



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

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**Title**

Appellate Procedure: Advisement of  
Appellate Rights in Juvenile Cases

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 5.590;  
approve form JV-805-INFO

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2020

**Date of Report**

August 12, 2019

**Contact**

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### Executive Summary

The Appellate Advisory Committee recommends amending the rule regarding advisement of appellate rights, which currently states that courts need only provide an advisement to parents and guardians who are present at the hearing that resulted in the judgment or order. The amendment would remove this limitation and require courts to provide this information to parents and guardians who are not present at the hearing. The committee also recommends adopting a new optional information sheet for clerks to send with court orders following a hearing to provide the advisement. This proposal, which originated with a suggestion from an attorney in San Diego, is intended to promote greater awareness of parents' and guardians' appellate rights in juvenile cases and to assist the courts in complying with the requirement to provide this notice.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 5.590, to remove the limitation that courts need only provide an advisement of appellate rights to parents and guardians who are present in court

for the hearing and thus require courts to send the advisement to parents and guardians not present at the hearing; and

2. Approve new optional form JV-805-INFO for courts to send after a hearing to provide the advisement of appellate rights.

The text of the amended rule and the new form are attached at pages 8–9.

## **Relevant Previous Council Action**

The predecessor to rule 5.590, including the “if present” limitation on providing the advisement of appellate rights, was adopted in 1973. The Judicial Council has taken no previous action that is relevant to the recommendations in this report.

## **Analysis/Rationale**

Rule 5.590 governs advisement of the right to appeal in Welfare and Institutions Code section 300, 601, and 602<sup>1</sup> cases (i.e., juvenile dependency and delinquency cases). Subdivision (a) of the rule provides: “If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of” the right to appeal, if there is one; the steps and timing of an appeal; and an indigent appellant’s rights to appointed counsel and a free copy of the transcript.<sup>2</sup>

This rule was adopted in 1973 as rule 251 in response to a request by the State Bar’s Board of Governors for a rule requiring juvenile court judges and referees to advise minors, and their parents or guardians, of the *minors’* appeal rights.<sup>3</sup> Rule 251 was modeled on rule 250, which required the trial court to advise convicted adult criminal defendants of their appeal rights. The initial focus of the rule was on ensuring that minors would be advised of their appellate rights in delinquency cases, although the rule that was adopted did not specify the juvenile proceedings to which it applied.<sup>4</sup> In 1978, the Judicial Council amended the rule to specify its applicability to juvenile court proceedings in which the minor was found to be a person described by section 300, 601, or 602. The “if present” limitation on providing the advisement to a minor’s parent or guardian has been part of the rule since its inception.<sup>5</sup> Over time, the language of the rule has

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<sup>1</sup> All further unspecified statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Subdivision (b) addresses advisement of the requirement to seek a writ to preserve appellate rights when the court orders a hearing under section 366.26.

<sup>3</sup> Judicial Council of Cal., staff rep., *Report and Recommendation Concerning Advising Juveniles of Their Appeal and Rehearing Rights* (Oct. 11, 1972), at p. 1.

<sup>4</sup> *Id.* at pp. 3–7.

<sup>5</sup> *Id.* at pp. 7–8.

changed little, but its application has expanded to include the appellate rights of parents and guardians, particularly in juvenile dependency proceedings.

The requirement in rule 5.590(a) that a parent or guardian must be present at the hearing to receive an advisement of appellate rights was recently challenged by a parent in a dependency case. In *In re A.A.* (2016) 243 Cal.App.4th 1220, the mother was not present for the continued jurisdictional hearing, did not appeal the dispositional orders, and following termination of her parental rights, challenged the juvenile court's failure to advise her of her right to appeal the disposition. The Court of Appeal rejected her contentions, concluding that a parent does not have a constitutional due process right to be advised of the right to appeal and that under rule 5.590(a) the mother was not entitled to an advisement because she was not present at the hearing. (*Id.* at pp. 1236–1239.)

Following this decision, counsel for the mother in *In re A.A.* submitted the suggestion to amend rule 5.590(a) to remove the requirement that a parent be present to receive an advisement of appellate rights.

The Family and Juvenile Law Advisory Committee responded by proposing a notice on certain forms to notify parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing. Effective January 1, 2018, the Judicial Council revised certain JV forms (e.g., JV-415, JV-430, and JV-435) to include the following language:

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

**The Proposal**

***Rule***

The Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, recommends amending rule 5.590(a) to remove the “if present” limitation so parents and guardians will be advised of their appellate rights regardless of whether they are present for the hearing. Removing the limitation will promote greater awareness on the part of parents and guardians of their right to appeal juvenile court orders, which is particularly important in dependency cases where parents are parties and have appeal rights at all stages of the proceedings. (See § 395.) There are any number of reasons why a parent or guardian may be absent from a hearing, including reasons related to the court's dependency jurisdiction or

medical issues or transportation issues, and other rules that provide for parental advisement of appellate rights do not limit the notice to parents who are present at the hearing.<sup>6</sup>

### ***Information sheet***

The committee also recommends a new, optional information sheet for courts to send after a hearing to provide the advisement of appellate rights: *Information Regarding Appeal Rights* (form JV-805-INFO). The committee recognizes that the rule amendment would require courts to provide the appellate rights advisement to parents and guardians who are not present at hearings, and the new information sheet is intended to assist courts in complying with that requirement. Form JV-805-INFO advises litigants of the right to appeal, the steps and time for taking an appeal, and the rights of indigent appellants to appointed counsel and to a free copy of the transcript.

### **Policy implications**

The committee considered the policy choice raised in some of the comments (see below) as to whether the responsibility of providing an advisement of appellate rights should rest with counsel rather than the court. The committee discussed numerous reasons why a parent or guardian may be unable to attend a hearing and found no reason for the rule to require courts to provide an advisement *only* to those who are present in the courtroom.

### **Comments**

This proposal circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. The committee received 13 comments from individual attorneys, organizations, and trial courts. Five commenters indicated that they agreed with the proposal, two indicated that they agreed with the proposal if modified, three did not take a position on the proposal but suggested changes or commented on certain aspects of the proposal, and three indicated that they disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 10-31.

Several commenters agreed that this is a much-needed change to the rule and that parents and guardians should receive an advisement of their appellate rights from the court whether they are present for the hearing or not. Other commenters expressed concerns regarding the burden this change will place on the courts. A number of comments included suggestions for improving the language of the information sheet. In addition, the committee received several comments from courts on implementation requirements such as new procedures, training for staff, and addition of codes to case management systems. None of the courts indicated that these implementation requirements would be problematic.

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<sup>6</sup> See rule 5.542(f) ("the judge must advise, either orally or in writing, the child and the parent or guardian" of appellate rights following denial of an application for rehearing of a proceeding heard by a referee); rule 5.590(b) (advisement of requirements for writ petition to preserve appellate rights must be sent by the clerk to any party not present at the hearing within one day of the court's order); and rule 5.590(c) (advisement of appellate rights must be provided "orally and in writing" to all parties when the court grants a petition transferring a case to tribal court).

*Whether the advisement should be provided by counsel.* As noted above in the section on policy implications, several commenters noted that parents and guardians have counsel in dependency proceedings and opined that the responsibility for providing notice of appellate rights to parents and guardians should rest with counsel, not the court. In developing the proposal, the committee considered issues relating to counsel, including whether the problem the proposal intends to address was more a matter of training and practice for attorneys in juvenile proceedings than an issue arising from a rule of court. The committee noted that counsel's representation and responsibilities are separate issues from whether the rule that requires the court to provide the advisement only to parents and guardians who are present at the hearing should be amended. The committee found no compelling reason for the rule to draw this distinction.

*Whether the burden outweighs the benefit.* Several commenters expressed concern that the proposed rule change will result in a substantial burden on already overtaxed juvenile courts without providing sufficient benefit. In addition to suggesting that attorneys representing parents and guardians should provide the advisement, commenters questioned whether the added burden on courts was reasonable as a practical matter. An office of county counsel opined that appeals by parents and guardians who have not been present at hearings are unlikely to be meritorious. A superior court noted that, in the proceedings addressed by the rule, no hearing has been set to terminate parental rights and the parent or guardian is not losing the right to appeal. Another superior court indicated that requiring the court to provide the advisement whether or not parents or guardians are present at the hearing "may not lead to actual notice."

The committee concluded that these are not persuasive reasons to modify the proposal or recommend that it not go forward. The actual burden on courts of this rule change is the requirement to send written notice of appellate rights to absent parents and guardians. Courts may use *Information Regarding Appeal Rights* (form JV-805-INFO) for this purpose, and may send the form together with the court's findings and orders after a hearing. Considerations such as the likely merit of a potential appeal, the stage of the proceedings, or the gravity of the rights affected by the court's order should not have bearing on whether courts provide an advisement of appellate rights to parents and guardians regardless of their physical presence at the hearing.

One commenter questioned whether issues with providing the advisement, such as whether the advisement was timely sent or sent to the correct address, could result in contentions on appeal and thereby cause delay in these cases. The Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees suggested adding language to the rule stating that notice to absent parents and guardians is sufficient if sent by first-class mail to the last known address. The committee recommends this addition to the rule and notes that courts routinely put procedures in place to ensure that notices, orders, and other documents are sent in a timely manner to the correct address on file, and to take other steps to mitigate potential problems.

*Text of the information sheet.* A number of commenters asked that the text of the form be simplified and use more descriptive language so that litigants can more easily understand the

information being provided. The committee made several revisions to the form in response to these comments.

*Whether to retain the current notice on certain JV forms.* At the request of the Family and Juvenile Law Advisory Committee, the invitation to comment asked for feedback regarding whether, if the rule is amended as proposed, the current notice on certain JV forms should be retained. Six commenters responded: two recommended removing the notice because it would no longer be accurate; two recommended retaining it, even if unnecessary, because it could be helpful to the public; and two recommended revising it. This feedback will be provided to the Family and Juvenile Law Advisory Committee.

### **Alternatives considered**

The committee considered whether no rule amendment was necessary in light of the information added to certain JV forms advising parties to consult with their attorneys regarding the right of appeal. However, the committee decided to propose the rule amendment because it concluded that removing the limitation would better promote parties' awareness of their appellate rights.

The committee also considered a suggestion to amend rule 5.590(a) to better track the statutory right to appeal as provided in section 395. Based on feedback from the Family and Juvenile Law Advisory Committee, the committee declined to pursue the suggestion because there was no indication that juvenile courts read the rule so narrowly as to provide an advisement of appellate rights only following disposition hearings or courts or parties were confused or unsure about which findings and orders are appealable. However, the committee received a comment from an individual regarding one juvenile court that has discontinued providing notice of appellate rights after permanency planning hearings based on language in the rule that requires the advisement only after a disposition hearing. The committee will retain the comment and share it with the Family and Juvenile Law Advisory Committee for future consideration.

The committee looked into a suggestion to correct an error in an advisory committee comment to rule 5.590, but the proponent provided no details and the committee found no error.

Finally, the committee considered not developing an information sheet but concluded that a form would assist courts in providing the advisement that would be required by the rule amendment.

### **Fiscal and Operational Impacts**

The proposal would require courts to send an advisement of appellate rights to parents and legal guardians who did not attend a hearing. Courts could comply with this requirement by including new form JV-805-INFO when sending findings and orders to the parties following a hearing.

The superior courts that provided comments indicated that implementation would involve training staff to provide the notice and creating new codes in the case management system. One court indicated that costs associated with printing, mailing, and staff processing time would increase. Another court suggested that the rule change could result in more appeals.

Notwithstanding these potential impacts, the committee has concluded that the proposal will improve awareness of appellate rights by parents and guardians who are not present at a hearing, and will thus promote access to justice for these individuals.

**Attachments and Links**

1. Cal. Rules of Court, rule 5.590, at page 8
2. Form JV-805-INFO, at page 9
3. Chart of comments, at pages 10-31

Rule 5.590 of the California Rules of Court is amended, effective January 1, 2020, to read:

**Rule 5.590. Advisement of right to review in section 300, 601, or 602 cases**

**(a) Advisement of right to appeal**

If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, ~~if present,~~ the parent or guardian of:

(1)–(4) \* \* \*

If the parent or guardian is not present at the hearing, the advisement must be made by the clerk of the court by first-class mail to the last known address of the party or by electronic service in accordance with section 212.5.

**(b)–(c) \* \* \***



**1 Your Right to Appeal**

You may have the right to appeal judgments and orders in juvenile proceedings under Welfare and Institutions Code sections 300.601, and 602. If you do not appeal in time, you could lose any right to appeal the judgment or order.

If a judgment or order was entered by a referee or commissioner, it becomes appealable after a rehearing by a judge is completed or when the time to apply for a rehearing has expired.

**2 Steps and Time for Taking an Appeal**

To appeal from a judgment or an appealable order of this court, you must file a written notice of appeal within 60 days after the judge renders the judgment or makes the order being appealed or, in matters heard by a referee or commissioner, within 60 days after the order of the referee or commissioner becomes final. An order of a referee or commissioner becomes final 10 calendar days after the order is served.

You may use *Notice of Appeal—Juvenile* (form JV-800) for this purpose. You can get form JV-800 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

The notice of appeal must be filed in this court, not the Court of Appeal. The notice must clearly state that you are appealing; identify the judgment or order by date, or describe it; and indicate whether you are appealing the entire judgment or order, or just part of it. You or your attorney must sign the notice of appeal.

**3 Requesting an Attorney**

If you cannot afford to hire an attorney for the appeal, you may request that the Court of Appeal appoint an attorney to represent you. You may use *Notice of Appeal—Juvenile* (form JV-800) to make this request by checking the appropriate box. After you file the notice of appeal and make the request for an attorney, the Court of Appeal will contact you to find out whether you have the right to an appointed attorney.

**4 Free Copy of the Transcript**

If you cannot afford to hire an attorney for this appeal, you may also be eligible for a free copy of the transcript.

**Important!**

You must keep the Court of Appeal advised of your current mailing address.

### SPR19-03

#### Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Appellate Defenders, Inc. by Elaine Alexander Executive Director San Diego	A	This change is a much-needed correction. Parties should be told of their appellate rights regardless of their ability to attend a particular hearing. The new form will expedite the advisal.	The committee notes the commenter's support for the proposal.
2.	Rosemary Bishop Attorney Law Offices of Rosemary Bishop San Diego	A	<p>1. Does the rule change address the stated purpose?</p> <p>Yes. The rule change does effectively address the stated purpose by deleting the language, "if present". Parents who are not present at the hearings covered by this rule should be advised of appeal rights and the rule change makes this clear.</p> <p>2 and 3. Are parts 3 and 4 of the proposed form accurate and helpful and should the form include additional information on appellate rights?</p> <p>Part 3 is accurate in advising the recipient about the right to appointed counsel. It would be helpful to add that the recipient may request an appointed attorney by checking the box on the notice of appeal form.</p> <p>Part 4 of the form is accurate. If an appellant is always eligible for a free transcript if they qualify for an appointed</p>	<p>The committee notes the commenter's support for the proposal and appreciates the responses to questions presented in the invitation to comment.</p> <p>The committee appreciates this suggestion and has revised the new form to include the option to request an appointed attorney on the notice of appeal form.</p> <p>The committee declines to make this change to maintain consistency with the prior item on the form. Both items are phrased as "if you</p>

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

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		<p>attorney, then the “may be” qualifier could be deleted to avoid uncertainty or confusion.</p> <p>To make the form more helpful, parts 1 and 2 could be simplified or put into plainer language and still be accurate and less intimidating or confusing.</p> <p>For example, the first sentence in part 1 could be captioned “Your right to appeal” and read: “You have the right to appeal judgments and orders in proceedings [under Welfare and Institutions Code sections.....] and if you do not appeal in time you could lose the right to challenge the judgment or order later in these proceedings.”</p> <p>The first sentence in Part 2 could be simplified to read: “...you must file a notice of appeal within 60 days of the judgment or order...” Also, if the JV-800 notice of appeal form is attached, then that should be referenced.</p> <p>It would be helpful to attach a notice of appeal form (JV-800) to this new form JV-805. If the notice of appeal form is not attached, then the JV-805 should tell the recipient how to get one—from trial</p>	<p>cannot afford to hire an attorney,” and eligibility for both an appointed attorney and a free transcript depend on the court’s finding that the litigant is indigent.</p> <p>The committee appreciates this recommendation and the suggested language. The committee has revised the form to use simplified and more descriptive language.</p> <p>The committee appreciates this suggestion and has included information on how to obtain the form.</p>
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			<p>attorney, online, at the courtroom, and that the trial attorney can file the notice for the client upon request.</p> <p>4. Should forms JV-415 through JV-455 be revised to remove statement parents may not be advised of appeal rights if they don't attend the hearing?</p> <p>Yes. This information is no longer accurate if the rule is changed.</p>	<p>The committee appreciates this input.</p>
3.	<p>County of Santa Clara Office of the County Counsel by James R. Williams County Counsel and Gita C. Suraj Assistant County Counsel</p>	N	<p>1. Does the proposal appropriately address the stated purpose?</p> <p>No. The stated purpose is to "promote greater awareness of parents' and legal guardians' appellate rights in juvenile court proceedings." In furtherance of this goal, the rule would require appellate advisements to be sent out to parties who are not present in court when orders are made. If the court has an address of record for a litigant, that litigant likely has appointed counsel who is available and able to advise the parent of their appellate rights. Further, any appeal by a litigant who has not been present at the hearing and is not in contact with court-appointed counsel is very unlikely to be meritorious. The proposed rule is likely to</p>	<p>The committee thanks the commenter for providing input on this proposal and notes the commenter's opposition to the proposal.</p> <p>The committee disagrees that the factors cited by the commenter outweigh the benefit of the proposed rule change. The proposal is intended to eliminate the current distinction in the rule that requires courts to advise some parents and guardians (those who are present for a hearing) but not others (those who are not present). The committee agrees that juvenile courts face tremendous workload challenges, but sees no principled reason for differential treatment. Absent parents are no less entitled to the advisement, without regard to the potential merit of any appeal.</p>

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		<p>result in greater administrative burdens on an overtaxed judicial system and is unlikely as a practical matter to further or preserve the due process rights of litigants in juvenile court. Further, in the event the required notices are on occasion sent in error or not sent at all, they may generate contentions on appeal that a litigant's late notice of appeal should be excused, resulting in greater burdens on the appellate courts and greater delay in resolution of status for dependent children.</p> <p>2. Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?</p> <p>Sections 2 and 3 are accurate, but would be more helpful if they used simpler language more easily understood by less sophisticated litigants.</p> <p>3. Should the form include any other information regarding appellate rights?</p>	<p>The committee acknowledges that most litigants will have appointed counsel and agrees that counsel should advise parents and guardians of their appellate rights. However, the committee concluded that these points do not outweigh the benefit of courts' providing the advisement to protect parents' and guardians' due process rights.</p> <p>The committee appreciates the commenter's concern that improper notice could create contentions on appeal, but notes that courts routinely create procedures, including case management codes, to comply with the rules of court and changes to those rules, and has received no indication that compliance will present any problems.</p> <p>The committee agrees with this observation and has made revisions to the form.</p>
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			<p>No.</p> <p>4. If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing?</p> <p>Our county does not use any of these optional forms, so we have no comment with respect to this question.</p>	<p>No response required.</p>
4.	<p>Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) By Saul Bercovitch Director of Governmental Affairs</p>	A	<p>The Invitation to Comment requests feedback on the question of whether related juvenile forms should be modified to delete language that a parent will not be advised of their appellate rights if they fail to appear at a hearing. FLEXCOM believes this language should remain in the various forms. Adopting a requirement that notice of appellate rights be mailed to parents not attending the hearing will increase the number of litigants receiving this advisement. However, there will be instances where notice is not successful. For example, a parent may not update their mailing address with the court. Or, a parent may fail to pick up mail at their current</p>	<p>The committee notes the commenter's support for this proposal.</p> <p>The committee appreciates the commenter's feedback on this question.</p>

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			address. Thus, there likely will be occasions when absent parents continue to go without receiving actual notice.	
5.	Los Angeles County Public Defender by Ricardo D. Garcia Public Defender Erika Anzoategui Acting Alternate Public Defender	NI	We do not object to the language of the proposed rule. However, we feel that the proposed JV-805 form contains an advisement that would be confusing to a layperson. Item 1 advises that judgment by a referee or commissioner becomes appealable "whenever proceedings under section 252, 253, or 254" have been completed. The advisement does not explain what proceedings under sections 252, 253, and 254 are, and it is unlikely that a layperson would know that they refer to a rehearing by a judge. Therefore, we suggest making the advisement more descriptive by stating that judgment by a referee or commissioner becomes appealable "whenever a rehearing by a judge under section 252, 253, or 254 has been completed."	The committee thanks the commenter for submitting feedback on this proposal.  The committee agrees and has revised this section of the form.
6.	Stephanie Miller	NI	Thank you for this opportunity to comment.  A. The proposal overreaches. The stated purpose should be to ensure that the parent or the guardian (and, obviously, the child) <b>who is a party of record</b> is advised of the right to seek review by appeal of the judgment entered at	The committee appreciates this feedback on the proposal.  The committee disagrees with limiting the stated purpose of the proposal in this way. The intent of the proposal is to remove the "if present" limitation in the rule so that courts provide notice of appellate rights to parents

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			<p>disposition. If the proposal is adopted, Rule 5.590 will be interpreted to include within its scope the parent or guardian who received notice of the proceedings but who did not take appropriate steps to become a party in them. (See <i>In re Joseph G.</i> (2000) 83 Cal.App.4<sup>th</sup> 712, 715.)</p> <p>B. Second, because <b>personal presence</b> by a party is not required in a dependency proceeding, the existing <b>presence</b> requirement could be interpreted to allow for the <b>presence</b> of the parent or guardian through his or her attorney. (See <i>In re Dolly D.</i> (1995) 41 Cal.App.4<sup>th</sup> 440, 444-446 [personal appearance by a party is not essential; appearance by an attorney is sufficient and equally effective].) Rule 5.590(a) should be modified to provide that “the court after making its disposition order . . . must advise, orally or in writing, the child, if of sufficient age, and, if <b>personally present or by counsel</b>, the parent or guardian of . . . .”</p> <p>C. If Rule 5.590(a) is revised in the manner suggested above, the forms should be revised to delete the notice that parents or guardians who do not personally</p>	<p>and guardians, whether they are present in court or not, and not to distinguish between parents and guardians who have taken steps to become parties of record and those who have not. Receiving notice that one may have the right to appeal certain findings and orders does not affect one’s standing to appeal.</p> <p>The committee disagrees with allowing an advisement to counsel to substitute for an advisement to the parent or guardian who is not present at the hearing. The goal of the proposal is to provide the same information to parents and guardians who are not present at a hearing as is provided to those who are present, and to promote greater awareness on the part of parents and guardians of their appellate rights.</p> <p>The committee appreciates this input.</p>
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			<p>appear may not be advised of their right to appeal.</p> <p>D. JV-805/Information Regarding Appeal Rights is incomplete in regard to the explanation of the time within which to seek review of the findings and orders made by a referee. The form states that in matters heard by a referee, the notice of appeal must be filed within 60 days after the referee's order becomes final, but it does not explain when the referee's order becomes final. The form should include the language now found in Rules 5.540(c) [finality date of referee's order] and 5.538(b)(3) [completion of service of referee's findings and orders].)</p> <p>E. Contrary to the feedback thus far received from the Family and Juvenile Law Advisory Committee that "there is no indication that juvenile courts read the rule so narrowly as to only provide an advisement of appellate rights following disposition hearings. . [,]" in April 2018 the Los Angeles County Edmund D. Edelman Children's Court in Monterey Park hearing dependency cases informed the Second District that the juvenile court would no longer</p>	<p>The committee thanks the commenter for this suggestion and has revised the form to include information regarding finality of a referee's order.</p> <p>The committee thanks the commenter for this information and will share it with the Family and Juvenile Law Advisory Committee.</p>
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### SPR19-03

#### Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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			inform the parent of the right to appeal the orders made at the Welfare and Institutions Code section 366.26 permanency planning hearing, although it would mail the minutes of those proceedings to the parent. It was noted that the existing rules – i.e., Rule 5.590(a) – require notice of the right to appeal <b>only</b> following disposition hearings. In discussions with the Second District about the juvenile court's intention, which was not opposed, the point was made that there are a large number of potentially appealable events in a dependency case. It may not be practical to identify and list all such events, and to require the juvenile court to inform the parties of the right to appeal in all those situations.	The committee notes this concern and considered this issue in developing the proposal.
7.	Orange County Bar Association by Deirdre Kelly President	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes.  <i>Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent</i>	The committee notes the commenter's support for the proposal if modified and appreciates the responses to questions presented in the invitation to comment.  No response required.

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		<p><i>appellant to appointed counsel and a free copy of the transcript?</i> Yes, but see below.</p> <p><i>Should the form include any other information regarding appellate rights?</i> Yes. Frequently, attorneys are appointed to represent parents in dependency proceedings who later absent themselves from the proceedings entirely and lose touch with their attorneys. In those situations, attorneys will typically continue to represent the absent parents' interests. Those parents, who will be the beneficiaries of the Committee's proposed changes, should understand that their attorney cannot file a notice of appeal without their approval (<i>In re Sean S.</i> (1996) 46 Cal.App.4th 350, 352.) Consequently, we recommend the following amendment to item at the very end of item 2: <u>However, your attorney cannot file an appeal on your behalf without your approval.</u></p> <p><i>If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440 and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights</i></p>	<p>No response required.</p> <p>The committee declines to add this language because it could cause confusion by suggesting that an affirmative showing of approval is required in order to authorize an appeal. (See <i>In re Asia L.</i> (2003) 107 Cal.App.4th 498, 505 ("In the absence of a satisfactory showing that the party did not authorize counsel to sign the notice of appeal, we presume that her counsel had the necessary authority to do so."))</p>
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			<i>if they do not attend the juvenile court hearing?</i> We would recommend the following amendment to the advisement contained on the listed forms: “You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss whether it is advisable for you to appear at the hearing and to discuss your appellate rights. Decisions made at the [next] hearing may also be subject to appellate review. If you do not attend the next hearing, you may not be <u>personally</u> advised of your appellate rights <u>by the court</u> . Contact your attorney if you miss the next hearing and want to discuss your appellate rights	The committee appreciates this feedback and will provide it to the Family and Juvenile Law Advisory Committee.
8.	Superior Court of Los Angeles County	AM	<b>Proposed Modifications</b> If notice is personally given at the initial hearing when parents/guardians are present it would save the court workload and postage costs.  <b>Request for Specific Comments</b>  <b>Should the form include any other information regarding appellate rights?</b> No, the form should not include other information regarding appellate rights.	The committee notes the commenter’s support for the proposal if modified, and agrees that providing the advisement to parents and guardians who are present at the hearing saves work and time for the courts. The committee appreciates the commenter’s responses to questions asked in the invitation to comments.  No response required.

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			<p><b>The advisory committee also seeks comments from <i>courts</i> on the following cost and implementation matters:</b></p> <p><b>Would the proposal provide cost savings? If so, please quantify.</b></p> <p>No, we do not anticipate cost savings.</p> <p><b>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?</b></p> <p>Implementation requirements would include changes to procedure and the creation of new events codes in the Case Management System.</p> <p><b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>Yes, three months is sufficient.</p>	<p>No response required.</p> <p>The committee notes the commenter's implementation requirements.</p> <p>No response required.</p>
9.	Superior Court of Orange County Juvenile Court Division	NI	<p><b>Comments</b></p> <ul style="list-style-type: none"><li>▪ <b>Rule 5.590 Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases</b></li><li>▪ Amend the rule to include “or through counsel” in the last</li></ul>	<p>The committee appreciates the commenter's input on this proposal.</p> <p>The committee disagrees that notice to counsel for absent parents is sufficient. See</p>

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			<p>sentence of section (a). This would allow the option for counsel to provide parties, if not present, notification of their right to appeal.</p> <ul style="list-style-type: none"><li>▪ <b>Information Regarding Appeal Rights (JV-805-INFO)</b><ul style="list-style-type: none"><li>▪ In the <i>Appealability</i> section, replace “300, 600, and 602” with language that is easier for parents to understand. Such as, juvenile justice, delinquency, or dependency case.</li></ul></li></ul> <p>In the <i>Steps and Time for Taking an Appeal</i> section, replace the word “rendition” with language that is easier for parents/guardians to understand. Such as, “within 60 days after the court has made a decision...”</p> <p><b>Request for Specific Comments</b></p> <ul style="list-style-type: none"><li>▪ <i>Would the proposal provide a cost savings?</i></li></ul> <p>No, there will not be a cost savings. If the Court provides the optional form to the parent/guardian, there will be an increase in cost associated with printing, mailing, and staff processing time.</p>	<p>response to the comment from Stephanie Miller, item B, above.</p> <p>The committee has simplified this section of the form. (The committee has also corrected the typographical error referring to section 600; the correct statute is section 601.)</p> <p>The committee has made certain revisions to this section to improve readability but has retained language where necessary to avoid potential confusion or inaccuracy.</p> <p>The committee thanks the commenter for this input.</p>
10.	Superior Court of Riverside County by Susan Ryan	N	Position on Proposal: Generally do not agree that this change is necessary.	The committee notes the commenter’s opposition to the proposal and appreciates the

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Chief Deputy, Legal Services		<p>Does the proposal appropriately address the stated purpose? Unsure. Requiring the court to give notice whether or not the party is at the hearing may not lead to actual notice. The minor in delinquency cases and the minor and parents in dependency cases will have an attorney. It would be more effective if the attorney made sure that parents who are not present at hearings were aware of these rights.</p> <p>Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript? Yes.</p> <p>Should the form include any other information regarding appellate rights? No.</p> <p>If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing? If rule 5.590 is amended then the forms should remove the sentence "If you</p>	<p>responses to questions presented in the invitation to comment.</p> <p>The committee appreciates the commenter's feedback and observations. The proposal is intended to correct an imbalance in the rule that only requires courts to provide an advisement of appellate rights to parents and guardians who are present in court. Although written notice may not always lead to actual notice, the committee concludes that the benefits of taking this step to protect absent parents' and guardians' due process rights outweighs the burden of doing so.</p> <p>No response required.</p> <p>No response required.</p>
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		<p>do not attend the next hearing you may not be advised of your appellate rights” from the “For Your Information” box at the bottom as this information would no longer be accurate.</p> <p>Would the proposal provide cost savings? If so, please quantify? No, it would cost the court more. Staff time, paper, toner, envelopes and postage would be needed to send out this additional notice.</p> <p>What would the implementation requirements be for courts? Staff would need to be trained that advisement of appellate rights should always be given whether or not the parents were at the hearing or not. Courts would likely create a code to enter into the CMS that the notice was mailed.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes</p> <p>How well would this proposal work in courts of different sizes? The same notifications and update codes would likely need to be made in all courts. The proposal should work for courts of all sizes.</p>	<p>The committee appreciates this input and will provide it to the Family and Juvenile Law Advisory Committee.</p> <p>The committee thanks the commenter for responding to the questions for courts in the invitation to comment.</p> <p>The committee notes the implementation requirements for courts.</p> <p>No further response required.</p> <p>No further response required.</p>
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11.	Superior Court of San Bernardino County by Hon. Annemarie Pace Presiding Judge, Juvenile Court	N	<p>This proposal places an undue burden on the already overwhelmed juvenile courts. The current law already requires the court to send writ/appeal rights notice to absent parents/guardians when a permanency hearing is set or when their parental rights have been terminated. Parents/guardians who appear at any stage of the proceedings get appointed counsel. Counsel is present at the disposition hearing whether or not the parent appears and can file an appeal as well as notify their client of their right to appeal. This proposed requirement would only apply where a permanency hearing is not set and in many cases where at least one party is receiving reunification services. The burden on the court outweighs the benefit in these cases because (1) notice of the recommendation has been sent to the party by the child welfare agency; (2) the party is represented by counsel; (3) no hearing has been set to terminate parental rights; and (4) the party is not losing the right to appeal - just the necessity of the court sending notice of the right to appeal.</p>	<p>The committee notes the commenter's opposition to the proposal and appreciates this feedback.</p> <p>The committee recognizes that parents and guardians have appointed counsel and that subdivision (b) of the rule requires that the court send notice to absent parents and guardians when hearings for permanency planning and to terminate parental rights are set. Parents and guardians have substantial interests at stake at every stage of dependency proceedings when the court issues findings and orders after a hearing. Those findings and orders become final and, if the parent or guardian is unaware of the right to appeal and an appeal is not timely filed, the parent or guardian will lose the right to appeal. The committee disagrees that the burden of sending notice of appellate rights with the court's minute order outweighs the benefit of courts' providing the same notice to parents and guardians whether they are present at the hearing or not.</p>
12.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<p>This change will require us to send the new form with the minute order and will require the orders clerk to be trained. It also may result in more appeals. Our court believes this is a good change.</p>	<p>The committee notes the commenter's support for the proposal and appreciates the input regarding implementation requirements.</p>

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			There is a typo on the first line of the new form: 600 should be 601.	The committee thanks the commenter for pointing this out and has corrected the error.
13.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"><li>• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</li><li>• Results in additional training, which requires the commitment of staff time and court resources.</li><li>• Increases court staff workload.</li></ul> <p>The JRS notes that the rule change will provide greater awareness on the part of parents and guardians of appellate rights. Since the rule now requires an additional advisement to be sent if a parent is not present this will increase the workload of the Clerk's Office staff to track and record the appearance of each parent. In addition, depending on the number of parents not present, this may significantly increase postage costs for courts with large caseloads.</p> <p><i>1. Does the proposal address the stated purpose?</i></p>	<p>The committee notes the commenter's support for the proposal and appreciates the feedback regarding implementation requirements for courts.</p> <p>The committee appreciates this input.</p>

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		<p>Yes, the proposed modification squarely addresses, and accomplishes the stated purpose. However, Rule of Court 5.590(b)(2) also references advisements to be given to parents who are present when a hearing is set. To be consistent, subdivision (b)(2) could include the term “the child's parent, guardian.” That section states,</p> <p>When the court orders a hearing under section 366.26, the court must advise all parties and, if present, the child's parent, guardian, or adult relative, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek an extraordinary writ by filing a <i>Notice of Intent to File Writ Petition and Request for Record</i> (California Rules of Court, Rule 8.450) (form JV-820) or other notice of intent to file a writ petition and request for record and a <i>Petition for Extraordinary Writ</i> (California Rules of Court, Rules 8.452, 8.456) (form JV-825) or other petition for extraordinary writ.</p> <p>(1)The advisement must be given orally to those present when the court orders the hearing under section 366.26.</p>	<p>The committee appreciates this suggestion. Amending subdivision (b) of rule 5.590 is beyond the scope of this proposal, but the committee will retain the suggestion for future consideration.</p>
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			<p>(2)If a party, or <u>the child's parent, guardian</u> is not present when the court orders a hearing under section 366.26, within 24 hours of the hearing, the advisement must be made by the clerk of the court by first-class mail to the last known address of the party or by electronic service in accordance with section 212.5. If the notice is for a hearing at which the social worker will recommend the termination of parental rights, the notice may be electronically served in accordance with section 212.5, but only in addition to service of the notice by first-class mail.</p> <p>This change would have additional financial consequences as discussed herein.</p> <p>Finally, the new requirements may have unintended consequences including delay of dependency proceedings (based on notice issues).</p> <p><i>2. Are items 3 and 4 accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?</i> Yes.</p>	<p>See response above.</p> <p>See response below.</p> <p>The committee notes this concern, but expects that courts will take steps to avert potential problems such as delay when implementing the rule change.</p> <p>No response required.</p>
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		<p>3. <i>Should the form include any other information regarding appellate rights?</i> No.</p> <p>4. <i>If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing?</i></p> <p>The above-recited judicial council forms provide the following notification:</p> <p>For Your Information -You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.</p> <p>We do not recommend that this language be eliminated from the forms. The advisement,</p>	No response required.
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			<p>even if unnecessary, may still be helpful to the public.</p> <p><i>5. Would the proposal provide cost savings? If so, please quantify.</i></p> <p>No, the proposal would not provide cost savings. To the contrary, the proposal would have result in an increase in court labor, training, changes to automated systems, and other costs related to the additional form requirement. Further, the burden placed upon the court will include efforts to ascertain parent/guardian addresses and follow-up where notices are returned. This might be mitigated with language allowing notice to sufficient if sent by first class mail to the last known address.</p> <p><i>6. 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?</i></p> <p>Implementation of the rule modification will include training all juvenile clerks of the requirements, including when and to whom the judicial council advisement form</p>	<p>The committee thanks the commenter for this input and will provide it to the Family and Juvenile Law Advisory Committee.</p> <p>The committee thanks the commenter for this information on costs to the court.</p> <p>The committee agrees and has added language to rule 5.590(a) to this effect.</p> <p>The committee appreciates this information regarding implementation requirements.</p>
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		<p>must be mailed, and how to update the minutes, docket and case management system. Such training should not be expected to take longer 1 hour. The burden on the court for this task will depend on the size of the juvenile department and the number of clerks. The implementation will also require modification to case management systems, and possible automation.</p> <p><i>7. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Three months is a reasonable amount of time to allow for implementation.</p> <p><i>8. How well would this proposal work in courts of different sizes?</i></p> <p>As noted above, the burden on the court will vary, depending on the size of the court and juvenile department. Nevertheless, implementation will not unduly burden the large courts.</p>	<p>No further response required.</p> <p>No further response required.</p>
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