



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title	Agenda Item Type
Juvenile Law: Out-of-County Placements	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.614; revise form JV-555	January 1, 2020
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	September 6, 2019
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Contact
	Kerry Doyle, Attorney 415-865-8791 kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule and revising one form to conform to recent statutory changes regarding (1) the circumstances that allow waiving the requirement for notice of the child welfare agency's intent to place a child out of county and (2) the time frame for notice of, and objection to, the agency's intent to move a foster child to a different county if that child is transitioning from a temporary placement facility.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 5.614 to ensure it conforms to the new statutory requirements;
2. Amend rule 5.614(b) by adding a cross-reference to new Welfare and Institutions Code section 361.2(h)(2)(A);

3. Amend rule 5.614(d) with the correct reference to Welfare and Institutions Code section 224.3 and amend rule 5.614(f) to add a paragraph requiring that notice of the hearing comply with that section;
4. Amend rule 5.614(e) to delete the time frame for written notice specified in Welfare and Institutions Code section 361.2(h) and replace it with a cross-reference to that section;
5. Amend the title of rule 5.614 to read “Out-of-county placements”;
6. Amend the title of chapter 7 (in division 3 of title 5 of the rules) to read “Intercounty Transfers; Out-of-County Placements; Interstate Compact on the Placement of Children”; and
7. Revise *Notice of Intent to Place Child Out of County* (form JV-555) to indicate in the instructions the new time frames for notice and objection if the child is transitioning from a temporary placement facility.

The text of the amended rule and the revised form are attached at pages 5–8.

Relevant Previous Council Action

Assembly Bill 1688 (Rodriguez; Stats. 2016, ch. 608) required the county to provide notice to the child’s attorney and to the child, if 10 years of age or older, before moving the child to a placement outside the county, and allowed for the child and the child’s attorney to object to the move. The Judicial Council, effective January 1, 2019, amended rule 5.610 (Transfer-out hearing), repealed and adopted rule 5.614, and approved *Notice of Intent to Place Child Out of County* (form JV-555) and *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556) to conform to the statutory changes in AB 1688 regarding who a child welfare agency must notice when moving a foster child to a different county.

Analysis/Rationale

Assembly Bill 1930 (Stone; Stats. 2018, ch. 910) provides for the waiving of notice, if certain circumstances exist, and shortens the time frame for notice if the child is transitioning from a temporary placement facility. These new statutory changes render recently amended rule 5.614 and recently revised form JV-555 inaccurate.

Rule 5.614

The committee recommends amending rule 5.614 to ensure it conforms to the requirements in Welfare and Institutions Code section 361.2(h)¹ that were amended by AB 1930. The committee recommends amending rule 5.614(b) to reflect the new provision that the notice required before placement may be waived if certain circumstances exist,² by cross-referencing the new section

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

² The notice required before out-of-county placement may be waived if (1) the child and family team had determined that the identified placement is in the best interest of the child, (2) no member of the child and family team objects to the placement, and (3) the child’s attorney has been informed of the intended placement and has no

361.2(h)(2)(A). The committee recommends amending the rule to delete the time frame for written notice specified in section 361.2(h) and to replace it with a cross-reference to that statute. (See rule 5.614(e).) This cross-reference should obviate the need to amend the rule again if this code section is amended in the future. The rule would also continue to identify the optional forms that can be used for notice and objection.

For consistency with statutory requirements, the committee also recommends amending rule 5.614 to correct the statutory reference to section 224.3 and to add a paragraph requiring that notice of the hearing comply with section 224.3 if notice is to be served on the child's identified Indian tribe and Indian custodian. (See rule 5.614(d) and (f) respectively.) Additionally, the committee recommends that the title of rule 5.614 be changed from "Intercounty placements" to "Out-of-county placements" to correspond with the language within the rule, the names of the forms used for notice and objection, and the nomenclature used throughout the state. The committee also recommends that the first half of the title of chapter 7 be changed from "Intercounty Transfers and Placements" to "Intercounty Transfers; Out-of-County Placements."

Notice of Intent to Place Child Out of County (form JV-555)

The committee recommends revising the optional form used to notice a planned out-of-county placement. Form JV-555's instructions—for notice at the top of the form, and for objection in item 3—would be revised to indicate the new time frames for notice and objection if the child is transitioning from a temporary placement facility.

Policy implications

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal amends the rules of court to include statutory references rather than a paraphrase of the full statutory text. This approach should reduce the frequency of rule amendments because the rules would remain current even when these code sections are amended again.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Seven organizations provided comment: five agreed with the proposal, one agreed with the proposal if modified, no commenters opposed the proposal, and one did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 9–13.

objection, and where applicable, the Indian custodian or child's tribe has been informed of the intended placement and has no objection. (§ 361.2(h)(2)(A).)

Alternatives considered

For this proposal, the committee did not consider not amending the rule or revising the form, because the current rule and form would be inaccurate and conflict with recent statutory amendments to section 361.2(h).

Fiscal and Operational Impacts

The recommended rule amendments and form revisions are intended to update procedures that were implemented by statutes that became effective January 1, 2017. Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload. Similarly, the written notice requirements to parents and guardians have been in place for many years and those to the child's attorney and the child aged 10 or older have been in place since January 1, 2017; therefore, this recommendation should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.

One large court commented that there would be no implementation requirements. Another large court commented that judges and staff would need to be notified of the changes in the rule and form, but no changes would be needed on procedures or in the case management system. A third large court similarly commented that the implementation requirements would be notifying judicial officers, staff, and justice partners of the change to form JV-555 and rule 5.614. A fourth large court commented that the implementation requirements would be notifying judicial officers, justice partners, and court staff, and revising procedures. This court would need to create a new action code and hearing code in its case management system. A fifth large court commented that the implementation requirements would be informing bench, staff, and attorneys of the changes.

Of the courts that commented on whether the proposal would provide cost savings, one commented that the proposal would provide cost savings, and four commented that it would not.

Attachments and Links

1. Cal. Rules of Court, rule 5.610, at pages 5–6
2. Form JV-555, at pages 7–8
3. Chart of comments, at pages 9–13
4. Link A: Assembly Bill 1930 (Stone; Stats. 2018, ch. 910),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1930

1
2 **(e) Objection to proposed out-of-county placement**

3
4 Each participant who receives notice under (b)(1)–(3) may object to the proposed
5 removal of the child, and the court must set a hearing as required by section
6 361.2(h).

- 7
8 (1) An objection to the proposed ~~intercounty~~ out-of-county placement may be
9 made by using *Objection to Out-of-County Placement and Notice of Hearing*
10 (form JV-556).
11
12 (2) An objection must be filed ~~no later than seven days after receipt of the notice.~~
13 within the time frames in section 361.2(h).

14
15 **(f) Notice of hearing on proposed removal**

16
17 If an objection is filed, the clerk must set a hearing, and notice of the hearing must
18 be as follows:

- 19
20 (1) If the party objecting to the removal is not represented by counsel, the clerk
21 must provide notice of the hearing to the agency and the participants listed in
22 (b);
23
24 (2) If the party objecting to the removal is represented by counsel, that counsel
25 must provide notice of the hearing to the agency and the participants listed in
26 (b);
27
28 (3) Notice must be by either first-class mail, sent to the last known address of the
29 person to be noticed; electronic service in accordance with Welfare and
30 Institutions Code section 212.5; or personal service; ~~and~~
31
32 (4) Notice to the child’s identified Indian tribe and Indian custodian must comply
33 with the requirements of section 224.3; and

34
35 ~~(4)(5)~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing
36 on the proposed removal.

37
38 **(g)–(h) * * ***
39

Notice of Intent to Place Child Out of County

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

This notice must be served with a blank copy of form JV-556, Objection to Out-of-County Placement and Notice of Hearing, and must be provided 14 days before the proposed date of placement. If the child is moving from a temporary care facility, this notice must be provided immediately after oral notice.

1 To:

a. Parent or guardian (name):

b. Parent or guardian (name):

c. Parent’s attorney, if any (name):

d. Parent’s attorney, if any (name):

e. Child’s attorney (name):

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

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

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

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

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

2 Name of agency proposing move:

Address:

Phone number:

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

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

Number of pages attached: _____



Case Number:


Child's name: _____

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

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

Date: _____

Type or print your name

 _____
Sign your name

SPRING 19-23

Juvenile Law: Out-of-County Placements (Amend Cal. Rules of Court, rule 5.614; revise form JV-555)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch Director of Governmental Affairs <i>Sacramento, CA</i>	A	FLEXCOM agrees with this proposal.	No response required.
2.	Orange County Bar Association By: Deirdre Kelly President	A	Does the proposal appropriately address the stated purpose? Yes.	No response required.
3.	Superior Court of Los Angeles County	A	Request for Specific Comments Does the proposal appropriately address the stated purpose? -Yes, the proposal addresses the stated purpose. The advisory committee also seeks comments from courts on the following cost and implementation matters: Would the proposal provide cost savings? If so, please quantify. -We do not anticipate cost savings. 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? -None.	No response required. No response required. No response required. No response required.

SPRING 19-23

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	Commenter	Position	Comment	Committee Response
			<p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, two months would be sufficient.</p> <p>How well would this proposal work in courts of different sizes? -This proposal is not likely to have difference in impact on courts of various sizes.</p>	No response required.
4.	Superior Court of Orange County		<p>Rule 5.614 Out-of-County Placements</p> <ul style="list-style-type: none"> ▪ It may be beneficial to define “temporary placement facility”. <p>Request for Specific Comments</p> <p>Would the proposal provide a cost savings? -No, the proposal would not provide a cost savings.</p> <p>What would the implementation requirements be for courts? -Judges and staff would be notified of the changes in the rule and forms, but no changes would be needed on procedures or in the case management system.</p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, two months would be sufficient time for implementation.</p>	<p>The use of the phrase “temporary placement facility” on <i>Notice of Intent to Place Child Out-Of-County</i> (form JV-555) directly tracks the statutory language and it is not within the purview of the council to define this.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
5.	Superior Court of Riverside County By: Susan Ryan	A	Does the proposal appropriately address the stated purpose?	No response required.

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	Commenter	Position	Comment	Committee Response
	Chief Deputy – Legal Services		<p>Yes, the revision to the instructions and to item 3 of the Notice of Intent to Place Child Out of County (JV-555) form will make the form comply to the change approved by AB 1930. The revisions to Rule 5.614 also comply with AB 1930 by referencing WIC 361.2(h).</p> <p>Would the proposal provide cost savings? No.</p> <p>What would the implementation requirements be for courts? Notifying judicial officers, staff and justice partners of the changes to form JV-555 and Rule 5.614.</p> <p>Would two 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 notification of the form updates would likely need to occur in any size court. The proposals should work well for courts of any size.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
6.	Superior Court of San Bernardino County By:Executive Office	A	<p>Optional form JV555 – This revision updates emergency placement and a new time frame for notice and the filing of an objection if the minor is being transferred from a temporary placement facility.</p> <p>Request for Specific Comments</p>	No response required.

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes • Would the proposal provide cost savings? No • 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? Notify judicial officers, justice partners, and court staff and revise procedures. Create new action code and hearing code in our case management system (JNET). • 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? It should be the same no matter the size of the court. 	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
7.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	<ol style="list-style-type: none"> 1. Does the proposal appropriately address the stated purpose? Yes. 2. Would the proposal provide cost savings? Yes. 3. What would the implementation requirements be for courts? Informing bench, staff, and attorneys of changes. 4. Would two months provide sufficient time for implementation? Yes. 	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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Juvenile Law: Out-of-County Placements (Amend Cal. Rules of Court, rule 5.614; revise form JV-555)

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	Commenter	Position	Comment	Committee Response
			<p>5. How well would this proposal work in courts of different sizes? Probably very well.</p> <p style="text-align: center;"><u>Rule 5.614</u></p> <p>Subd. (b): Delete comma after “section 361.4 are met;”</p> <p style="padding-left: 40px;">Unless the requirements for emergency placement in section 361.4 are met, <u>or the circumstances in section 361.2(h)(2)(A) exist</u>, before placing a child out of county, county, the agency must notify the following participants of the proposed removal:</p> <p>Subd. (d)(2): Change “224.2” to “224.3.”</p> <p style="padding-left: 40px;">(2) Notice to the child’s identified Indian tribe and Indian custodian must comply with the requirements of section 224.23; and</p> <p>Subd. (f): Query -- Should a paragraph be added to require notice of the hearing on proposed removal to comply with section 224.3 if notice is to be served on the child’s identified Indian tribe and Indian custodian?</p> <p style="text-align: center;"><u>Form JV-555</u></p> <p>No comment.</p>	<p>No response required.</p> <p>The committee agrees with this suggestion and has deleted the comma from the proposed rule.</p> <p>The committee agrees with this suggestion and has updated the proposed rule with the correct statutory reference.</p> <p>The committee agrees with this suggestion and has amended the rule to include a statutory cross-reference to notice requirements for the child’s identified Indian tribe and Indian custodian.</p> <p>No response required.</p>