved in
29 the matter, or immediate loss or damage to property subject to disposition in the
30 matter. When an emergency order is requested, the transferring court must send
31 notice to the receiving court that it is exercising its jurisdiction and must inform the
32 receiving court of the action taken on the request. If the court makes a new order in
33 the case, it must send a copy of the order to the receiving court if the case file has
34 already been transmitted. The transferring court retains jurisdiction over the request
35 until it takes action on it.

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
1.	FLEXCOM Stephen J. Hamilton, Legislation Chair	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with the proposed changes.	No response required.
2.	Family Violence Appellate Project Shuray Ghorishi, Senior Staff Attorney	AM	<p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposed rule provides reasonable time frames and a workable solution to avoid delays in transferring cases of low-income litigants by allowing them to apply for a fee waiver.</p> <p>However, as currently drafted, subsection (e), which affords the original court with special jurisdiction to make orders to prevent immediate harm before the case is transferred, may exclude some survivors of domestic abuse that file restraining order requests under the Domestic Violence Prevention Act, Family Code section 6200 et seq. (“DVPA”). Under statutory authority, a petitioner does not need to demonstrate “immediate harm” to obtain a temporary restraining order; rather, the DVPA prescribes that the petitioner demonstrate only “a past act or acts of abuse.” (See Fam. Code, § 6300.) Thus, the language included under subsection (e), in particular “immediate danger or irreparable harm,” imposes a stricter standard than the standard mandated by the DVPA.</p> <p>Moreover, even if the presently-drafted language could be interpreted to include these temporary restraining orders, we still encourage the Judicial Council to expressly state so in the rule to avoid any ambiguity that a petitioner may obtain such protective order. Accordingly,</p>	<p>The standard for making orders in a family law proceeding in a case which is being transferred that is proposed in rule 5.97 is drawn directly from the statute that it implements, and that statute makes no exception for DVPA orders. The committee notes, however, that a petition for a protective order under the DVPA may well be a separate proceeding than other family law causes of action, and could thus may be able to be filed in any jurisdiction with venue over the DVPA action without regard to rule 5.97. Given these facts, the committee has opted to maintain the statutory standard without an exception.</p>

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

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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	Commenter	Position	Comment	Committee Response
			we suggest the following modification to subsection (e): <ul style="list-style-type: none">• Until the clerk of the receiving court sends notice of the date of filing, the transferring court retains jurisdiction over the matter to make orders designed to prevent immediate danger or irreparable harm to a party or the children involved in the matter, or immediate loss or damage to property subject to disposition in the matter, <u>or domestic violence restraining orders under section 6200 et seq. of the Family Code.</u>	
3.	Joint Rules Subcommittee, TCPJAC/CEAC	AM	Recommended JRS Position: Agree with proposed changes if modified. The JRS notes the following impact to court operations: <ul style="list-style-type: none">• This proposal requires some training to ensure clerks are aware of the new time frames, but this training is minimal. The JRS expects no major impact on workload as a result of this rule change. Suggested Modifications: The JRS recommends the addition of the following paragraph: <ul style="list-style-type: none">• (4): “At the hearing to transfer Jurisdiction, the Court is to address any issues regarding fees. If a litigant indicates they cannot afford to pay the fees, a fee waiver request form should be provided by the clerk and the court should promptly rule on that request.”	No response required. The committee has added this paragraph to the rule to ensure that fee issues are addressed in a timely manner.
4.	Hon. William Liebman, Judge, Superior Court of Ventura County	AM	Receiving court should be required to notify transferring court of acceptance. Transferring court has jurisdiction to make orders until acceptance. If transferring court is not given	The committee agrees that this notice is appropriate and has added it to rule 5.97(d).

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Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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			notice, there is a possibility of an order being entered by transferring court after receiving court has taken jurisdiction.	
5.	Courtney O'Hagan, Family Law Facilitator, Superior Court of Contra Costa		<p>General Comments on the Proposed Cal. R. of Court. 5.97</p> <p>CRC 5.97(e) provides much needed relief for litigants who find themselves in an emergency situation while their transfer is pending. There is no statewide uniform procedure for litigants to seek, and courts to decide, ex parte relief. Given the timeframe to transfer cases described in CRC 5.97(c), in many instances the receiving court may send notice of filing the case prior to a scheduled hearing following a temporary emergency order. To avoid confusion in how each county handles emergency orders pending a case transfer, clarification is needed as described below:</p> <ul style="list-style-type: none"> • How the courts should communicate with each other that an emergency order was requested/made while a transfer is pending; • How sending courts should handle hearings when a temporary emergency order is issued by the sending court but the receiving court sends notice of filing the case prior to the scheduled hearing on the emergency order. Does the sending court maintain jurisdiction on the emergency issue through the conclusion of the hearing? • How sending courts should handle hearings when a judicial officer in the sending court does not issue an emergency order but does find good cause to grant an order 	<p>The committee appreciates this question and the following issues and has clarified the rule to require the court considering the emergency request to notify the other court when the request is made, and after the court takes action and to provide for jurisdiction to remain with the transferring court until it takes action on the request.</p> <p>The statute provides that the transferring court only retains jurisdiction to grant emergency orders, thus any request for an order shortening time would need to be filed in the receiving court.</p>

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			<p>shortening time to schedule a hearing. Once the receiving court sends notice of filing the case, does any pending hearing on an order shortening time (but without an emergency order) need to be rescheduled in the receiving court? If so, who is responsible to coordinate rescheduling the hearing?</p> <ul style="list-style-type: none">• In the event an emergency request is made and denied, a hearing would still ordinarily be scheduled on the court's regular calendar with no interim relief ordered. In this specific scenario, should the sending court deny the emergency request, decline to set a hearing on the request, taking no further action, and instead direct the parties to file in the receiving court once notice has been sent the receiving court has filed the case?• Who is responsible for maintaining copies of current orders that will be needed if the sending court is asked to exercise emergency jurisdiction? Will the sending court be required to maintain a copy of all orders? Will the rule require the parties to be responsible for obtaining and maintaining a copy of any order they believe may be needed for potential emergency relief while the transfer is pending, relieving the courts of that burden? <p>Request for Specific Comment (General): Does the proposal appropriately address the stated purpose? Yes; however, as currently drafted may cause additional cost to the courts</p>	<p>The committee agrees that if the transferring court denies the request for emergency relief that it does not have jurisdiction to then set a hearing on the regular calendar, and thus should direct the party to file in the receiving court.</p> <p>The committee has revised the rule to require the court to send a copy of the emergency order to the receiving court if the case file has already been transmitted. Placing that burden on the parties may not result in complete and accurate information being added to the case file and thus the committee proposes court to court communication for this purpose.</p> <p>The committee has worked to address the issues raised by the commenter and clarify the rule.</p>

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			<p>and create confusion when emergency jurisdiction is exercised.</p> <p>Are the timeframes proposed in the rule appropriate? The timeframes proposed provide both sending and receiving courts very little breathing room and may cause courts to either incur overtime costs or miss the deadlines, particularly if that court has multiple transfers at one time, large file(s) to send or receive, or staff out sick or on vacation. Extending the timeframe to send out a transferred case by 5 court days, for a total of 10 court days, and extending the timeframe to file a received a case by 10 court days, for a total of 30 court days, will allow courts more flexibility to meet the deadlines while still providing litigants a reasonable and specific timeframe for their case transfer to be completed.</p> <p>Is the treatment of fee waivers in the rule a workable solution? Yes, if the rule is interpreted and implemented uniformly across all counties. Clarification is needed when the litigant has a valid fee waiver at the time the sending court transmits the file but it expires before the receiving court enters the file.</p> <p>Request for Specific Comment Sought from Courts: Would the proposal provide cost savings? If so please quantify. No; the proposal will potentially create additional cost in the form of additional staff or overtime required to ensure compliance with</p>	<p>The committee considered this feedback but agreed with the majority of commenters who felt the proposed timelines in the rule were workable, and that any extensions would cause unnecessary delays in accomplishing the transfer. The committee also notes that the five court days to send the file is after the expiration of the twenty day writ period, and the twenty court day period on the other end amounts to 4 weeks total which seemed reasonable to the committee.</p> <p>The committee has sought to clarify the treatment of fees and fee waivers in the rule by requiring the court to address the issue when making a transfer order.</p> <p>The committee notes that all of these impacts detailed by the commenter are a result of the underlying statutory change rather than the rule of court implementing the change, and are thus</p>

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			<p>timing requirements (5.97(c)), track compliance with fee payments (5.97(b)), ensure the sending court retains sufficient records to exercise emergency jurisdiction in the event it becomes necessary (5.97(e)), and to coordinate between the sending and receiving courts when emergency jurisdiction is exercised by the sending court pending the receiving courts' filing of the case (5.97(e)).</p> <p>The amount of additional cost will fluctuate depending on the following factors:</p> <ul style="list-style-type: none">• Size of the file received from another court and therefore the amount of time required to file all documents in the new court;• Large files generally require a legal processing clerk to be available all day to ensure documents are all filed within the same calendar day. In order to meet timing requirements, this may result in a legal processing clerk being unavailable to have a filing window open for the public, causing longer lines and delays and potentially necessitating overtime or additional staff.• Size of the file to be sent to another court, including whether court staff must go through each file to find and photocopy court orders;• Pending implementation of a case management system that supports electronic documents and for cases with orders filed prior to implementation of such a case management system will require clerical hours to review files and photocopy orders to maintain with the	<p>unavoidable, but will take note of them in the report to the council.</p>

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			<p>sending court in case emergency jurisdiction is required, if that obligation ultimately falls on the court.</p> <p><input type="checkbox"/> Alternatively, the rule could require the parties to be responsible for obtaining and maintaining a copy of any order they believe may become an issue requiring emergency jurisdiction during the interim period and relieve the courts of that burden.</p> <ul style="list-style-type: none">• the number of cases in which emergency jurisdiction is exercised while a transfer is pending and how uniformly courts procedurally approach exercising emergency jurisdiction <p>What would the implementation requirements be for courts? 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.</p> <ul style="list-style-type: none">• Revising processes and procedures<ul style="list-style-type: none">o Procedure will need to be developed to handle requests for emergency orders pending a file transfer, including processing the request & calendaring any hearings, communication between the sending and receiving courts, and to send/receive documents related to the request for emergency order after the receiving court has filed the case and the emergency matter is concluded;o Procedure may need to be developed to retain copies of files or orders to enable the	

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			<p>court to make emergency orders pending the transfer</p> <ul style="list-style-type: none"> • Training: <ul style="list-style-type: none"> o Staff will need to be trained on new procedures to handle requests for emergency orders while a case transfer pending. • Modifying case management systems <ul style="list-style-type: none"> o In the long run, the case management system will need to be updated to allow electronic documents. <p>What would the implementation requirements be for courts? Unclear at this time.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A minimum of 6 months is requested.</p> <p>How well would this proposal work in courts of different sizes? Unclear at this time; there are too many unknown variables to properly assess.</p>	<p>No response required.</p> <p>No response required</p>
6.	Orange County Bar Association Nikki P. Milliband, President	A	<p>The proposal does address the stated purpose; establishing time limits to when an action gets transferred.</p> <p>Since the time frames come from CCP 399 they are appropriate.</p> <p>The treatment of fee waivers is a workable solution.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
7.	Superior Court of Los Angeles County	AM	Suggested Modifications:	The committee considered this feedback but agreed with the majority of commenters who felt

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			<p>We disagree with setting a five court day requirement for transmission of the file to the receiving court, and instead it should be 20 days. This would be more in line with the 20 days to send out a notice that the receiving court has, as provided by the proposed rule.</p> <p>Further, there should be some discussion about the mechanics of the transfer between courts for e-courts and paper courts.</p> <p>Rule 5.97 (a) Page 3, line 4 – The “or” allows two interpretations of the sentence. Add “family law” before “proceedings” to read: “This rule applies to family law actions or family law proceedings for which a transfer of ...” Page 3, line 5 – Add “Part 2” to the reference to read: “...jurisdiction has been ordered under part 2, title 4 of the Code of Civil Procedure”</p>	<p>the proposed timelines in the rule were workable, and that any extensions would cause unnecessary delays in accomplishing the transfer. The committee also notes that the five court days to send the file is after the expiration of the twenty day writ period which seemed reasonable to the committee.</p> <p>Given that each court is differently situated with regard to paper v. electronic records the committee believes it is premature to set forth any hard and fast rules on this topic at this time so that courts can individually determine how to best transmit case files.</p> <p>The committee has incorporated this suggested change for clarity.</p> <p>The committee has incorporated this suggested change for clarity.</p>
8.	Superior Court of Orange County Juvenile and Family Court Divisions	NI	<p>What would the implementation requirements be for courts?</p> <p>In order to implement, changes may be needed to our case management system. Also, revisions to procedures and staff training would be required.</p>	No response required.

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			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response required.
9.	Superior Court of Riverside County Susan D. Ryan, Chief Deputy of Legal Services	A	<ul style="list-style-type: none"> Does the proposal appropriately address the stated purpose? Yes Are the time frames proposed in the rule appropriate? Yes Is the treatment of fee waivers in the rule a workable solution? Yes Would the proposal provide cost savings? No. What would the implementation requirements be for courts? Train staff, revise procedures, create new codes for case management. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? Equally well. 	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee will note this impact in its report to the council.</p> <p>No response required.</p> <p>No response required.</p>
10.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes.	No response required.

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			<p>Q: Are the time frames proposed in the rule appropriate? Yes.</p> <p>Q: Is the treatment of fee waivers in the rule a workable solution? Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. No.</p> <p>Q: What would the implementation requirements be for courts? 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. Updating internal procedures and notifying staff.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>Q: How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of various sizes.</p> <p>Additional Comments: Proposed Rule of Court, 5.97(b)(2): What is meant by the last sentence: “No other action on the cause may be commenced in the original court or another court before satisfaction of the court’s order for fees and costs or a court-</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>These impacts will be noted in the report to the council.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee has tracked the language in the statute and believes that the limitation to “the cause” may not include other types of petitions, such as a DVPA petition.</p>

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	Commenter	Position	Comment	Committee Response
			ordered waiver of such fees and costs.” – Does this mean that a party could not appear in the original court where the action is to be transferred from to file anything (e.g. domestic violence restraining orders or temporary emergency (ex parte) orders regarding minor children) until the fees have been paid?	
11.	Superior Court of Ventura County Julie Camacho, Court Manager	AM	<p>Clarification of proposed rule 5.97: 5.97(b)(1) and (2) each contain the following: If the fees are not paid...the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause.</p> <p>Does this mean the court can vacate the order of transfer, but not the case? Clarification is needed as the nonpayment of fees is the reason a large number of family law cases have not been transferred pursuant to the transfer order. If payment is not made, the file sits on the court’s records shelf with an active transfer order until the party decides to make payment.</p> <p>5.97(b)(2) includes the following sentence: No other action on the cause may be commenced in the original court or another court before satisfaction of the court’s order for fees and costs or a court-ordered waiver of such fees and costs.</p> <p>Can [sic] of this sentence is requested. How does a court prohibit this from occurring? And, Isn’t this contrary to Code of Civil Procedure 399(d)?</p>	<p>The language in the rule is drawn from CCP section 399 and it is clear that the case may be dismissed. The rule maintains that discretion, so that if payment is not made, upon a motion the case may be dismissed.</p> <p>This provision has been clarified to allow for emergency orders as authorized in subdivision (e) of the rule.</p>

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

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			<p>5.97(c) states “After a court orders the transfer of jurisdiction over the action or proceeding...</p> <p>Another factor that causes a delay in the transfer of a case is the preparation of an Order after Hearing. When a party, or a party’s attorney is directed to prepare and file a formal order, the clerk must wait for the order to be filed before the case is transferred. The party preparing the Order after Hearing must comply with CRC 5.125 which provides the time deadlines for preparing, serving and filing the OAH. Many times the filer does not comply with the deadline in CRC 5.125. An example of this is a case where the court granted a transfer request at a hearing on 10/31/17 and directed respondent’s counsel for prepare a formal order. The Findings an Order after Hearing in this case was filed on 02/09/18, more than 3 months later. This court recommends that the rule require the court to mail a copy of the court’s minute order to all parties in the case in place of preparation of an order after hearing. In addition, it would be helpful if the rule clearly stated that the court’s minute order is the formal order of the court and the parties are exempted from the requirements of CRC 5.125. This court has transferred cases without an Order after Hearing being filed and the case was returned by the receiving court with a letter indicating the case is being returned due to no formal order having been provided to the receiving court.</p>	<p>The committee believes that there are mechanisms in existing law to ensure that orders after hearing are completed in a timely manner and is concerned with the precedent of making exceptions to general rules. In addition, the committee notes that not all courts create minute orders and thus the proposed solution would not work across courts.</p>

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	Commenter	Position	Comment	Committee Response
			Both 5.97(c) and (d) should include that mailing of the notice must also be sent to the court. The current practice is the sending court includes the receiving court in the notice of transfer and also mails a “receipt of transfer” that is then completed by the receiving court and include the date of receipt of transfer and the new case number. This receipt is then returned to the sending court. Although this is the current practice, it is not included in any rule or statute and should be included here.	The committee has revised the rule as suggested here to require that notice be sent to the receiving court at the time of transmittal and the transferring court from the receiving court stating the transfer filing date.

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