TITLE FIVE. Special Rules for Trial Courts

Adopted as Title Four effective January 1, 1970. Renumbered effective July 1, 1993.

DIVISION I. Rules Pertaining to Proceedings Involving Children and Families

Adopted effective July 1, 1998.

DIVISION Ia. GENERAL RULES

Adopted effective July 1, 1998.

Rule 1180. Kinship adoption agreement

Rule 1180. Kinship adoption agreement

(a) [Applicability of rule (Fam. Code, §§ 8714.5, 8714.7; Welf. & Inst. Code, § 366.26)] This rule shall apply only to adoptions of a child by a relative of the child or a relative of a sibling or half-sibling of the child. The adoption petition shall be filed under Family Code section 8714.5 or, if the child is a dependent of the juvenile court, under Welfare and Institutions Code section 366.26. If the child is a dependent of the juvenile court, the clerk shall open a confidential adoption file for the child, and this file shall be separate and apart from the dependency file, with an adoption case number different from the dependency case number. For the purposes of this rule, a "relative" is defined as follows:

(1) An adult related to the child or the child's sibling or half-sibling by blood or affinity, including a relative whose status is preceded by the word "step," "great," "great-great," or "grand"; and

(2) The spouse of any of the persons described in subdivision (a)(1) even if the marriage was terminated by dissolution or the death of the spouse related to the child.

(b) [Agreement for postadoption contact (Fam. Code, § 8714.7)] An adoptive parent or parents, a birth parent or parents of a child who is the subject of an adoption petition, and the child may enter into a written agreement permitting postadoption contact between the child and birth relatives.

(c) [Court approval; time of decree (Fam. Code, § 8714.7)] If, at the time the adoption petition is granted, the court finds that the agreement is in the best interests of the child, the court may enter the decree of adoption and grant postadoption contact as reflected in the approved agreement.

(d) [Terms of agreement (Fam. Code, § 8714.7)] The terms of the agreement shall be limited to the following, although they need not include all permitted terms:

(1) Provisions for visitation between the child and a birth parent or parents;

(2) Provisions for visitation between the child and other identified birth relatives, including siblings or half-siblings of the child;

(3) Provisions for contact between the child and a birth parent or parents;

(4) Provisions for contact between the child and other identified birth relatives, including siblings or half-siblings of the child;

(5) Provisions for contact between the adoptive parent or parents and a birth parent or parents;

(6) Provisions for contact between the adoptive parent or parents and other identified birth relatives, including siblings or half-siblings of the child;

(7) Provisions for the sharing of information about the child with a birth parent or parents;

(8) Provisions for the sharing of information about the child with other identified birth relatives, including siblings or half-siblings of the child.

(e) [Child a party (Fam. Code, § 8714.7)] The child who is the subject of the adoption petition shall be considered a party to the agreement.

(1) Written consent by a child of 12 years of age or older to the terms of the agreement shall be required for enforcement of the agreement**,** unless the court finds by a preponderance of the evidence that the agreement is in the best interests of the child and waives the requirement of the child's written consent.

(2) If the child has been found by a juvenile court to be described by section 300 of the Welfare and Institutions Code, an attorney shall be appointed to represent the child for purposes of participation in and consent to any kinship adoption agreement, regardless of the age of the child. The attorney is required to represent the child only until the adoption is decreed and dependency terminated.

(f) [Form and provisions of the agreement (Fam. Code, § 8714.7)] The agreement shall be prepared and submitted on Judicial Council form *Kinship Adoption Agreement* (AD-310) with appropriate attachments.

(g) [Report to the court (Fam. Code, § 8715)] The department or agency participating as a party or joining in the petition for adoption shall submit a report to the court. The report shall include a criminal record check and all social service referrals. If a Kinship Adoption Agreement has been submitted, the report shall include a summary of the agreement and a recommendation as to whether it is in the best interests of the child.

(h) [Enforcement of the agreement (Fam. Code, § 8714.7)] The court that grants the petition for adoption and approves the Kinship Adoption Agreement shall retain jurisdiction over the agreement.

(1) Any petition for enforcement of an agreement shall be filed on Judicial Council form *Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-315). The form shall not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other dispute resolution.

(2) The court may make its determination on the petition without testimony or an evidentiary hearing and may rely solely on documentary evidence or offers of proof. The court may order compliance with the agreement only if:

(A) There is sufficient evidence of good-faith attempts to resolve the issues through mediation or other dispute resolution; and

(B) The court finds enforcement is in the best interests of the child.

(3) The court shall not order investigation or evaluation of the issues raised in the petition unless the court finds by clear and convincing evidence that:

(A) The best interests of the child may be protected or advanced only by such inquiry; and

(B) The inquiry will not disturb the stability of the child's home to the child's detriment.

(4) No monetary damages shall be ordered.

(i) [Modification or termination of agreement (Fam. Code, § 8714.7)] The agreement may be modified or terminated by the court. Any petition for modification shall be filed on Judicial Council form *Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-315). The form shall not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or appropriate dispute resolution.

(1) The agreement may be terminated or modified only if:

(A) All parties, including the child of 12 years or older, have signed the petition or have indicated on the Judicial Council form *Response to Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-320) their consent or have executed a modified agreement filed with the petition; or

(B) The court finds all of the following:

(i) The termination or modification is necessary to serve the best interests of the child;

(ii) There has been a substantial change of circumstances since the original agreement was approved; and

(iii) The petitioner has participated in, or has attempted to participate in, mediation or appropriate dispute resolution.

(2) The court may make its determination without testimony or evidentiary hearing and may rely solely on documentary evidence or offers of proof.

(3) The court may order modification or termination without a hearing if all parties, including the child of 12 years or older, have signed the petition or have indicated on the Judicial Council Form *Response to Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-320) their consent or have executed a modified agreement filed with the petition.

(4) The court shall not order an investigation or evaluation of the issues raised in the petition unless the court finds by clear and convincing evidence that:

(A) The best interests of the child may be protected or advanced only by such inquiry; and

(B) The inquiry will not disturb the stability of the child's home to the child's detriment.

(j) [Costs and fees (Fam. Code, § 8714.7)] The fee for filing a *Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-315) shall not exceed the fee assessed for the filing of an adoption petition. Costs and fees for mediation or other appropriate dispute resolution shall be assumed by each party, with the exception of the child. All costs and fees of litigation, including any court-ordered investigation or evaluation, shall be charged to the petitioner unless the court finds that a party, other than the child, has failed, without good cause, to comply with the approved agreement; all costs and fees shall then be charged to that party.

(k) [Adoption final (Fam. Code, § 8714.7)] Once a decree of adoption has been entered, the court may not set aside the decree, rescind any relinquishment, modify or set aside any order terminating parental rights, or modify or set aside any other orders related to the granting of the adoption petition, due to the failure of any party to comply with the terms of a Kinship Adoption Agreement or any subsequent modifications to it.

Rule 1180 adopted effective July 1, 1998.

Drafter's Notes
1998—This rule was adopted to conform to recent statutory changes. The legislation changed various foster care and adoption procedures with the intent of expediting the permanent placement of foster children living with relatives. Rule 1180 sets forth the procedures for a Kinship Adoption Agreement.

DIVISION Ib. Family Law Rules

Renumbered effective July 1, 1998.

CHAPTER 1. General Provisions

Title 4, Special Rules for Trial Courts—Division I, Family Law Rules—Chapter 1, General Provisions; adopted effective January 1, 1970.

Rule 1200. Judicial education for family court judicial officers

Every judicial officer whose principal judicial assignment is to hear family law matters or who is the sole judge hearing family law matters shall, if funds are available, attend the following judicial education programs:

(1) *(Basic family law education)* Within three months of beginning a family law assignment, or within one year of beginning a family law assignment in courts with five or fewer judges, the judicial officer shall attend a basic educational program on California family law and procedure designed primarily for judicial officers. A judicial officer who has completed the basic educational program need not attend the basic educational program again. All other judicial officers who hear family law matters, including retired judges who sit on court assignment, shall participate in appropriate family law educational programs.

(2) *(Continuing family law education)* The judicial officer shall attend a periodic update on new developments in California family law and procedure.

(3) *(Other family law education)* To the extent that judicial time and resources are available, the judicial officer shall attend additional educational programs on other aspects of family law including interdisciplinary subjects relating to the family.

Rule 1200 adopted effective January 1, 1992.

Drafter's Notes
1992—The council adopted rule 1200 to mandate judicial education for judicial officers whose principal judicial assignment is family law matters. This is the first rule mandating education in a specific area of the law for judges. (See related new section 25.3 of the Standards of Judicial Administration on family law judicial education curriculum.)

Rule 1201. Definitions

As used in these rules, unless the context or subject matter otherwise requires:

(a) "Family Code" means that code enacted by chapter 162 of the Statutes of 1992 and any subsequent amendments to that code.

(b) "Party," "petitioner," "respondent," or any other designation of a party includes such party's attorney of record. When a notice or other paper is required to be given or served on a party, such notice or service shall be given to or made on his attorney of record if he has one.

(c) "Proceeding" means a proceeding pursuant to the Family Code or, prior to January 1, 1994, to the Family Law Act for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

(d) "Property" includes assets and obligations.

(e) "Serve and file" means that a paper filed in a court is to be accompanied by proof of prior service in a manner permitted by law of a copy of the paper on each party appearing in the proceeding.

(f) Any references in these rules to the Family Law Act or to provisions of the Civil Code that have been relocated to the Family Code shall be deemed to refer to the corresponding provisions of the Family Code.

Rule 1201 as amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1202. Construction of terms

(a) "Shall" is mandatory, and "may" is permissive.

(b) The past, present, and future tense shall each include the others.

(c) The singular and plural number shall each include the other.

(d) Rule and subdivision headings do not in any manner affect the scope, meaning, or intent of the provisions of these rules.

Rule 1202 adopted effective January 1, 1970.

Rule 1203. Extensions of time

The time within which any act is permitted or required to be done by a party under these rules may be extended by the court upon such terms as may be just.

Rule 1203 adopted effective January 1, 1970.

Rule 1204. Holidays

If any day on which an act permitted or required to be done by these rules falls on a legal holiday, the act may be performed on the next succeeding judicial day.

Rule 1204 adopted effective January 1, 1970.

Rule 1205. Applicability of rules

The rules in this division apply to every action and proceeding as to which the Family Code applies and, unless these rules elsewhere explicitly make them applicable, do not apply to any other action or proceeding except for proceedings formerly brought under chapters 1608 and 1609 of the Statutes of 1969.

Chapter 3.5 of this division applies to summary dissolution proceedings pursuant to sections 2400-2406 of the Family Code, and chapters 2, 2.5, and 3 of this division do not apply to such proceedings.

Rule 1205 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1979.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1206. General law applicable

Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply regardless of nomenclature to a proceeding pursuant to the Family Code if they would otherwise apply to such proceeding without reference to this rule. To the extent that these rules conflict with such provisions, these rules shall prevail.

Rule 1206 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1207. Other proceedings

In any action pursuant to the Family Code but not otherwise subject to these rules by virtue of subdivision (c) of rule 1201, including but not limited to those proceedings authorized by sections 3021, 3041, 3120, and 4000 of the Family Code, all provisions of law applicable to civil actions generally apply regardless of nomenclature if they would otherwise apply to such actions without reference to this rule, but the action shall be commenced by filing an appropriate petition and defended by filing an appropriate response within 30 days after service upon the respondent of the summons and a copy of the petition.

Rule 1207 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 2. Procedural Rules

Title 4, Special Rules for Trial Courts—Division I, Family Law Rules—Chapter 2, Procedural Rules; adopted effective January 1, 1970.

Rule 1210. Designation of parties

The party initiating the proceeding is the petitioner, and the other party is the respondent. Every proceeding shall be prosecuted and defended in the names of the real parties in interest.

Rule 1210 adopted effective January 1, 1970.

Rule 1211. Parties to proceeding

(a) Except as provided in subdivision (b) or in rules 1250 through 1255, the only persons permitted to be parties to the proceeding are the husband and wife.

(Subd (a) amended effective January 1, 1977.)

(b) In a nullity proceeding commenced by a person specified in Family Code section 2211, other than a proceeding commenced by or on behalf of the husband or wife, the person initiating the proceeding is a party and the caption on all papers shall be suitably modified to reflect that fact.

(Subd (b) amended effective January 1, 1994.)

Rule 1211 as amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1977.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1212. Other causes of action

Neither party to the proceeding may assert against the other party or any other person any cause of action or claim for relief other than for the relief provided in these rules or the Family Code.

Rule 1212 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1213. Injunctive relief and reservation of jurisdiction

If there is any person who has or claims an interest in the controversy, or who but for rule 1211 would be a necessary party to a complete adjudication of the controversy, or if there is a person who is acting as a trustee, agent, custodian, or similar fiduciary with respect to any property subject to disposition by the court in the proceeding, or other matter subject to the jurisdiction of the court in the proceeding, the court may grant injunctive or other relief against any such person to protect the rights of either or both of the parties to the proceeding under the Family Code upon application therefor in the manner prescribed by rule 1225 or, if the court is unable to resolve the issue in the proceeding under the Family Code, the court may reserve jurisdiction over the particular issue until such time as the rights of such person and the parties to the proceeding under the Family Code have been adjudicated in a separate action or proceeding.

Rule 1213 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1215. Pleadings

(a) The forms of pleading and the rules by which the sufficiency of pleadings is to be determined are solely those prescribed in these rules. Demurrers and other forms of pleading may not be used unless specifically permitted by these rules.

(b) The only pleading permitted by a petitioner is the petition in the form prescribed by rule 1281.

(c) The only pleading permitted by a respondent is the response in the form prescribed by rule 1282.

(d) Amendments to pleadings, amended pleadings, and supplemental pleadings may be served and filed in conformity with the provisions of law applicable to such matters in civil actions generally, but there need be no reply by the petitioner if the respondent has filed a response. If both parties have filed pleadings, there may be no default entered on an amended pleading of either party.

Rule 1215 adopted effective January 1, 1970.

Rule 1216. Summons; restraining order

(a) [Issuing the summons; form] The procedure for issuance of summons in the proceeding shall be that applicable to civil actions generally. The summons shall be in the form prescribed by rule 1283.

(b) [Service of summons] A copy of the petition, together with a copy of the summons, shall be served upon the respondent in the manner provided for service of summons in civil actions generally, and proof of such service shall be made in the manner provided for proof of service of summons in civil actions generally.

(c) [Standard family law restraining order; handling by clerk] Notwithstanding Family Code section 233, the summons with the standard family law restraining order shall be issued and filed in the same manner as a summons in a civil action and shall be served and enforced the same as any other restraining order. If service is by publication, the publication shall not include the restraining order.

(Subd (c) amended effective January 1, 1994; adopted effective July 1, 1990.)

(d) [Individual restraining order] On application of a party, a court may issue any individual restraining order, as provided in the Family Code, that appears to be reasonable or necessary, including those restraining orders included in the standard family law restraining order. Individual orders supersede the standard family law restraining order on the family law summons.

(Subd (d) amended effective January 1, 1994; adopted effective July 1, 1990.)

(e) [Confidential restraining order] On application of any party for an individual restraining order, a court may, upon the request of a party, issue the restraining orders as confidential

restraining orders, whose existence shall be entered in the register of actions as confidential restraining orders. A confidential restraining order shall be prominently designated as such by the clerk, who shall hand print or stamp the word "confidential" in large capital letters across the front of the restraining order and each copy. The application for the restraining order, the responsive declaration, and the original order shall be sealed and labeled confidential. The restraining orders shall be given or shown only to the parties, the court, the county clerk, the person or entity serving the confidential restraining orders, law enforcement officials as necessary for service or enforcement, and other persons specified by the court.

(Subd (e) adopted effective July 1, 1990.)

Rule 1216 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective July 1, 1990.

Drafter's Notes
1990—A new rule 1216 was adopted to provide that the family law summons is filed, served and enforced the same as any civil summons. This rule modifies the effect of legislation effective July 1, 1990 (Code of Civil Procedure section 412.21), which in the absence of the rule would subject court clerks and others to criminal penalties for placing copies of the summons in the court's files or otherwise revealing the existence of the standard (automatic) restraining orders.

1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1217. Continuing jurisdiction

The court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and a copy of the petition. A general appearance of the respondent is equivalent to personal service within this state of the summons and a copy of the petition upon him.

Rule 1217 adopted effective January 1, 1970.

Rule 1218. Duties of clerk

The functions of the clerk with respect to filing and endorsement of the petition and other papers filed in the proceeding shall be those applicable to civil actions generally.

Rule 1218 adopted effective January 1, 1970.

Rule 1219. Lis pendens

In a proceeding under the Family Code, either party may record a notice of pendency of the proceeding under the circumstances and in the manner provided by section 409 of the Code of Civil Procedure.

Rule 1219 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1220. Costs

The provisions of chapter 6 (commencing with section 1021) of title 14 of part 2 of the Code of Civil Procedure are applicable to contested proceedings under the Family Code in the same manner as in civil actions generally.

Rule 1220 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1221. Alternative relief

A party seeking alternative relief shall indicate his request by such designations as are appropriate in the petition or response.

Rule 1221 adopted effective January 1, 1970.

Rule 1222. Commencement of proceeding

A party who seeks a judicial determination altering that party's marital status pursuant to the Family Code shall complete and file in the superior court a petition in the form prescribed by rule 1281. The proceeding is commenced upon the filing of this petition.

Rule 1222 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1223. Stipulation for judgment

A stipulation for judgment in the form prescribed by rule 1287 or rule 1289, as may be appropriate to the relief sought, may be submitted to the court for signature at the time of the hearing on the merits and shall contain the exact terms of any judgment proposed to be entered in the case. At the end thereof, immediately above the space reserved for the judge's signature, the stipulation for judgment shall contain the following:

The foregoing is agreed to by

_____	_____
(Petitioner)	(Respondent)
_____	_____
(Attorney for Petitioner)	(Attorney for Respondent)

The stipulation for judgment shall include disposition of all matters subject to the court's jurisdiction for which a party seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time. The stipulation for judgment shall constitute a written agreement between the parties as to all matters covered therein.

Rule 1223 amended effective January 1, 1972; adopted effective January 1, 1970.

Rule 1224. Confidential counseling statement (Petitioner)

In those counties having a conciliation court established pursuant to the Family Conciliation Court Law (part 1 of division 5 of the Family Code), the petitioner shall sign and file, concurrently with the filing of the petition, a confidential counseling statement in the form prescribed by rule 1284.

Upon the filing of the confidential counseling statement, the clerk shall protect it from access or inspection by unauthorized persons and shall promptly transfer it to the conciliation court. A confidential counseling statement filed pursuant to this rule may be destroyed after one year from the date of filing unless otherwise ordered by the court.

A blank copy of the confidential counseling statement in the form prescribed by rule 1284 shall be served upon the respondent with and at the same time as service of the summons and petition is made.

Rule 1224 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1972, and January 1, 1975.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Note
Stats. 1980, ch. 48, amending CCP §1740 et seq., changed the title of the conciliation courts to "Family Conciliation Courts."

Rule 1225. Application for court order

(a) An application for an injunctive or other order against a party or any other person, the response thereto, and to the extent that these rules so provide all attachments thereto, shall be in the form prescribed by rules 1285, 1285.10, 1285.20, and 1285.40. The court may grant or deny the relief solely on the basis of the application and responses and any accompanying memorandum of points and authorities, and an injunction may be granted under the circumstances and in the manner provided by sections 526, 527, 528, and 529 of the Code of Civil Procedure, except that

(1) there shall be no continuance of a hearing granted as a matter of right where the court determines that the interests of justice require an immediate hearing and

(2) no memorandum of points and authorities need be filed unless required by the court.

(Subd (a) amended effective January 1, 1980; previously amended effective January 1, 1972; adopted effective January 1, 1970.)

(b) A completed income and expense declaration, property declaration and application for order and supporting declaration in the form prescribed by rules 1285.20, 1285.50 and 1285.55 shall be attached to an application for an injunctive or other order when relevant to the relief requested. A copy of the application for order and supporting declaration, a copy of the order endorsed by the clerk if relief is sought by order to show cause, and a blank copy of the responsive declaration in the form prescribed by rule 1285.40 shall be served on the person against whom relief is requested. The original application and order shall be retained in the court file. Blank copies of the income and expense declaration and the property declaration in the form prescribed by rules 1285.50 and 1285.55 shall be served when completed declarations are among the papers required to be served.

(Subd (b) amended effective January 1, 1980; previously amended effective July 1, 1977; adopted effective January 1, 1972.)

Rule 1225 amended effective January 1, 1980; previously amended effective January 1, 1972, and July 1, 1977; adopted effective January 1, 1970.

Rule 1226. Orders to show cause re contempt

Every order to show cause re contempt and supporting declaration in a proceeding under the Family Code shall be in the form prescribed by rule 1285.60.

Rule 1226 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1972.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1227. Responsive pleading

Regardless of the type of relief sought in the petition, a responsive pleading may be served and filed within 30 days of the date of the service upon the respondent of a copy of the petition and summons. The responsive pleading, if any, shall be in the form prescribed by rule 1282.

Rule 1227 adopted effective January 1, 1970.

Rule 1228. Confidential counseling statement (Respondent)

In those counties having a conciliation court established pursuant to the Family Conciliation Court Law (part 1 of division 5 of the Family Code), a respondent who files a response shall, concurrently with the filing thereof, sign and file, concurrently with the filing of the petition, a confidential counseling statement in the form prescribed by rule 1284.

Upon the filing of the confidential counseling statement, the clerk shall protect it from access or inspection by unauthorized persons and shall promptly transfer it to the conciliation court. A confidential counseling statement filed pursuant to this rule may be destroyed after one year from the date of filing unless otherwise ordered by the court.

Rule 1228 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1972, and January 1, 1975.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1229. Motion to strike

(a) Neither the petition nor the response shall contain any matter not specifically required by rule 1281 or rule 1282, respectively. At the request of either party upon noticed motion, or on the

court's own motion, any matter not so required may be stricken by the court or otherwise disregarded by it.

(b) A notice of motion to strike pursuant to this rule shall distinctly specify the matter to be stricken and the reasons therefor. Unless it does so, the motion may be disregarded by the court.

(c) A motion to strike any matter in a pleading pursuant to this rule does not extend the time within which to file a response.

(d) The provisions of sections 435 and 453 of the Code of Civil Procedure do not apply to these proceedings.

Rule 1229 adopted effective January 1, 1970.

Rule 1230. Motion to quash proceeding

(a) Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following:

(1) Petitioner's lack of legal capacity to sue.

(2) That there is a prior judgment or another action pending between the same parties for the same cause.

(3) That the residence required by Family Code section 2320 is lacking.

(4) That Family Code section 2211 prevents maintenance of the proceeding.

A party waives the matters set forth above if they are not raised by filing a motion to quash pursuant to this rule within the time permitted to file a response.

(b) The notice of motion to quash pursuant to this rule shall specify a hearing date not more than 20 days from the date of filing such notice. If the respondent files a notice of motion pursuant to this rule, no default may be entered against him and his time to file a response shall be extended until 15 days after notice of the court's ruling.

(c) A notice of motion to quash pursuant to this rule shall distinctly specify the ground upon which the motion is based. Unless it does so, the motion may be disregarded by the court.

(d) When a motion to quash pursuant to this rule is based on a matter of which the court may take judicial notice pursuant to section 452 or 453 of the Evidence Code, such matter shall be specified in the motion or in the supporting memorandum of points and authorities for the purpose of invoking such notice except as the court may otherwise permit.

Rule 1230 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1231. Filing of response

A response may be filed at the same time as a motion to strike pursuant to rule 1229 or a motion to quash pursuant to rule 1230, or both, is filed.

Rule 1231 adopted effective January 1, 1970.

Rule 1232. Ruling on motion to quash

(a) A defense which is raised by a motion to quash pursuant to rule 1230 is not waived by later filing a response.

(b) When a motion to quash pursuant to rule 1230 is granted, the court may grant leave to amend the petition and shall fix the time within which such amendment to the pleading or amended pleading shall be filed. When the court makes an order granting a motion to quash pursuant to rule 1230 without leave to amend, and the proceeding is dismissed pursuant to rule 1233, the question as to whether the court abused its discretion in making the order is open on appeal even though no request to amend was made.

(c) When a motion to quash pursuant to rule 1230 is granted and time to amend is given, or when such motion is denied and time to respond is given, the time given runs from the service of notice of the order unless such notice is waived in open court and the waiver entered in the minutes.

Rule 1232 adopted effective January 1, 1970.

Rule 1233. Dismissal of proceeding

A proceeding may be dismissed by the court when a motion to quash pursuant to rule 1230 is sustained without leave to amend, or when, after a motion to quash pursuant to rule 1230 has been sustained with leave to amend, the petitioner fails to amend the petition within the time permitted by the court, and either party moves for such dismissal.

In other cases, the proceeding may be dismissed under the circumstances and in the manner provided by sections 581, 581c, 581d, and chapter 1.5 (§583.110 et seq.) of title 8 of part 2 of the Code of Civil Procedure.

Rule 1233 amended effective January 1, 1986; adopted effective January 1, 1970.

Drafter's Notes
1985—See note following rule 373.

Rule 1234. Motion to quash summons

In a proceeding under the Family Code, a respondent may serve and file a notice of motion to quash the service of summons upon the ground of lack of jurisdiction of the court over that person or a notice of the filing of a petition for writ of mandate under the circumstances and in the manner provided by section 418.10 of the Code of Civil Procedure.

Rule 1234 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1977.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1235. Motion to transfer

In a proceeding under the Family Code, a respondent may serve and file a notice of motion to transfer the proceeding under the circumstances and in the manner provided by title 4 (commencing with section 392) of part 2 of the Code of Civil Procedure, but there need be no affidavit of merits filed.

Rule 1235 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1236. Appearance

A respondent appears in a proceeding when he files a response, or a notice of motion to strike pursuant to rule 1229, or a notice of motion to quash the proceeding pursuant to rule 1230, or a notice of motion to transfer the proceeding pursuant to rule 1235, or when he files written notice of his appearance. After appearance, the respondent or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given by these rules or in civil actions generally. Where a respondent has not appeared, notice of subsequent proceedings need not be given him except as provided in these rules.

Rule 1236 amended effective January 1, 1972; adopted effective January 1, 1970.

Rule 1237. Default

If the respondent fails within the time permitted to respond to file a response, a notice of motion to quash the proceeding pursuant to rule 1230, a notice of motion to quash service of summons or

a notice of the filing of a petition for writ of mandate pursuant to rule 1234, or a notice of motion to transfer the proceeding pursuant to rule 1235, the clerk shall enter the respondent's default upon proper application of the petitioner and thereafter the petitioner may apply to the court for the relief sought in the petition. The court shall require proof to be made of the facts stated in the petition and may enter its judgment accordingly. The court may permit the use of a completed income and expense declaration and property declaration in the form prescribed by rules 1285.50 and 1285.55 as to all or any part of the proof required or permitted to be offered on any issue as to which they are relevant.

Rule 1237 amended effective January 1, 1980; previously amended effective January 1, 1972; adopted effective January 1, 1970.

Rule 1238. Statements of fact

Unless controverted in the response, or unless a motion to quash pursuant to rule 1230(a)(3) be made, every material statement of fact in the petition shall be taken as true for the purpose of the proceeding. All statements of fact and requests for relief contained in the response shall be deemed controverted. There shall be no reply by petitioner to such matters except as permitted by rule 1239.

Rule 1238 adopted effective January 1, 1970.

Rule 1239. Motion to quash responsive relief

(a) Within 15 days after the filing of the response, the petitioner may move to quash, in whole or in part, any request for affirmative relief in the response for any of the following:

(1) Respondent's lack of legal capacity to sue.

(2) That there is a prior judgment or another action pending between the same parties for the same cause.

(3) That the residence required by Family Code section 2320 is lacking.

(4) That Family Code section 2211 prevents maintenance of the proceeding.

The petitioner waives the matters set forth above if they are not raised within 15 days after the filing of the response.

(Subd (a) amended effective January 1, 1994.)

(b) The notice of motion to quash pursuant to this rule shall specify a hearing date not more than 20 days from the date of filing such notice.

(c) A notice of motion to quash pursuant to this rule shall distinctly specify the ground upon which the motion is based. Unless it does so, the motion may be disregarded by the court.

(d) When a motion to quash pursuant to this rule is based on a matter of which the court may take judicial notice pursuant to section 452 or 453 of the Evidence Code, such matter must be specified in the motion or in the supporting memorandum of points and authorities for the purpose of invoking such notice except as the court may otherwise permit.

(e) When a motion to quash pursuant to this rule is granted, the court may grant leave to amend the response and shall fix the time within which such amendment to the pleading or amended pleading shall be filed. The time given runs from the service of notice of the order unless such notice is waived in open court and the waiver entered in the minutes.

(f) When the court makes an order granting a motion to quash pursuant to this rule without leave to amend, and the proceeding is dismissed pursuant to subdivision (g), the question as to whether the court abused its discretion in making the order is open on appeal even though no request to amend was made.

(g) The request for affirmative relief by the respondent may be dismissed by the court when a motion to quash pursuant to this rule is sustained without leave to amend, or when, after a motion to quash pursuant to this rule has been sustained with leave to amend, the respondent fails to amend it within the time permitted by the court, and either party moves for such dismissal.

In other cases, the request for affirmative relief by the respondent may be dismissed under the circumstances and in the manner provided by sections 581, 581c, 581d, and chapter 1.5 (§583.110 et seq.) of title 8 of part 2 of the Code of Civil Procedure.

(Subd (g) amended effective January 1, 1986.)

Rule 1239 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1986.

Drafter's Notes
1985—See note following rule 373.

1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1240. Request for default

No default may be entered in any proceeding unless a request in the form prescribed by rule 1286 has been completed in full and filed by the petitioner, but no financial declaration is required when the petition contains no demand for money, property, costs, or attorney's fees. For the purpose of completing the declaration of mailing, unless service was by publication and the address of

respondent is unknown, it is not sufficient to state that the address of the party to whom notice is given is unknown or unavailable.

Rule 1240 amended effective January 1, 1980; previously amended effective January 1, 1979; adopted effective January 1, 1970.

Rule 1241. Uncontested proceeding

In the following cases, which shall be treated as uncontested matters, the same procedure shall be followed and judgment shall be rendered in the same manner as if a default had been entered:

(a) If the respondent fails to file a response within the time permitted by the court after a motion to quash pursuant to rule 1230 is granted or denied, in whole or in part, and the proceeding is not dismissed pursuant to rule 1233.

(b) If the respondent fails to file a response within the time permitted by the court after denial of a motion to quash service of summons or denial of a writ of mandate, as provided in rule 1234.

(c) If the respondent fails to file a response within the time permitted after a ruling by the court on a motion to transfer pursuant to rule 1235.

(d) If the respondent files written notice of his appearance.

(e) If the respondent has appeared and the parties have stipulated that the matter be so treated.

Rule 1241 amended effective January 1, 1972; adopted effective January 1, 1970.

Rule 1242. Division of property

The court in every case shall ascertain the nature and extent of all assets and obligations subject to disposition by the court in the proceeding and shall divide these assets and obligations as provided in the Family Code, except upon the written agreement of the parties or an oral stipulation of the parties made in open court. The court may require that any agreement be submitted to verify that there is no property subject to disposition by the court.

Rule 1242 amended effective January 1, 1994; adopted effective January 1, 1970; previously amended effective January 1, 1972.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1242.5. Alternate date of valuation

(a) [Notice of motion] The notice referred to in Family Code §2552(b) shall consist of a noticed motion served upon all parties in the form prescribed by rule 1286.75.

(b) [Declaration accompanying notice] In addition to the requirements of rule 1286.75, the notice shall be accompanied by a declaration which sets forth the following:

(1) The proposed alternate valuation date;

(2) Whether the proposed alternate valuation date shall apply to all or only a portion of the assets and, if the motion is directed to only a portion of the assets, the declaration must separately identify each such asset; and

(3) The reasons supporting the alternate valuation date.

Rule 1242.5 adopted effective July 1, 1995.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council adopted:

(1) rule 1242.5 to create a procedure to be used when a party to a dissolution requests an alternative valuation date for the marital assets; . . . .

Rule 1243. Financial declaration

A current income and expense declaration and a current property declaration in the form prescribed by rules 1285.50 and 1285.55 shall be served and filed by any petitioner or respondent appearing at any hearing at which the court is to determine an issue as to which such declarations would be relevant, and so much thereof shall be completed as is applicable to the issue to be determined except that, unless otherwise ordered by the court in which the proceeding is pending, the income and expense declaration need not be completed for any hearing on the merits when the matter is to be disposed of by default pursuant to rule 1237 or as an uncontested proceeding pursuant to rule 1241. When a petitioner or respondent is represented by counsel and attorney's fees are requested by either party, item 19 of the income information attachment to the income and expense declaration shall be fully completed.

Rule 1243 amended effective July 1, 1985; previously amended effective January 1, 1972, and January 1, 1980; adopted effective January 1, 1970.

Rule 1244. Judgment

If the court finds that a judgment altering the marital status of parties is appropriate, the court shall render its judgment in the form prescribed by rule 1287.

Rule 1244 amended effective July 1, 1985; adopted effective January 1, 1970.

Rule 1245. Request for final judgment

In any proceeding for dissolution of marriage in which an interlocutory judgment of divorce was entered prior to January 1, 1970, or in which an interlocutory judgment of dissolution is entered after January 1, 1970, and prior to July 1, 1984, the party applying for a final judgment of dissolution shall submit to the court a Request and Declaration for Final Judgment in the form prescribed by rule 1288. The judgment of dissolution shall be in the form prescribed by rule 1287.

Rule 1245 amended effective July 1, 1984; adopted effective January 1, 1970.

Drafter's Notes
1984—A 1983 amendment to Civ C §4514 eliminated the interlocutory judgment and made a dissolution automatically effective six months after the date of service of the summons or the appearance of respondent, whichever occurs first, or at a date specified in the judgment, unless the court retains jurisdiction over the date of termination of the marital status.

To implement these provisions a new judgment form has been adopted and revisions have been made in the Notice of Entry of Judgment and Declaration for Default or Uncontested Dissolution. An amendment to rule 1245 will enable a party who has an interlocutory judgment issued before July 1 to file the form Request for Final Judgment and receive a judgment on the new form.

Rule 1246. [Repealed 1985.]

Adopted effective January 1, 1970; amended effective January 1, 1972; repealed effective July 1, 1985. The repealed rule related to notice of entry of interlocutory judgment.

Rule 1247. Notice of entry of judgment

Notwithstanding Code of Civil Procedure section 664.5, the clerk shall give notice of entry of judgment of legal separation, a final judgment of dissolution, or a judgment of nullity in the form prescribed by rule 1290 to the attorney for each party, or to the party if unrepresented.

Rule 1247 amended effective January 1, 1982; previously amended effective January 1, 1972; adopted effective January 1, 1970.

Rule 1248. Completion of notice of entry of judgment

Every person who submits a judgment for signature by the court shall submit stamped envelopes addressed to the parties and an original and two copies of a notice of entry of judgment in the form prescribed by rule 1290, completed except for the designation of the date, book, and page where entered, the date of mailing, and signatures, and shall specify in the certificate of mailing the place where notices have been given to the other party or, if there has been no appearance by

the other party, the address stated in the affidavit of mailing in Part 3 of the request to enter default, which shall be the party's last known address.

If service was by publication and the address of respondent is unknown, those facts shall be stated in place of the required address.

Failure to complete the form or to submit the envelopes shall be cause for refusal to sign the judgment until compliance with the requirements of this rule.

Rule 1248 amended effective July 1, 1982; previously amended effective January 1, 1972, and January 1, 1980; adopted effective January 1, 1970.

Drafter's Notes
1982—The Judicial Council has amended rule 1248 to require that a party submitting a family law judgment for signature must provide the clerk with stamped envelopes addressed to the parties as well as completed forms of the Notice of Entry of Judgment to be mailed to the parties. The amendment is intended to assist counties in reducing costs of processing family law documents.

Rule 1249. Implied procedures

In the exercise of the court's jurisdiction pursuant to the Family Code, if the course of proceeding is not specifically indicated by statute or these rules, any suitable process or mode of proceeding may be adopted by the court which appears conformable to the spirit of the Family Code and these rules.

Rule 1249 amended effective January 1, 1994; adopted effective January 1, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 2.5. Joinder of Parties

Title 4, Special Rules for Trial Courts—Division I, Family Law Rules—Chapter 2.5, Joinder of Parties, adopted effective January 1, 1970.

Rule 1250. Joinder of persons claiming interest

Notwithstanding any other rule in this division, a person who claims or controls an interest subject to disposition in the proceeding may be joined as a party to the proceeding only as provided in this chapter. Except as otherwise provided in this chapter, all provisions of law relating to joinder of parties in civil actions generally apply to the joinder of a person as a party to the proceeding.

Rule 1250 amended effective January 1, 1978; adopted effective November 23, 1970.

Rule 1251. "Claimant" defined

As used in this chapter, "claimant" means a person joined or sought or seeking to be joined as a party to the proceeding.

Rule 1251 amended effective January 1, 1972; adopted effective November 23, 1970.

Rule 1252. Persons who may seek joinder

(a) The petitioner or the respondent may apply to the court for an order joining a person as a party to the proceeding who has or claims custody or physical control of any of the minor children of the marriage or visitation rights with respect to such children or who has in his possession or control or claims to own any property subject to the jurisdiction of the court in the proceeding.

(b) A person who has or claims custody or physical control of any of the minor children of the marriage or visitation rights with respect to such children may apply to the court for an order joining him as a party to the proceeding.

(c) A person served with an order temporarily restraining the use of property in his possession or control or which he claims to own or affecting the custody of minor children of the marriage or visitation rights with respect to such children may apply to the court for an order joining him as a party to the proceeding.

Rule 1252 amended effective July 1, 1975; adopted effective November 23, 1970.

Rule 1253. Form of joinder application

(a) An employee pension benefit plan shall be joined as provided in article 1 (commencing with section 2060) of chapter 6 of part 1 of division 6 of the Family Code and rule 1256. All other applications for joinder shall be made by service and filing a notice of motion that specifies a hearing date not more than 20 days from the date of filing the notice. The application shall state with particularity the claimant's interest in the proceeding and the relief sought by the applicant,

and it shall be accompanied by an appropriate pleading setting forth the claim as if it were asserted in a separate action or proceeding.

(Subd (a) amended effective January 1, 1994; previously amended effective January 1, 1972, January 1, 1978, and January 1, 1979; adopted effective November 23, 1970.)

(b) Every application for joinder, except for joinder of an employee pension benefit plan, and every response thereto, order for joinder, and summons issued thereon shall be in the form prescribed by rules 1291, 1291.10, 1291.20, and 1291.40.

(Subd (b) amended effective July 1, 1985; previously amended effective January 1, and January 1, 1979; adopted effective January 1, 1972.)

Rule 1253 amended effective January 1, 1994; previously amended effective January 1, 1972, January 1, 1978, January 1, 1979, and July 1, 1985; adopted effective November 23, 1970.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1254. Determination on joinder

(a) The court shall order joined as a party to the proceeding any person the court discovers has physical custody or claims custody or visitation rights with respect to any minor child of the marriage.

The court may order that a person be joined as a party to the proceeding if the court finds that it would be appropriate to determine the particular issue in the proceeding and that the person to be joined as a party is either indispensable to a determination of that issue or necessary to the enforcement of any judgment rendered on that issue. In determining whether it is appropriate to determine the particular issue in the proceeding, the court shall consider its effect upon the proceeding, including whether the determination of that issue will unduly delay the disposition of the proceeding, whether other parties would need to be joined to render an effective judgment between the parties, whether the determination of that issue will confuse other issues in the proceeding, and whether the joinder of a party to determine the particular issue will complicate, delay, or otherwise interfere with the effective disposition of the proceeding.

(b) If the court orders that a person be joined as a party to the proceeding pursuant to subdivision (a) of rule 1252, the court shall direct that an appropriate summons be issued and that the claimant be served with a copy of the application for joinder, the pleading attached thereto, the order of joinder, and the summons. The claimant has 30 days after service within which to file an appropriate response.

Rule 1254 amended effective July 1, 1975; adopted effective November 23, 1970.

Rule 1255. Pleading rules applicable

Except as otherwise provided in this chapter or by the court in which the proceeding is pending, the law applicable to civil actions generally shall govern all pleadings, motions, and other matters pertaining to that portion of the proceeding as to which a claimant has been joined as a party to the proceeding in the same manner as if a separate action or proceeding not subject to these rules had been filed.

Rule 1255 adopted effective November 23, 1970.

Rule 1256. Joinder of employee pension benefit plan

Every request for joinder of employee pension benefit plan and order and every pleading on joinder shall be in the form prescribed by rules 1291.15 and 1291.35. Every summons issued thereon shall be in the form prescribed by rule 1291.40. Every notice of appearance of employee pension benefit plan and responsive pleading file pursuant to Family Code section 2063(b) shall be in the form prescribed by rule 1291.25.

Rule 1256 amended effective January 1, 1994; adopted effective January 1, 1979.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 2.6. Evaluations

Chapter adopted effective January 1, 1993.

Rule 1257. Procedures for court-appointed investigations in child custody disputes

Rule 1257. Procedures for court-appointed investigations in child custody disputes

(a) [Purpose] The purpose of this rule is to establish principles and statewide standards to provide each family and the court with accurate, comprehensive, and constructive information regarding the best interests of the child in a way that promotes understanding and cooperation within the family and adoption of the best possible plans relating to duties and responsibilities of parents in raising their children. If the care and upbringing of a child are contested issues, the quality and conduct of an investigation by the court are of the utmost importance for the well-being of the child and for society at large. Whenever possible and appropriate, multiple examinations of the child by different examiners shall be avoided.

(Subd (a) amended effective January 1, 1994.)

(b) [Appointment of court-appointed investigators; standards; qualifications]

(1) Whenever possible, each superior court shall appoint for each evaluation, assessment, investigation, home study, or family study ordered under chapter 6 (beginning with section 3110) of part 2 of division 8 of the Family Code or Evidence Code section 730 a court-appointed investigator whose skills, training, and background are best suited to the particular needs of the family.

(2) The minimum standards of qualification for performing such investigations are those possessed by

(i) persons to whom the parties stipulate in writing, subject to approval by the court;

(ii) Family Court Services or other county employees who meet statutory minimum requirements for mediators under Family Code section 3164(b) or are found by the court to possess the necessary training and experience to prepare the report; or

(iii) mental health professionals who possess at least the statutory minimum requirements for family court mediators.

(3) If none of the persons described in subdivision (2) is reasonably available, the court may appoint a person the court has determined possesses the necessary qualifications.

(4) Before a person who is not a county employee is appointed as a court-appointed investigator, the person shall, upon request, provide to the attorneys for the parties, or to the parties if they are unrepresented, the following information:

(i) a curriculum vitae; and

(ii) the names of at least three attorneys who have worked with the proposed court-appointed investigator in connection with previous investigations or three mental health professionals who are familiar with the work of the proposed court-appointed investigator.

(Subd (b) as amended effective January 1, 1994.)

(c) [Challenges to court-appointed investigators] Each superior court shall adopt a rule on whether a preemptory challenge to a court-appointed investigator is allowed and when the challenge must be exercised. The rule shall specify whether a Family Court Services staff member, other county employee, mental health professional, or all of them may be challenged.

(Subd (c) amended effective January 1, 1994.)

(d) [Ex parte contact prohibited] No party or attorney for a party shall initiate contact with a court-appointed investigator, orally or in writing, to discuss the merits of the case without notice to the other party and an opportunity to be present or to receive a copy of a written communication. The court shall advise all court-appointed investigators, attorneys, and parties of

this prohibition at the time the order for investigation is made. Nothing in this rule shall prohibit the court-appointed investigator from contacting either party or attorney.

(Subd (d) amended effective January 1, 1994.)

(e) [Local rule required] Each superior court shall adopt a rule governing contact between court-appointed investigators and minor children of families being evaluated. The rule shall state:

(1) whether lack of confidentiality must be disclosed to the child;

(2) whether a child seen with one parent must also be seen with the other;

(3) whether interviews with siblings should be separate; and

(4) whether an investigation can be based on an interview with only one parent.

(Subd (e) amended effective January 1, 1994.)

(f) [The investigation report] If an investigation is ordered by a court, the order shall state the date the investigator shall return the report. The date may be extended by order of the court or written agreement of the parties. The report shall be in writing and shall be distributed to the court, all counsel, and the parties as provided by local rules. Each superior court shall adopt local rules regarding

(1) access to the report by minors and represented parties; and

(2) use of the report and information contained in the report by any person.

(Subd (f) amended effective January 1, 1994.)

(g) [Grievance procedure] Each superior court shall establish a procedure for receiving and responding to grievances raised in connection with court-ordered investigations.

(Subd (g) amended effective January 1, 1994.)

(h) [Making court policies, procedures, and rules available to the public] Each superior court shall make available to the public in writing its policies, procedures, and rules relating to investigations. The court shall advise each party of this document when the investigation is ordered.

(Subd (h) amended effective January 1, 1994.)

(i) [Payment of evaluator's fees] If an evaluation is ordered by a court and if any fees or costs will be charged for the evaluation, the court shall make an order allocating the payment of the evaluator's fees and costs between the parties, using as a guideline Family Code sections 271, 2030, and 2032.

(Subd (i) amended effective January 1, 1994.)

Rule 1257 amended effective January 1, 1994; adopted effective January 1, 1993.

Drafter's Notes
1993—The council adopted new rule 1257, which requires local courts to adopt local rules about evaluation procedures and make procedures available in writing to the parties and their attorneys.

1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 2.7. Computer Software Standards

Adopted effective December 1, 1993.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1258. Standards for computer software to assist in determining support

Rule 1258. Standards for computer software to assist in determining support

(a) [Authority] This rule is adopted pursuant to Family Code section 3830 and article VI, section 6 of the California Constitution.

(b) [Standards] The standards for computer software to assist in determining the appropriate amount of child or spousal support are:

(1) The software shall accurately compute the net disposable income of each parent as follows:

(i) Permit entry of the "gross income" of each parent as defined by Family Code section 4058;

(ii) Either accurately compute the state and federal income tax liability under Family Code section 4059(a) or permit the entry of a figure for this amount; this figure, in the default state of the program, shall not include the tax consequences of any spousal support to be ordered;

(iii) Ensure that any deduction for contributions to the Federal Insurance Contributions Act or as otherwise permitted by Family Code section 4059(b) does not exceed the allowable amount;

(iv) Permit the entry of deductions authorized by Family Code sections 4059(c) through (f); and

(v) Permit the entry of deductions authorized by Family Code section 4059(g) [Hardship] while ensuring that any deduction subject to the limitation in Family Code section 4071(b) does not exceed that limitation.

(2) Using examples provided by the Judicial Council, the software shall calculate a child support amount, using its default settings, that is accurate to within 1 percent of the correct amount. In making this determination, the Judicial Council shall calculate the correct amount of support for each example and shall then calculate the amount for each example using the software program. Each person seeking certification of software shall supply a copy of the software to the Judicial Council. If the software does not operate on a standard MS/DOS compatible or Macintosh computer, the person seeking certification of the software shall make available to the Judicial Council any hardware required to use the software. The Judicial Council may delegate the responsibility for the calculation and determinations required by this rule.

(3) The software shall contain, either on the screen or in written form, a glossary defining each term used on the computer screen or in printed hard copy produced by the software.

(4) The software shall contain, either on the screen or in written form, instructions for the entry of each figure that is required for computation of child support using the default setting of the software. These instructions shall include but not be limited to the following:

(i) The gross income of each party as provided for by Family Code section 4058;

(ii) The deductions from gross income of each party as provided for by Family Code section 4059 and subdivision (b)(1) of this rule;

(iii) The additional items of child support provided for in Family Code section 4062; and

(iv) The following factors rebutting the presumptive guideline amount: Family Code section 4057(b)(2) [Deferred sale of residence] and 4057(b)(3) [Income of subsequent partner].

(5) In making an allocation of the additional items of child support under subdivision (b)(4)(iii) of this rule, the software shall, as its default setting, allocate the expenses one-half to each parent. The software shall also provide, in an easily selected option, the alternative allocation of the expenses as provided for by Family Code section 4061(b).

(6) The software or a license to use the software shall be available to persons without restriction based on profession or occupation.

(7) The sale or donation of software or a license to use the software to a court or a judicial officer shall include a license, without additional charge, to the court or judicial officer to permit an additional copy of the software to be installed on a computer to be made available by the court or judicial officer to members of the public.

(c) [Expiration of certification] Except as provided in subdivision (j), any certification provided by the Judicial Council pursuant to Family Code section 3830 and this rule shall expire one year from the date of its issuance unless another expiration date is set forth in the certification. The

Judicial Council may provide for earlier expiration of a certification if (1) the provisions involving the calculation of tax consequences change or (2) other provisions involving the calculation of support change.

(d) [Statement of certified public accountant] If the software computes the state and federal income tax liability as provided in subdivision (b)(1)(ii) of this rule, the application for certification, whether for original certification or for renewal, shall be accompanied by a statement from a certified public accountant that

(1) the accountant is familiar with the operation of the software,

(2) the accountant has carefully examined, in a variety of situations, the operation of the software in regard to the computation of tax liability,

(3) in the opinion of the accountant the software accurately calculates the estimated actual state and federal income tax liability consistent with Internal Revenue Service and Franchise Tax Board procedures, and

(4) in the opinion of the accountant the software accurately calculates the deductions pursuant to the Federal Insurance Contributions Act (FICA) including the amount for social security and for Medicare, and the deductions for California State Disability Insurance and properly annualizes these amounts.

The statement shall state which calendar year the statement includes and shall clearly indicate any limitations on the statement. The Judicial Council may request a new statement as often as it determines necessary to ensure accuracy of the tax computation.

(e) [Renewal of certification] At least three months prior to the expiration of a certification, a person may apply for renewal of the certification. The renewal shall include a statement of any changes made to the software since the last application for certification. Upon request, the Judicial Council will keep the information concerning changes confidential.

(f) [Modifications to the software] The certification issued by the Judicial Council pursuant to Family Code section 3830 and this rule imposes a duty upon the person applying for the certification to promptly notify the Judicial Council of all changes made to the software during the period of certification. Upon request, the Judicial Council will keep the information concerning changes confidential. The Judicial Council may, after receipt of information concerning changes, require that the software be recertified pursuant to this rule.

(g) [Definitions] As used in this rule:

(1) “Default settings” refers to the status in which the software first starts when it is installed on a computer system. The software may permit the default settings to be changed by the user, either on a temporary or a permanent basis, if (i) the user is permitted to change the settings back to the default without reinstalling the software, (ii) the computer screen prominently indicates whether the software is set to the default settings, and (iii) any printout from the software prominently indicates whether the software is set to the default settings.

(2) “Contains” means, with reference to software, that the material is either displayed by the program code itself or is found in written documents supplied with the software.

(h) [Explanation of discrepancies] Before the Judicial Council denies a certificate because of failure to comply with the standards in paragraph (b)(1) or (b)(2) of this rule, the Judicial Council may request the person seeking certification to explain the differences in results.

(i) [Application] An application for certification shall be on a form supplied by the Judicial Council and shall be accompanied by an application fee of $250.

(j) [Initial certification] The initial certification of software under this rule may be made notwithstanding that:

(1) The software does not use all the default settings required by this rule but does permit each required setting to be selected as an option;

(2) The requirements of paragraphs (b)(3), (4), (6), and (7) are not met; and

(3) The tax year for which the statement of the certified public accountant is submitted is for 1993.

In the event the software is initially certified under this paragraph, the initial certification shall expire on April 30, 1994.

Rule 1258 adopted effective December 1, 1993.

Drafter’s Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 3. Transitional Rules

Title 4, Special Rules for Trial Courts—Division I, Family Law Rules—Chapter 3, Transitional Rules; adopted effective January 1, 1970.

Chapter 3, consisting of rules 1260-1268, repealed effective January 1, 1994.

Drafter’s Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1260. [Repealed 1994.]
Rule 1261. [Repealed 1994.]

Rule 1262. [Repealed 1994.]
Rule 1263. [Repealed 1994.]
Rule 1264. [Repealed 1994.]
Rule 1265. [Repealed 1994.]
Rule 1266. [Repealed 1994.]
Rule 1267. [Repealed 1994.]
Rule 1268. [Repealed 1994.]

Rule 1260. [Repealed 1994.]

Rule 1260 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to applicability of chapter.

Rule 1261. [Repealed 1994.]

Rule 1261 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to designation of parties, grounds.

Rule 1262. [Repealed 1994.]

Rule 1262 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to proceeding by default.

Rule 1263. [Repealed 1994.]

Rule 1263 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to filing timely response.

Rule 1264. [Repealed 1994.]

Rule 1264 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to pending motions.

Rule 1265. [Repealed 1994.]

Rule 1265 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to former pleadings.

Rule 1266. [Repealed 1994.]

Rule 1266 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to time to file response.

Rule 1267. [Repealed 1994.]

Rule 1267 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to response.

Rule 1268. [Repealed 1994.]

Rule 1268 adopted effective January 1, 1970; repealed effective January 1, 1994. The repealed rule related to liberal construction.

CHAPTER 3.2. Bifurcation and Appeals

Chapter adopted effective July 1, 1989.

Rule 1269. Bifurcation of issues

(a) [Bifurcation of issues] On noticed motion of a party, the stipulation of the parties, or its own motion, the court may bifurcate one or more issues to be tried separately before other issues are tried. The motion shall be heard not later than the trial-setting conference.

The clerk shall mail copies of the order deciding the bifurcated issue and any statement of decision under rule 232.5 to the parties within 10 days of their filing and file a certificate of mailing.

(Subd (a) amended effective January 1, 1994.)

(b) [When to bifurcate] The court may try separately one or more issues before trial of the other issues if resolution of the bifurcated issue is likely to simplify the determination of the other issues. Issues that may, in some cases, be appropriate to try separately in advance include:

(1) validity of a postnuptial or premarital agreement;

(2) date of separation;

(3) date to use for valuation of assets;

(4) whether property is separate or community;

(5) how to apportion increase in value of a business;

(6) existence or value of business or professional goodwill.

Rule 1269 amended effective January 1, 1994; adopted effective July 1, 1989.

Former Rule
Former rule 1269, relating to transitional use of responsive forms, was adopted effective January 1, 1980, and repealed effective July 1, 1989.

Drafter's Notes
1989—The council repealed obsolete rule 1269 and adopted new chapter 3.2 ("Bifurcation and Appeals") of title IV, division 1 containing rules 1269 and 1269.5, which deal with the trial and interlocutory appeal of bifurcated issues in family law cases.

1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1269.5. Interlocutory appeals

(a) [Applicability] This rule does not apply to appeals from the court's termination of marital status as a separate issue, nor to appeals from other orders that are separately appealable.

(Subd (a) amended effective January 1, 1994.)

(b) [Certificate of probable cause for appeal] The order deciding the bifurcated issue may, at the judge's discretion, include an order certifying there is probable cause for immediate appellate review of the issue. If it was not in the order, within 10 days after the clerk mails the order deciding the bifurcated issue a party may notice a motion requesting the court to certify there is probable cause for immediate appellate review of the order. The motion shall be heard within 30 days after the order deciding the bifurcated issue is mailed.

The clerk shall promptly mail notice of the decision on the motion to the parties. If the motion is not determined within 40 days after mailing of the order on the bifurcated issue, it shall be deemed granted on the grounds stated in the motion.

(c) [Content and effect of certificate] A certificate of probable cause shall state, in general terms, the reason immediate appellate review is desirable, such as a statement that final resolution of the issue

(1) is likely to lead to settlement of the entire case;

(2) will simplify remaining issues;

(3) will conserve the courts' resources;

(4) will benefit the well-being of a child of the marriage or the parties.

If a certificate is granted, trial of the remaining issues may be stayed. If trial of the remaining issues is stayed, unless otherwise ordered by the trial court on noticed motion, further discovery shall be stayed while the certification is pending. These stays terminate upon the expiration of time for filing a motion to appeal if none is filed, or upon the Court of Appeal denying all motions to appeal, or upon the Court of Appeal decision becoming final.

(d) [Motion to appeal] If the certificate is granted, a party may within 15 days after the mailing of the notice of the order granting it serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days. The motion shall contain a brief statement of the facts necessary to an understanding of the issue; a statement of the issue; and a statement of why, in the context of the case, an immediate appeal is desirable. The motion shall include or have annexed a copy of the decision of the trial court on the bifurcated issue; any statement of decision; the certification of the appeal; and a sufficient partial record to enable the Court of Appeal to determine whether to grant the motion. A summary of evidence and oral proceedings, if relevant, supported by a declaration of counsel may be used when a transcript is not available. The motion shall be accompanied by the filing fee for an appeal under rule 1(c) and Government Code sections 68926 and 68926.1. A copy of the motion shall be served on the trial court.

(e) [Proceedings to determine motion] Within 10 days after service of the motion, an adverse party may serve and file an opposition to it. The motion to appeal and any opposition shall be submitted without oral argument, unless otherwise ordered.

The motion to appeal shall be deemed granted unless it is denied within 30 days from the date of filing the opposition or the last document requested by the court, whichever is later. Denial of a motion to appeal is final forthwith and is not subject to rehearing. A party aggrieved by the denial of the motion may petition for review by the Supreme Court.

(f) [Proceedings if motion to appeal is granted] If the motion to appeal is granted, the moving party is deemed an appellant, and the rules governing other civil appeals apply except as provided in this rule. The partial record filed with the motion shall be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion is mailed, a party notifies the Court of Appeal of additional portions of the record that are needed for a full consideration of the appeal. If a party notifies the court of the need for an additional record, the additional material shall be secured from the trial court by augmentation under rule 12, unless it appears to the Court of Appeal that some of the material is not needed.

Briefs shall be filed pursuant to a schedule set for the matter by the Court of Appeal.

(g) [Review by writ or appeal] The trial court's denial of a certification for immediate appeal does not preclude review of the decision on the bifurcated issue by extraordinary writ. Neither

the trial court's denial of a certification for immediate appeal nor the Court of Appeal's denial of a motion to appeal precludes review of the bifurcated issue upon appeal of the final judgment in the proceeding.

Rule 1269.5 amended effective January 1, 1994; adopted effective July 1, 1989.

Drafter's Notes
1989—The council repealed obsolete rule 1269 and adopted new chapter 3.2 ("Bifurcation and Appeals") of title IV, division 1 containing rules 1269 and 1269.5, which deal with the trial and interlocutory appeal of bifurcated issues in family law cases.

1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 3.5. Summary Dissolution

Title Four, Special Rules for Trial Courts—Division 1, Family Law Rules—Chapter 3.5, Summary Dissolution; Chapter adopted effective January 1, 1970.

Rule 1270. Applicability of chapter

The provisions of this chapter govern every proceeding for summary dissolution pursuant to chapter 5 (beginning with section 2400) of part 3 of division 6 of the Family Code and do not apply to any other proceeding.

Rule 1270 amended effective January 1, 1994; adopted effective January 1, 1979.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1271. Commencing the proceeding

(a) A proceeding for summary dissolution is commenced by completing and filing in the superior court a joint petition for summary dissolution in the form prescribed by rule 1295.10.

(b) Attachment to the petition of completed worksheet pages listing separate and community property and obligations shall constitute compliance with chapter 9 (beginning with section 2100) of part 1 of division 6 of the Family Code.

(Subd (b) amended effective January 1, 1994; adopted effective January 1, 1993.)

(c) The fee for filing the joint petition shall be the same as that charged for filing a petition in the form prescribed by rule 1281. No additional fee shall be charged for the filing of any form prescribed for use in a summary dissolution proceeding, except as required by Government Code section 26859.

(Subd (c) relettered effective January 1, 1993; adopted effective January 1, 1979 as subd (b).)

Rule 1271 amended effective January 1, 1994; adopted effective January 1, 1979; previously amended effective January 1, 1993.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1272. Revocation

At any time prior to the filing of a request for final judgment, either party may file a completed notice of revocation of summary dissolution petition in the form prescribed by rule 1295.30.

Rule 1272 adopted effective January 1, 1979.

Rule 1273. Final judgment

No final judgment may be entered in a proceeding for summary dissolution unless a party has completed and filed a request for final judgment in the form prescribed by rule 1295.20.

Rule 1273 adopted effective January 1, 1979.

CHAPTER 3.6. Child Support

Chapter 3.6, consisting of rule 1274, adopted effective March 1, 1991; repealed effective January 1, 1994.

Rule 1274. [Repealed 1994.]

Rule 1274. [Repealed 1994.]

Rule 1274 repealed effective January 1, 1994; amended effective March 1, 1991; adopted effective March 1, 1991. The repealed rule related to child support guideline.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

CHAPTER 4. Forms

Title Four, Special Rules for Trial Courts—Division 1, Family Law Rules; Chapter 4, Forms; adopted January 1, 1970.

Note
These forms are not reproduced here. Copies are available from the court clerk.

Rule 1275. Use of forms in nonfamily law proceedings
Rule 1276. Use of interstate forms
Rule 1277. Use of existing family law forms
Rule 1280. [Renumbered 1987.]
Rule 1280.5. Procedures for clerk's handling of combined summons and complaint
Rule 1281. Petition (Family Law)
Rule 1282. Response (Family Law)
Rule 1282.50. Appearance, Stipulation and Waivers (Family Law)
Rule 1283. Summons (Family Law)
Rule 1283.5. Proof of Service of Summons (Family Law)
Rule 1284. Confidential Counseling Statement (Marriage)
Rule 1285. Order to Show Cause (Family Law)
Rule 1285.05. Temporary Restraining Orders (Family Law)
Rule 1285.10. Notice of Motion (Family Law)
Rule 1285.15. [Renumbered 1990.]
Rule 1285.20. Application for Order and Supporting Declaration (Family Law)
Rule 1285.25. [Revoked 1993.]
Rule 1285.25(A). [Revoked 1993.]
Rule 1285.25(B). [Revoked 1993.]
Rule 1285.26. [Revoked 1993.]
Rule 1285.27. Stipulation to Establish or Modify Child Support and Order (Family Law—Domestic Violence Prevention—Uniform Parentage)
Rule 1285.28. Order for Child Support Security Deposit and Evidence of Deposit (Family Law—Uniform Parentage)
Rule 1285.29. Application for Disbursement and Order for Disbursement from Child Support Security Deposit (Family Law—Uniform Parentage)

Rule 1298.085. Declaration for Default or Uncontested Judgment (Governmental)
Rule 1298.09. Notice of Motion (Governmental)
Rule 1298.10. Governmental Complaint to Establish Parental Relationship and Child Support (Governmental)
Rule 1298.11. Stipulation for Entry of Judgment and Judgment (Governmental)
Rule 1298.12. Judgment Establishing Parental Relationship and Child Support (Governmental)
Rule 1298.30. Statement for Registration of Foreign Support Order
Rule 1299.01. Summons and Complaint or Supplemental Complaint Regarding Parental Obligations
Rule 1299.04. Answer to Complaint or Supplemental Complaint regarding Parental Obligations
Rule 1299.05. Information Sheet for Service of Process
Rule 1299.07. Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment
Rule 1299.10. Request to Enter Default Judgment
Rule 1299.13. Judgment Regarding Parental Obligations
Rule 1299.16. Notice of Entry of Judgment and Certificate of Service by Mail
Rule 1299.17. Declaration for Amended Proposed Judgment
Rule 1299.19. Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income and Proposed Answer
Rule 1299.22. Stipulation and Order
Rule 1299.25. Notice of Wage and Earnings Assignment
Rule 1299.28. Request for Hearing Regarding Notice of Wage and Earnings Assignment
Rule 1299.40. Request for Judicial Determination of Support Arrearages
Rule 1299.43. Notice of Opposition and Notice of Motion on Claim of Exemption
Rule 1299.46. Order Determining Claim of Exemption or third-Party Claim
Rule 1299.49. Notice of District Attorney of Intent to Take Independent Action to Enforce Support Order
Rule 1299.52. Response of District Attorney to Notice of Intent to Take Independent Action to Enforce Support Order

Rule 1275. Use of forms in nonfamily law proceedings

The forms specified by this chapter may be used, at the option of the party, in any proceeding involving a financial obligation growing out of the relationship of parent and child or husband and wife, to the extent they are appropriate to that proceeding.

Rule 1275 adopted effective July 1, 1985.

Rule 1276. Use of interstate forms

Notwithstanding any other provision of these rules, all Uniform Interstate Family Support Act forms approved by either the National Conference of Commissioners on Uniform State Laws or

the U.S. Department of Health and Human Services are adopted for use in family law and other support actions in California.

Rule 1276 amended effective January 1, 1998; adopted effective July 1, 1988.

Drafter's Notes
1988—Acting in response to recently adopted federal regulations, the council added rule 1276 to permit district attorneys to use certain federal child support forms in actions brought in state courts under the Uniform Reciprocal Enforcement of Support Act and for registration of a foreign support order.

1998—This rule was amended to allow the use of federally mandated interstate forms in California courts.

Rule 1277. Use of existing family law forms

Parties may use copies of the following Judicial Council forms until December 31, 1996, as they were in effect on December 31, 1994, in lieu of the forms modified effective January 1, 1995:

(1) Order for Child Support Security Deposit and Evidence of Deposit (Form 1285.28);

(2) Application for Disbursement and Order for Disbursement from Child Support Security Deposit (Form 1285.29);

(3) Income Information (Form 1285.50a);

(4) Child Support Information (Form 1285.50c);

(5) Ex Parte Application for Wage Assignment for Support Ordered Before July 1, 1990 (Form 1285.65);

(6) Judgment (Form 1287);

(7) Child Custody and Visitation Order Attachment (Form 1296.31A);

(8) Spousal or Family Support Order Attachment (Form 1296.31C);

(9) Property Order Attachment (Form 1296.31D);

(10) Domestic Violence Miscellaneous Orders Attachment (Form 1296.31E); and

(11) Notice of Delinquency (Form 1296.90).

Rule 1277 adopted effective January 1, 1995.

Note
These forms are not reproduced here. Copies are available from the court clerk.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council adopted new rule 1277 permitting, for a limited time, the use of existing stock of certain revised family law forms.

Rule 1280. [Renumbered 1987.]

Rule 1280 adopted effective January 1, 1985. Amended effective July 1, 1985, and January 1, 1986. Renumbered rule 982.9, effective July 1, 1987.

Rule 1280.5. Procedures for clerk's handling of combined summons and complaint

(a) [Purpose] This rule provides guidance to court clerks in processing and filing the Judicial Council combined form *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form 1299.01) for actions brought under Welfare and Institutions Code section 11475.1 or 11350.1.

(b) [Filing of complaint and issuance of summons] The clerk shall accept the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form 1299.01) for filing under Code of Civil Procedure section 411.10. The clerk shall issue the original summons in accordance with Code of Civil Procedure section 412.20 by filing the original form 1299.01 and affixing the seal of the court. The original form 1299.01 shall be retained in the court's file.

(c) [Issuance of copies of combined summons and complaint] Upon issuance of the original summons, the clerk shall conform copies of the filed form 1299.01 to reflect that the complaint has been filed and the summons has been issued. A copy of the form 1299.01 so conformed shall be served on the defendant in accordance with Code of Civil Procedure section 415.10 et seq.

(d) [Proof of service of summons] Proof of service of the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental*) (form 1299.01) shall be on the form prescribed by rule 982(a)(23) or any other proof of service form that meets the requirements of Code of Civil Procedure section 417.10.

(e) [Filing of proposed judgment and amended proposed judgment] The proposed judgment shall be an attachment to the form 1299.01 *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* and shall not be file-endorsed separately. An amended proposed judgment submitted for filing shall be attached to the declaration for amended proposed judgment prescribed by rule 1299.17, as required by Welfare and Institutions Code section 11355(c), and a proof of service by mail, if appropriate. Upon filing, the declaration for amended proposed judgment shall be file-endorsed. The amended proposed judgment shall not be file-endorsed.

Rule 1280.5 adopted effective July 1, 1998.

Drafter's Notes
1998—This rule was adopted to establish a uniform procedure for the processing of the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (Form 1299.01).

Rule 1281. Petition (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1281 revised effective January 1, 1995; previously revised effective January 1, 1972, January 1, 1980, January 1, 1983, July 1, 1990, July 1, 1991, January 1, 1993, and January 1, 1994.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1282. Response (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1282 revised effective January 1, 1995; previously revised effective January 1, 1972, January 1, 1980, January 1, 1983, July 1, 1990, and January 1, 1993; adopted effective January 1, 1970.

Rule 1282.50. Appearance, Stipulation and Waivers (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1282.50 approved for Optional use effective January 1, 1980.

Rule 1283. Summons (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1283 revised effective January 1, 1995; previously revised effective July 1, 1970, January 1, 1972, July 1, 1972, January 1, 1975, January 1, 1980, July 1, 1990, and January 1, 1991; adopted effective January 1, 1970.

Rule 1283.5. Proof of Service of Summons (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1283.5 adopted effective January 1, 1991.

Rule 1284. Confidential Counseling Statement (Marriage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1284 adopted effective January 1, 1975.

Rule 1285. Order to Show Cause (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285 revised effective January 1, 1994; previously revised effective July 1, 1985; adopted January 1, 1980.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1285.05. Temporary Restraining Orders (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.05 revised effective January 1, 1995; previously revised effective January 1, 1985, January 1, 1987, July 1, 1987, and July 1, 1992; adopted effective January 1, 1981.

Rule 1285.10. Notice of Motion (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.10 revised effective January 1, 1994; previously revised effective January 1, 1980, and July 1, 1985; adopted effective January 1, 1972.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1285.15. [Renumbered 1990.]

Rule 1285.15 renumbered rule 1292.15 effective July 1, 1990; adopted effective January 1, 1986.

Rule 1285.20. Application for Order and Supporting Declaration (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.20 revised effective January 1, 1995; previously revised effective January 1, 1980, July 1, 1980, January 1, 1981, January 1, 1987, July 1, 1987, July 1, 1990, and January 1, 1993; adopted effective January 1, 1972.

Rule 1285.25. [Revoked 1993.]

Rule 1285.25 revoked effective January 1, 1993; previously revised effective July 1, 1986, July 1, 1987, and July 1, 1989; approved effective July 1, 1985. The revoked rule related to Minimum Child Support Worksheet (Family Law).

Rule 1285.25(A). [Revoked 1993.]

Rule 1285.25(A) revoked effective January 1, 1993; approved effective July 15, 1985. The revoked rule related to Minimum Child Support Information Booklet.

Rule 1285.25(B). [Revoked 1993.]

Rule 1285.25(B) revoked effective January 1, 1993; previously revised effective July 1, 1986, July 1, 1987, and July 1, 1989; approved effective July 1, 1985. The revoked rule related to Appendix A (Minimum Child Support Information Booklet).

Rule 1285.26. [Revoked 1993.]

Rule 1285.26 revoked effective January 1, 1993; amended effective July 1, 1989; adopted effective January 1, 1989. The revoked rule related to Hardship Deduction Schedule for Children Residing with Parent (Family Law).

Rule 1285.27. Stipulation to Establish or Modify Child Support and Order (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.27 revised effective January 1, 1995; previously revised effective January 1, 1986, July 1, 1991, January 1, 1993, and January 1, 1994; approved effective July 1, 1985.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1285.28. Order for Child Support Security Deposit and Evidence of Deposit (Family Law—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.28 revised effective January 1, 1995; adopted effective January 1, 1992.

Rule 1285.29. Application for Disbursement and Order for Disbursement from Child Support Security Deposit (Family Law—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.29 revised effective January 1, 1995; adopted effective January 1, 1992.

Rule 1285.30. Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.30 adopted effective July 1, 1997.

Rule 1285.30(A). [Revoked 1995.]

Rule 1285.30(A), Appendix A, revoked January 1, 1995; revised effective January 1, 1988, and July 1, 1991; adopted effective July 1, 1984. The revoked rule related to Information Sheet—New and Simplified Way to Change Child or Spousal Support.

Rule 1285.31. Information Sheet—Simplified Way to Change Child, Spousal, or Family Support (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.31 adopted effective July 1, 1997.

Rule 1285.32. Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal, or Family Support

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.32 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1285.32(A). [Revoked 1995.]

Rule 1285.32(A) revised effective January 1, 1988;

Rule 1285.32(A), Appendix A, revoked effective January 1, 1995, revised effective July 1, 1991, and January 1, 1988; Appendix A added January 1, 1988; adopted effective July 1, 1984. The revoked rule related to Information Sheet—How to Oppose a Request to Change Child or Spousal Support.

1285.33. Information Sheet—How to Oppose a Request to Change Child, Spousal, or Family Support (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.33 adopted effective July 1, 1997.

Rule 1285.34. [Revoked 1995.]

Rule 1285.34 revoked effective January 1, 1995; revised effective January 1, 1988, July 1, 1990, and January 1, 1994; adopted effective July 1, 1984. The revoked rule related to Order Changing Support (Uncontested) (Family Code, §§3680-3694) (Family Law).

Rule 1285.36. [Revoked 1995.]

Rule 1285.36 revoked effective January 1, 1995; revised effective January 1, 1988, July 1, 1990, and January 1, 1994; adopted effective July 1, 1984. The revoked rule related to Order Changing Support (Contested—No Attorneys) (Family Code, §§3680-3694) (Family Law).

Rule 1285.38. [Revoked 1995.]

Rule 1285.38 revoked effective January 1, 1995; revised effective January 1, 1988; adopted effective July 1, 1984. The revoked rule related to Proof of Service (Simplified Support Modification) (Family Law).

Rule 1285.39. [Revoked 1995.]

Rule 1285.39 revoked effective January 1, 1995; revised effective January 1, 1988; adopted effective July 1, 1984. The revoked rule related to Certificate of Filing with District Attorney (Simplified Support Modification) (Family Law).

Rule 1285.40. Responsive Declaration to Order to Show Cause or Notice of Motion (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.40 revised effective January 1, 1993; previously revised effective January 1, 1980, July 1, 1980, January 1, 1981, July 1, 1985, and July 1, 1987; adopted effective January 1, 1972.

Rule 1285.50. Income and Expense Declaration (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.50 revised effective January 1, 1995; previously revised effective January 1, 1980, July 1, 1985, January 1, 1986, and January 1, 1993; adopted effective January 1, 1972.

Drafter's Notes
July 1995—The council adopted for mandatory use the Request for Separate Trial (Form 1286.75) to be used when requesting a separate trial on specific issues in a family law matter. The council also adopted for optional use a Financial Statement (Simplified) (Form 1285.52) to be used in lieu of the Income and Expense Declaration (Form 1285.50) in specified situations. The form was mandated by Family Code section 4068(b).

Rule 1285.50a. Income Information (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.50a revised effective January 1, 1995; previously revised effective January 1, 1986, and January 1, 1993; adopted effective July 1, 1985.

Rule 1285.50b. Expense Information (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.50b revised effective January 1, 1995; previously revised effective January 1, 1986, January 1, 1993, and July 1, 1994; adopted effective July 1, 1985.

Rule 1285.50c. Child Support Information (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.50c revised effective January 1, 1995; adopted effective January 1, 1993.

Rule 1285.52. Financial Statement (Simplified) (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.52 adopted effective July 1, 1995.

Drafter's Notes
1995—The council adopted for mandatory use the Request for Separate Trial (Form 1286.75) to be used when requesting a separate trial on specific issues in a family law matter. The council also adopted for optional use a Financial Statement (Simplified) (Form 1285.52) to be used in lieu of the Income and Expense Declaration (Form 1285.50) in specified situations. The form was mandated by Family Code section 4068(b).

Rule 1285.55. Property Declaration (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.55 adopted effective January 1, 1980.

Rule 1285.56. Continuation of Property Declaration (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.56 adopted effective January 1, 1980.

Rule 1285.60. Order to Show Cause and Declaration for Contempt (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.60 revised effective January 1, 1980; adopted effective January 1, 1972.

Rule 1285.62. Declaration of Support Arrearage (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.62 adopted effective July 1, 1997.

Rule 1285.625. Attachment to Declaration of Support Arrearage (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.625 approved effective July 1, 1997.

Rule 1285.65. Ex Parte Application for Wage and Earnings Assignment Order (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.65 revised effective January 1, 1998; previously revised effective January 1, 1986, January 1, 1987, July 1, 1990, January 1, 1995, and July 1, 1997; adopted effective January 1, 1982.

Rule 1285.70. Wage and Earnings Assignment Order (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.70 revised effective January 1, 1995; previously revised effective January 1, 1976, January 1, 1980, July 1, 1984, January 1, 1986, January 1, 1987, July 1, 1990, July 1, 1991, January 1, 1994, and July 1, 1994; adopted effective January 1, 1972.

Drafter's Notes
January 1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1285.70A. Allocation of Withheld Amount Subject to Multiple Assignment Orders (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.70A adopted effective January 1, 1994.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1285.72. Stay of Service of Wage Assignment Order and Order (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.72 adopted effective July 1, 1990.

Rule 1285.75. Application and Order for Health Insurance Coverage (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.75 revised effective January 1, 1994; adopted effective January 1, 1989, July 1, 1990.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1285.76. Employer's Health Insurance Return (Family Law—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.76 revised effective January 1, 1995; adopted effective January 1, 1992.

Rule 1285.78. Notice of Rights and Responsibilities—Health Care Costs and Reimbursement Procedures

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.78 adopted effective January 1, 1995.

Rule 1285.80. Abstract of Support Judgment (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1285.80 revised effective July 1, 1989; previously revised effective January 1, 1989; adopted effective January 1, 1987.

Rule 1286. Request to Enter Default (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1286 revised effective January 1, 1980; previously revised effective January 1, 1976; adopted effective January 1, 1970.

Rule 1286.50. Declaration for Default or Uncontested Dissolution or Legal Separation (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1286.50 revised effective July 1, 1994; previously revised effective July 1, 1984, January 1, 1987, and July 1, 1990; adopted effective January 1, 1982.

Rule 1286.75. Request for Separate Trial (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1286.75 adopted effective July 1, 1995.

Drafter's Notes
1995—The council adopted for mandatory use the Request for Separate Trial (Form 1286.75) to be used when requesting a separate trial on specific issues in a family law matter. The council also adopted for optional use a Financial Statement (Simplified) (Form 1285.52) to be used in lieu of the Income and Expense Declaration (Form 1285.50) in specified situations. The form was mandated by Family Code section 4068(b).

Rule 1287. Judgment (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1287 revised effective January 1, 1997; previously revised effective July 1, 1985, January 1, 1993, and January 1, 1995; adopted effective July 1, 1984.

Former Rule
Former rule 1287 (Interlocutory Judgment of Dissolution of Marriage) was adopted effective January 1, 1972; revised effective January 1, 1980, and January 1, 1981; and revoked effective July 1, 1984.

Drafter's Notes
1997—Two forms for use in family law proceedings have been amended to correct statutory references in the test to the Family Code: *Judgment (Family Law)* (rule [1]287) and *Declaration Under Uniform Child Custody Jurisdiction Act* (UCCJA)(MC-150).

Rule 1287.50. Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1287.50 revised effective July 1, 1994; adopted effective January 1, 1987.

Rule 1288. Request and Declaration for Final Judgment of Dissolution of Marriage (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1288 revised effective January 1, 1980; adopted effective January 1, 1970.

Rule 1289. [Revoked 1984.]

Rule 1289 adopted effective January 1, 1970; revised effective January 1, 1972, January 1, 1980, January 1, 1981, and January 1, 1982; revoked effective July 1, 1984. The revoked rule related to Final Judgment.

Rule 1290. Notice of Entry of Judgment (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1290 revised effective July 1, 1985; previously revised effective January 1, 1972, January 1, 1980, and July 1, 1984; adopted effective January 1, 1970.

Rule 1291. [Revoked 1992.]

Rule 1291 revoked effective January 1, 1992; revised effective July 1, 1986, and July 1, 1990; adopted effective July 1, 1985. The form related to Findings and Order After Hearing.

Rule 1291.10. Notice of Motion and Declaration for Joinder (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1291.10 revised effective January 1, 1995; previously revised effective January 1, 1980; adopted effective January 1, 1972.

Rule 1291.15. Request for Joinder of Employee Benefit Plan and Order (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1291.15 revised effective January 1, 1995; previously revised effective January 1, 1979; adopted effective January 1, 1978.

Rule 1291.20. Responsive Declaration to Motion for Joinder—Consent Order of Joinder (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1291.20 revised effective January 1, 1980; adopted effective January 1, 1972.

Rule 1291.25. Notice of Appearance and Response of Employee Benefit Plan (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1291.25 revised effective January 1, 1995; previously revised effective January 1, 1979; adopted effective January 1, 1978.

Rule 1291.30. [Revoked 1985.]

Rule 1291.30 approved effective January 1, 1980; revoked effective July 1, 1985. See form 1291, Findings and Order After Hearing.

Rule 1291.35. Pleading on Joinder—Employee Benefit Plan (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1291.35 revised effective January 1, 1995; adopted effective January 1, 1979.

Rule 1291.40. Summons (Joinder) (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1291.40 revised effective January 1, 1979; previously revised effective July 1, 1972, January 1, 1975, and January 1, 1978; adopted effective January 1, 1972.

Rule 1292. Declaration of Disclosure (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1292 revised effective January 1,1994; adopted effective January 1, 1993.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1292.05. Declaration Regarding Service of Final Declaration of Disclosure (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1292.05 adopted effective January 1, 1994.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1292.10. Form Interrogatories (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1292.10 approved effective July 1, 1990.

Rule 1292.11. Schedule of Assets and Debts (Famiy Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1292.11 approved effective July 1, 1990

Rule 1292.15. Request for Production of an Income and Expense Declaration After Judgment (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1292.15 revised effective January 1, 1994; adopted as form 1285.15 effective January 1, 1986; renumbered effective July 1, 1990.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1295.10. Joint Petition for Summary Dissolution of Marriage (Family Law—Summary Dissolution)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.10 as revised effective January 1, 1995; previously revised effective January 1, 1981, January 1, 1983, January 1, 1985, January 1, 1987, January 1, 1989, January 1, 1991, and January 1, 1993; adopted effective January 1, 1979.

Rule 1295.10[A]. Summary Dissolution Information

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.10(A) revised effective January 1, 1981; approved effective January 1, 1979.

Rule 1295.11. Summary Dissolution Information—English (Cover Only)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.11 revised effective January 1, 1991.

Rule 1295.11a. Summary Dissolution Information Insert (Family Law—Summary Dissolution)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.11a adopted effective January 1, 1993.

Rule 1295.12. Summary Dissolution Information—Spanish (Cover Only)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.12 revised effective January 1, 1991.

Rule 1295.20. Request for Final Judgment, Final Judgment of Dissolution of Marriage, and Notice of Entry of Judgment (Family Law—Summary Dissolution)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.20 revised effective January 1, 1995; previously revised effective January 1, 1981, January 1, 1985, July 1, 1985, and January 1, 1993; adopted effective January 1, 1979.

Rule 1295.30. Notice of Revocation of Petition for Summary Dissolution (Family Law—Summary Dissolution)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.30 revised effective January 1, 1995; adopted effective January 1, 1979.

Rule 1295.90. Emergency Protective Order (CLETS) (Domestic Violence and Child Abuse Prevention)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1295.90 revised effective January 1, 1998; adopted effective July 1, 1988; previously revised effective January 1, 1990, January 1, 1992, January 1, 1994, and July 1, 1997.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1295.95. [Revoked 1990.]

Rule 1295.95 adopted effective July 1, 1988; revoked effective January 1, 1990. The revoked rule related to Emergency Protective Order.

Rule 1296. Application and Declaration for Order (Domestic Violence)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296 revised effective January 1, 1997; adopted effective July 1, 1980; previously revised effective January 1, 1981, January 1, 1985, January 1, 1991, January 1, 1994.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

1997—Revisions were made to the following forms (adopted as California Rules of Court) to conform to statutory changes and to increase the effectiveness with which courts administer domestic violence cases: (1) *Application and Declaration for Order* (rule 1296); (2) *Order to Show Cause and Temporary Restraining Order (CLETS)* (rule 1296.10); and (3) *Restraining Order After Hearing (CLETS)* (rule 1296.29).

Rule 1296(A). Instructions for Orders Prohibiting Domestic Violence

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296(A) revised effective July 1, 1997; approved July 1, 1980; previously revised effective July 1, 1985, and January 1, 1994; revised and renumbered effective July 1, 1988.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1296.10. Order to Show Cause and Temporary Restraining Order (CLETS) (Domestic Violence)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.10 as revised effective January 1, 1997; previously revised effective January 1, 1981, January 1, 1985, January 1, 1991, and January 1, 1994; adopted effective July 1, 1980.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

1997—Revisions were made to the following forms (adopted as California Rules of Court) to conform to statutory changes and to increase the effectiveness with which courts administer domestic violence cases: (1) *Application and Declaration for Order* (rule 1296); (2) *Order to Show Cause and Temporary Restraining Order (CLETS)* (rule 1296.10); and (3) *Restraining Order After Hearing (CLETS)* (rule 1296.29).

Rule 1296.15. Application and Order for Reissuance of Order to Show Cause (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.15 as revised effective January 1, 1985; adopted effective January 1, 1981.

Rule 1296.20. Responsive Declaration to Order to Show Cause (Domestic Violence Prevention)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.20 as revised effective January 1, 1994; previously revised effective January 1, 1985, and January 1, 1991; adopted effective July 1, 1980.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1296.29. Restraining Order After Hearing (CLETS) (Domestic Violence)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.29 as revised effective January 1, 1997; adopted effective July 1, 1991; previously revised effective January 1, 1994.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

1997—Revisions were made to the following forms (adopted as California Rules of Court) to conform to statutory changes and to increase the effectiveness with which courts administer domestic violence cases: (1) *Application and Declaration for Order* (rule 1296); (2) *Order to Show Cause and Temporary Restraining Order (CLETS)* (rule 1296.10); and (3) *Restraining Order After Hearing (CLETS)* (rule 1296.29).

Rule 1296.30. [Revoked 1992.]

Rule 1296.30 revoked effective January 1, 1992; revised effective January 1, 1981, January 1, 1985, and January 1, 1991; adopted effective July 1, 1980. The revoked rule related to Order After Hearing.

Rule 1296.31. Findings and Order After Hearing (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31 adopted effective July 1, 1991. Revised effective January 1, 1992.

Rule 1296.31A. Child Custody and Visitation Order Attachment (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31A revised effective January 1, 1995; adopted effective July 1, 1991.

Rule 1296.31B. Child Support Information and Order Attachment (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31B revised effective January 1, 1995; adopted effective January 1, 1993.

Rule 1296.31B(1). Child Support Extended Information Attachment (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31B(1) as revised effective January 1, 1994; adopted effective January 1, 1993.

Former Rule
Former rule 1296.31B(1), relating to Child Support Order Attachment (Part One of Three), was adopted effective July 1, 1991, and revoked effective January 1, 1993.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1296.31B(2). Child Support Extended Order Attachment (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31B(2) revised effective January 1, 1995; adopted effective January 1, 1993.

Former Rule
Former rule 1296.31B(2), relating to Child Support Order Attachment (Part Two of Three), was adopted effective July 1, 1991, and revoked effective January 1, 1993.

Rule 1296.31B(3). [Revoked 1993.]

Rule 1296.31B(3) adopted effective July 1, 1991, and revoked effective January 1, 1993. See rule 1296.31B(2). The revoked rule related to Child Support Order Attachment (Part Three of Three).

Rule 1296.31C. Spousal or Family Support Order Attachment (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31C revised effective January 1, 1995; adopted effective July 1, 1991.

Rule 1296.31D. Property Order Attachment (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31D revised effective January 1, 1995; adopted effective July 1, 1991.

Rule 1296.31E. Domestic Violence Miscellaneous Orders Attachment (Domestic Violence Prevention—Uniform Parentage Act)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.31E revised effective January 1, 1995; adopted effective January 1, 1992.

Rule 1296.40. Proof of Service

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.40 as revised effective January 1, 1985; adopted effective July 1, 1980.

Rule 1296.60. Complaint to Establish Parental Relationship (Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.60 revised effective January 1, 1994; previously revised effective January 1, 1986; approved effective January 1, 1985.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1296.61. Standard Restraining Order (Uniform Parentage Act)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.61 as revised effective January 1, 1991; approved effective July 1, 1990.

Rule 1296.65. Answer—Complaint to Establish Parental Relationship (Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.65 as revised effective January 1, 1994; approved effective January 1, 1986.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1296.90. Notice of Delinquency (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.90 revised effective January 1, 1995; adopted effective March 1, 1992.

Rule 1296.91. Notice of Motion to Determine Arrearages (Family Law—Domestic Violence Prevention—Uniform Parentage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.91 revised effective January 1, 1994; adopted effective March 1, 1992.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1296.95. Notice of Motion for Judicial Review of License Denial (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.95 adopted effective January 1, 1993.

Rule 1296.96. Order After Judicial Review of License Denial (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1296.96 adopted effective January 1, 1993.

Rule 1297. Application for Expedited Child Support Order (Family Code, §§3620-3634) (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297 revised effective January 1, 1994; adopted effective January 1, 1986.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1297.10. Response to Application for Expedited Child Support Order and Notice of Hearing (Family Code, §§3620-3634) (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.10 revised effective January 1, 1994; adopted effective January 1, 1986.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1297.20. Expedited Child Support Order (Family Code, §§3620-3634) (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.20 revised effective January 1, 1995; previously revised effective January 1, 1994; adopted effective January 1, 1986.

Drafter's Notes
1994—The Judicial Council Family and Juvenile Law Standing Advisory Committee proposed these changes in family law rules and forms to comply with recent legislation, including changes enacted by the adoption of the Family Code.

Rule 1297.80. Notice of Review Hearing Regarding Child Support and Recommendation of Commissioner or Referee (CCP §640.1) (Family Law)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.80 adopted effective January 1, 1987.

Rule 1297.82. Order After Review Hearing (CCP §640.1) (Child Support)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.82 revised effective January 1, 1995; adopted effective January 1, 1987.

Rule 1297.90. Application for Notice of Support Arrearage (Support Arrearage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.90 revised effective January 1, 1990; adopted effective July 1, 1989.

Rule 1297.91. Proof of Service of Application (Support Arrearage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.91 revised effective January 1, 1990; adopted effective July 1, 1989.

Rule 1297.92. Notice of Support Arrearage (Support Arrearage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.92 revised effective January 1, 1990; adopted effective July 1, 1989.

Rule 1297.93. Notice to Judgment Debtor (Support Arrearage)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1297.93 revised effective January 1, 1990; adopted effective July 1, 1989.

Rule 1298.01. Summons (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.01 adopted effective July 1, 1994.

Rule 1298.02. Answer to Governmental Complaint to Establish Parental Relationship or Child Support or Both (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.02 adopted effective July 1, 1994.

Rule 1298.03. Request for Order and Supporting Declaration (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.03 adopted effective July 1, 1994.

Rule 1298.04. Declaration and Request for Order and Order (Support Enforcement and Earnings Assignment) (Governmental)

Note
This is form is not reproduced here. It is available from the court clerk.

Rule 1298.04 revised effective July 1, 1997; adopted effective January 1, 1995.

Rule 1298.045. Order for Blood (Parentage) Testing

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.045 adopted effective January 1, 1995.

Rule 1298.05. Response to Governmental Notice of Motion or Order to Show Cause (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.05 adopted effective July 1, 1994.

Rule 1298.06. Stipulation and Order (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.06 revised effective January 1, 1995; adopted effective July 1, 1994.

Rule 1298.07. Order after Hearing (Governmental)

Note
This form is not reproduced here. It is availble from the court clerk.

Rule 1298.07 revised effective July 1, 1997; adopted effective July 1, 1994; previously revised effective January 1, 1995.

Rule 1298.08. Request to Enter Default (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.08 adopted effective July 1, 1994.

Rule 1298.085. Declaration for Default or Uncontested Judgment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.085 adopted effective January 1, 1995.

Rule 1298.09. Notice of Motion (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.09 adopted effective July 1, 1994.

Rule 1298.10. Governmental Complaint to Establish Parental Relationship and Child Support (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.10 revised effective January 1, 1995; adopted effective January 1, 1993.

Rule 1298.11. Stipulation for Entry of Judgment and Judgment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.11 revised effective January 1, 1995; adopted effective January 1, 1993.

Rule 1298.12. Judgment Establishing Parental Relationship and Child Support (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.12 revised effective January 1, 1995; adopted effective January 1, 1993.

Rule 1298.30. Statement for Registration of Foreign Support Order (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1298.30 adopted effective July 1, 1997.

Rule 1299.01. Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.01 revised effective January 1, 1998; adopted effective July 1, 1997

Rule 1299.04. Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.04 adopted effective July 1, 1997.

Rule 1299.05. Information Sheet for Service of Process (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.05 approved effective July 1, 1997.

Rule 1299.07. Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.07 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1299.10. Request to Enter Default Judgment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.10 adopted effective July 1, 1997.

Rule 1299.13. Judgment Regarding Parental Obligations (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.13 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1299.16. Notice of Entry of Judgment and Certification of Service by Mail (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.16 adopted effective July 1, 1997.

Rule 1299.17. Declaration for Amended Proposed Judgment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.17 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1299.19. Notice Motion to Cancel (Set Aside) Support Order Based on Presumed Income and Proposed Answer (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.19 adopted effective July 1, 1997.

Rule 1299.22. Stipulation and Order (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.22 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1299.25. Notice of Wage and Earnings Assignment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.25 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1299.28. Request for Hearing regarding Notice of Wage and Earnings Assignment (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.28 adopted effective July 1, 1997.

Rule 1299.40. Request for Judicial Determination of Support Arrearages (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.40 adopted effective July 1, 1997.

Rule 1299.43. Notice of Opposition and Notice of Motion on Claim Exemption (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.43 revised effective January 1, 1998; adopted effective July 1, 1997.

Rule 1299.46. Order Determining Claim of Exemption or Third-Party Claim (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.46 adopted effective July 1, 1997.

Rule 1299.49. Notice to District Attorney of Intent to Take Independent Action to Enforce Support Order (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.49 adopted effective July 1, 1997.

Rule 1299.52. Response of District Attorney to Notice of Intent to Take Independent Action to Enforce Support Order (Governmental)

Note
This form is not reproduced here. It is available from the court clerk.

Rule 1299.52 adopted effective July 1, 1997.

CHAPTER 5. Rules For Title IV-D Support Actions

Adopted effective July 1, 1997.

Rule 1280. Purpose, authority, and definitions

(a) [Purpose] The rules in this chapter are adopted to provide practice and procedure for support actions under Title IV-D of the Social Security Act and under California statutory provisions concerning these actions.

(b) [Authority] These rules are adopted pursuant to article VI, section 6 of the California Constitution; Family Code sections 211, 3680(b), 4251(a), 4252(b), and 10010; and Welfare and Institutions Code sections 11350.1(g), 11356(d), and 11475.1(c).

(c) [Definitions] As used in these rules, unless the context requires otherwise, "Title IV-D support action" refers to an action for child or family support that is brought by or otherwise involves the district attorney pursuant to Title IV-D of the Social Security Act.

Rule 1280 adopted effective July 1, 1997.

Rule 1280.1. Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)

(a) [Exceptional circumstances] The exceptional circumstances under which a judge may hear a Title IV-D support action include:

(1) The failure of the judge to hear the action would result in significant prejudice or delay to a party including but not limited to added cost or loss of work time.

(2) Transferring the matter to a commissioner would result in undue consumption of court time.

(3) Physical impossibility or difficulty due to the commissioner being geographically separate from the judge presently hearing the matter.

(4) The absence of the commissioner from the county due to illness, disability, death, or vacation.

(5) The absence of the commissioner from the county due to service in another county and the difficulty of travel to the county in which the matter is pending.

(b) [Duty of judge hearing matter] A judge hearing a Title IV-D support action pursuant to this rule and Family Code sections 4251(a) and 4252(b)(7) shall make an interim order and refer the matter to the commissioner for further proceedings.

(c) [Discretion of the court] Notwithstanding sections (a) and (b) of this rule, a judge may, in the interests of justice, transfer a case to a commissioner for hearing.

Rule 1280.1 adopted effective July 1, 1997.

Rule 1280.2. Use of existing family law forms

When an existing family law form is required or appropriate for use in a Title IV-D support action, the form may be used notwithstanding the absence of a notation for the other parent as a party pursuant to Welfare and Institutions Code section 11350.1(e). The caption of the form shall be modified by the person filing it by adding the words "Other parent:" and the name of the other parent to the form.

Rule 1280.2 adopted effective July 1, 1997.

Rule 1280.3. Memorandum of points and authorities

Notwithstanding any other rule, including rule 313, a notice of motion in a Title IV-D support action shall not be required to contain points and authorities if the notice of motion uses a form adopted or approved by the Judicial Council. The absence of points and authorities under these circumstances shall not be construed by the court as an admission that the motion is not meritorious and cause for its denial.

Rule 1280.3 adopted effective July 1, 1997.]

Rule 1280.4. State Bar number and district attorney name

Notwithstanding any other rule, including rule 201(e), the name, address, and telephone number of the district attorney of the county shall be sufficient for any papers filed by the district attorney's office. The name of the deputy or assistant district attorney and the State Bar number of the district attorney, the assistant district attorney, or the deputy district attorney shall not be required.

Rule 1280.4 adopted effective July 1, 1997.

DIVISION Ic. Juvenile Court Rules

Renumbered effective July 1, 1998; previously amended effective January 1, 1991; adopted by the Judicial Council effective July 1, 1989. Former Division Ia, Juvenile Court Rules, consisting of rules 1301-1396, repealed effective July 1, 1989.

Drafter's Notes
1989—The council adopted new forms required by Statutes of 1989, chapter 137. The legislation amends sections 304 and 362.4 of the Welfare and Institutions Code and provides that when a juvenile court makes a custody order and terminates its jurisdiction, the juvenile court custody order, on a form adopted by the Judicial Council, shall be filed in any nullity, dissolution, legal separation, or paternity proceeding, or used to open a new court file. The legislation also provides that restraining orders issued by the juvenile court under sections 304 or 362.4 shall be on a form adopted by the Judicial Council and shall be enforceable in the same manner as any other order issued under section 4359 of the Civil Code.

To implement these procedures, the council adopted new rules 1457 and 1458 to specify the procedure for using and filing the custody order and restraining order forms.

The council also repealed and adopted juvenile court rules 1400-1456 and 1460-1465 to make technical revisions.

CHAPTER 1. Preliminary Provisions—Definitions; Construction

Drafter's Notes
1993—The council adopted revisions to the juvenile court rules to conform to statute regarding review by extraordinary writ and to clarify procedures regarding intercounty transfer of juvenile cases and modifications of guardianship orders.

Rule 1400. Preliminary provisions

(a) [Applicability of rules (§§ 200-945*)] The rules in this division apply to every action and proceeding to which the juvenile court law (Welf. & Inst. Code, div. 2, pt. 1, ch. 2, § 200 et seq.) applies and, unless they are elsewhere explicitly made applicable, do not apply to any other action or proceeding. The rules in this division do not apply to an action or proceeding heard by a traffic hearing officer, nor to a rehearing or appeal from a denial of a rehearing following an order by a traffic hearing officer.

*Note: Unless otherwise indicated, all section references in the rules are to the Welfare and Institutions Code.

(b) [Authority for and purpose of rules (Cal. Const., art. VI, § 6; § 265] The rules in this division are adopted by the Judicial Council pursuant to its constitutional and statutory authority to adopt rules for court administration, practice, and procedure, not inconsistent with statute. These rules are designed to implement the purposes of the juvenile court law by promoting uniformity in practice and procedure and by providing guidance to judges, referees, attorneys, probation officers, and others participating in the juvenile court.

(c) [Rules of construction] Unless the context otherwise requires, these preliminary provisions and the following rules of construction shall govern the construction of these rules:

(1) Insofar as these rules are substantially the same as existing statutory provisions relating to the same subject matter, these rules shall be construed as restatements of those statutes;

(2) Insofar as these rules may add to existing statutory provisions relating to the same subject matter, these rules shall be construed so as to implement the purposes of the juvenile court law.

(d) [Severability clause] If a rule or a subdivision of a rule in this division is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule or a subdivision of a rule in this division is invalid in one or more of its applications, the rule or subdivision remains in effect in all valid applications that are severable from the invalid applications.

Rule 1400 adopted effective January 1, 1990.

Former Rule
Former rule 1400, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1401. Definitions; construction of terms

(a) [Definitions] As used in these rules, unless the context or subject matter otherwise requires:

(1) “Child” means a person under the age of 18 years;

(2) “Clerk” means the clerk of the juvenile court;

(3) “Court” means the juvenile court, and includes the judge or referee of the juvenile court;

(4) “Court-ordered services” or “court-ordered treatment program” means child welfare services or services provided by an appropriate agency ordered at a disposition hearing at which the child is declared a dependent child of the court, and any hearing thereafter, for the purpose of maintaining or reunifying a child with a parent or guardian.

(5) “De facto parent” means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period;

(6) “Detained” means any removal of the child from the person or persons legally entitled to the child’s physical custody, or any release of the child on home supervision under section 628.1 or 636;

(7) “Foster parent” includes a relative with whom the child is placed;

(8) “Guardian” means legal guardian of the child;

(9) “Initial removal” means the date on which the child, who is the subject of a petition filed under section 300, was taken into custody by the social worker, or deemed to be taken into custody under section 309(b), if removal results in the filing of the petition before the court.

(10) “Member of the household,” for purposes of section 300 proceedings, means any person continually or frequently found in the same household as the child;

(11) “Notice” means a paper to be filed with the court accompanied by proof of service upon each party required to be served in the manner prescribed by these rules. If a notice or other paper is required to be given to or served on a party, the notice or service shall be given to or made on the party’s attorney of record, if any;

(12) “Notify” means to inform, either orally or in writing;

(13) “Petitioner,” in section 300 proceedings, means the probation officer or county welfare department; “petitioner,” in section 601 and 602 proceedings, means the probation officer or prosecuting attorney;

(14) “Probation officer,” in section 300 proceedings, includes a social worker in the county agency responsible for the administration of child welfare;

(15) “Removal” means a court order that takes away the care, custody, and control of a dependent child or ward from the child’s parent or guardian, and places the care, custody, and control of the child with the court, under the supervision of the agency responsible for the administration of child welfare or the county probation department.

(16) “Section” means a section of the Welfare and Institutions Code;

(17) “Social study,” in section 300 proceedings, means any written report provided to the court and all parties and counsel by the social worker in any matter involving the custody, status, or welfare of a child in a dependency proceeding;

(18) “Social worker,” in section 300 proceedings, includes a probation officer performing the child welfare duties;

(19) “Subdivision” means a subdivision of the rule in which the term appears.

(Subd (a) amended effective January 1, 1998; previously amended effective July 1, 1992 and July 1, 1997; adopted effective January 1, 1990.)

(b) [Construction of terms]

(1) “Shall” is mandatory and “may” is permissive.

(2) The past, present, and future tense include the others.

(3) The singular and plural number each includes the other.

(Subd (b) adopted effective January 1, 1990.)

Rule 1401 amended effective January 1, 1998; previously amended effective July 1, 1992 and July 1, 1997; adopted effective January 1, 1990.

Former Rule
Former rule 1401, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Advisory Committee Comment
1998—The additions to the definitions section of the juvenile court rules clarify the terms “court-ordered services” or “court-ordered treatment program,” and “initial removal.”

Drafter’s Notes
1992—(a) Rule 1401 was amended to include a definition for “removal.”

(b) Rule 1402 was amended to change the date for adoption for mandatory use from July 1, 1992, to January 1, 1993, on a number of court forms.

(c) Rule 1423 was added on confidentiality of records.

(d) Rule 1463 was amended to reference court-appointed child advocates and to conform to statutory change.

Rule 1402. Judicial Council forms

(a) [Petition under §300]

(1) The following Judicial Council forms are adopted for mandatory use:

(A) Juvenile Dependency Petition (Version One) (JV-100)

(B) Additional Children Attachment (JV-101)

(C) Juvenile Dependency Petition (Version Two) (JV-110)

(D) Serious Physical Harm (JV-120)

(E) Failure to Protect (JV-121)

(F) Serious Emotional Damage (JV-122)

(G) Sexual Abuse (JV-123)

(H) Severe Physical Abuse (Child Under Five) (JV-124)

(I) Conviction of Another Child's Death (JV-125)

(J) No Provision for Support (JV-126)

(K) Freed for Adoption (JV-127)

(L) Cruelty (JV-128)

(M) Abuse of Sibling (JV-129)

(2) *(Use of petition forms)*

(A) Counties that file a separate petition for each child shall use the Juvenile Dependency Petition (Version One) (JV-100).

(B) Counties that file a joint petition for siblings with the same mother and father shall use either:

(i) Juvenile Dependency Petition (Version Two) (JV-110); or

(ii) Juvenile Dependency Petition (Version One) (JV-100), with Additional Children Attachment (JV-101). Petitioner shall check the box on the petition marked "Other children are listed on Additional Children Attachment."

(C) Counties that file a joint petition for half-siblings shall use Juvenile Dependency Petition (Version One) (JV-100), with Additional Children Attachment (JV-101). Petitioner shall check the box on the petition marked "Other children are listed on Additional Children Attachment."

(3) *(Combining forms)* Judicial Council forms JV-120, JV-121, JV-122, JV-123, JV-124, JV-125, JV-126, JV-127, JV-128, and JV-129 may be combined if the headings and language in the body of the forms are included as they appear. (The footer may be deleted.)

(Subd (a) amended effective January 1, 1992; adopted effective January 1, 1991; previously amended effective July 1, 1991.)

(b) [Additional forms]

(1) The following Judicial Council forms are adopted for mandatory use:

(A) Supplemental Petition for More Restrictive Placement (Attachment) (JV-150) (Welf. & Inst. Code, §387)

(B) Petition Modification Attachment (JV-180)

(C) Custody Order—Juvenile (JV-200)

(D) Restraining Order—Juvenile (JV-250)

(E) Notice of Review Hearing—Juvenile (JV-280)

(F) Notice of Hearing on Selection of Permanent Plan—Juvenile (JV-300)

(G) Orders under Section 366.26 of the Welfare and Institutions Code (JV-320)

(H) Letters of Guardianship of the Person—Juvenile (JV-325)

(I) Juvenile Court Transfer Orders (JV-550)

(J) Petition for Disclosure of Juvenile Court Records (JV-570)

(K) Order to Seal Juvenile Records (JV-590)

(2) The following Judicial Council forms are approved for optional use:

(A) Notification of Mailing Address (Welf. & Inst. Code, §316.1) (JV-140)

(B) Waiver of Rights (Juvenile Dependency) (JV-190)

(C) Proof of Service—Juvenile Hearing Under Section 366.26 of the Welfare and Institutions Code (JV-310)

(D) Guardianship Pamphlet (JV-350)

(E) Guardianship Pamphlet (Spanish) (JV-355)

(F) Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights or Waiver of Appearance (JV-450)

(G) Proof of Service—Juvenile (JV-510)

(H) Petition to Obtain Report of Law Enforcement Agency (Juvenile) (JV-575)

(I) Juvenile Wardship Petition (JV-600)

(J) Child Habitually Disobedient (Attachment) (JV-610) (Welf. & Inst. Code, §601(a))

(K) Child Habitually Truant (Attachment) (JV-611) (Welf. & Inst. Code, §601(b))

(L) Violation of Law by Child (Attachment) (JV-620) (Welf. & Inst. Code, §602)

(M) Notice of Hearing—Juvenile Wardship Petition (JV-625)

(N) Juvenile Court Fitness Hearing Order (JV-710) (Welf. & Inst. Code, §707)

(O) Supplemental Petition for More Restrictive Placement (Attachment) (JV-720) (Welf & Inst. Code, § 777(a))

(P) Supplemental Petition for Commitment for 30 Days or Less (Attachment) (JV-730) (Welf. & Inst. Code, § 777(b))

(Q) Petition to Modify Previous Orders—Change of Circumstances (Attachment) (JV-740) (Welf. & Inst. Code, § 778)

(R) Notice of Appeal—Juvenile (JV-800)

(S) Writ Petition—Juvenile (JV-825)

(Subd (b) amended effective January 1, 1994; adopted effective January 1, 1991; previously amended effective January 1, 1992, July 1, 1992, January 1, 1993.)

(c) [Word processor-produced forms] The forms may be produced entirely by word processor printer or similar process or may be produced by the California State Department of Social Services Child Welfare Systems Case Management System.

(Subd (c) amended effective January 1, 1998; adopted effective July 1, 1991; previously amended effective January 1, 1993.)

Rule 1402 amended effective January 1, 1998; adopted effective January 1, 1991; previously amended effective July 1, 1991, January 1, 1992, July 1, 1992, January 1, 1993, and January 1, 1994.

Advisory Committee Comment
1998—The change allows California Department of Social Services computer-generated Judicial Council forms to be used in juvenile court proceedings.

Drafter's Notes
January 1992—The council amended rule 1402 to permit counties to produce all juvenile forms by word processor following a specified procedure.

July 1992—See notes following rule 1401.

1993—The council adopted revisions to the juvenile court rules to conform to statute regarding review by extraordinary writ and to clarify procedures regarding intercounty transfer of juvenile cases and modifications of guardianship orders. The council also amended rule 1402 to: include

new juvenile forms; delete the Administrative Office of the Courts' approval requirement for word processor-generated forms; and delete, for specified juvenile wardship forms, the January 1, 1993, date for adoption for mandatory use.

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

CHAPTER 2. Commencement of Juvenile Court Proceedings

Rule 1403. Proper court; determination of child's residence

(a) [Proper court (§§327, 651)] The proper court in which to commence proceedings to declare a child a dependent or ward of the court is the juvenile court in the county:

(1) In which the child resides; or

(2) In which the child is found; or

(3) In which the acts take place or the circumstances exist which are alleged to bring the child within the provisions of section 300 or 601 or 602.

(b) [Determination of residence—general rule (§17.1)] Unless otherwise provided in the juvenile court law or in these rules, the residence of a child shall be determined under section 17.1.

Rule 1403 adopted effective January 1, 1991.

Former Rules
Former rule 1403, similar to present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1403, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1404. Intake; guidelines

(a) [Role of juvenile court] The presiding judge of the juvenile court shall initiate meetings and cooperate with the probation department, welfare department, prosecuting attorney, law enforcement, and other persons and agencies performing an intake function to establish and maintain a fair and efficient intake program designed to promote swift and objective evaluation of the circumstances of any referral and to pursue an appropriate course of action.

(b) [Purpose of intake program] The intake program shall be designed to:

(1) Provide for settlement at intake of:

(A) Matters over which the juvenile court has no jurisdiction;

(B) Matters in which there is insufficient evidence to support a petition; and

(C) Matters which are suitable for referral to a nonjudicial agency or program available in the community;

(2) Provide for a program of informal supervision of the child under sections 301 and 654; and

(3) Provide for the commencement of proceedings in the juvenile court only when necessary for the welfare of the child or protection of the public.

(Subd (b) as amended effective January 1, 1995.)

(c) [Investigation at intake] The probation officer may and the social worker shall conduct an investigation and determine whether:

(1) The matter should be settled at intake by:

(A) Taking no action;

(B) Counseling the child and any others involved in the matter; or

(C) Referring the child and any others involved to other agencies and programs in the community;

(2) A program of informal supervision should be undertaken for not more than six months under section 301 or 654; or

(3) A petition should be filed under section 300 or 601, or the prosecuting attorney should be requested to file a petition under section 602.

(Subd (c) as amended effective January 1, 1995; previously amended effective January 1, 1994.)

(d) [Mandatory referrals to the prosecuting attorney (§653.5)] Notwithstanding subdivision (c), the probation officer may refer to the prosecuting attorney, within 48 hours, all affidavits requesting that a petition be filed under section 602 if it appears to the probation officer that:

(1) The child, regardless of age:

(A) Is alleged to have committed an offense listed in section 707(b);

(B) Has been referred for the sale or possession for sale of a controlled substance under chapter 2 of division 10 of the Health and Safety Code;

(C) Has been referred for a violation of section 11350 or 11377 of the Health and Safety Code at a school, or for a violation of section 245.5, 626.9, or 626.10 of the Penal Code;

(D) Has been referred for a violation of section 186.22 of the Penal Code;

(E) Has previously been placed on informal supervision under section 654; or

(F) Has been referred for an alleged offense in which restitution to the victim exceeds $1,000;

(2) The child was 16 years of age or older on the date of the alleged offense and the referral is for a felony offense;

(3) The child was under 16 years of age on the date of the alleged offense and the referral is not the first referral for a felony offense; or

(4) The child was 14 years of age or older on the date of the alleged offense and the referral is for a violation of section 487h of the Penal Code or section 10851 of the Vehicle Code. (This subdivision repealed effective January 1, 1997.)

Except for the offenses listed in paragraph (1)(C), the provisions of this subdivision shall not apply to narcotics and drug offenses listed in section 1000 of the Penal Code.

(Subd (d) as amended effective January 1, 1995; previously amended effective January 1, 1994.)

(e) [Informal supervision §§301, 654]

(1) If the child is placed on a program of informal supervision for not more than six months under section 301, the social worker may file a petition at any time during the six-month period. If the objectives of a service plan under section 301 have not been achieved within six months, the social worker may extend the period up to an additional six months, with the consent of the parent or guardian.

(2) If a child is placed on a program of informal supervision for not more than six months under section 654, the probation officer may file a petition under section 601, or request that one be filed by the prosecuting attorney under section 602, at any time during the six-month period, or within 90 days thereafter. If a child on informal supervision under section 654 has not participated in the specific programs within 60 days, the probation officer shall immediately file a

petition under section 601, or request that one be filed by the prosecuting attorney under section 602, unless the probation officer determines that the interests of the child and the community can be protected adequately by continuing under section 654.

(Subd (e) as amended effective January 1, 1995.)

Rule 1404 as amended effective January 1, 1995; adopted effective January 1, 1991; previously amended effective January 1, 1994.

Former Rules
Former rule 1404, similar to the present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1404, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

Rule 1405. Factors to consider

(a) [Settlement at intake] In determining whether a matter not described in rule 1404(d) should be settled at intake, the social worker or probation officer shall consider:

(1) Whether there is sufficient evidence of a condition or conduct to bring the child within the jurisdiction of the court;

(2) If the alleged condition or conduct is not considered serious, whether the child has previously presented no significant problems in the home, school, or community;

(3) Whether the matter appears to have arisen from a temporary problem within the family which has been or can be resolved;

(4) Whether any agency or other resource in the community is better suited to serve the needs of the child, the parent or guardian, or both;

(5) The attitudes of the child and the parent or guardian;

(6) The age, maturity, and capabilities of the child;

(7) The dependency or delinquency history, if any, of the child;

(8) The recommendation, if any, of the referring party or agency;

(9) The attitudes of affected persons; and

(10) Any other circumstances that indicate that settling the matter at intake would be consistent with the welfare of the child and the protection of the public.

(b) [Informal supervision] In determining whether to undertake a program of informal supervision of a child not described by rule 1404(d), the social worker or probation officer shall consider:

(1) If the condition or conduct is not considered serious, whether the child has had a problem in the home, school, or community which indicates that some supervision would be desirable;

(2) Whether the child and the parent or guardian seem able to resolve the matter with the assistance of the social worker or probation officer and without formal court action;

(3) Whether further observation or evaluation by the social worker or probation officer is needed before a decision can be reached;

(4) The attitudes of the child and the parent or guardian;

(5) The age, maturity, and capabilities of the child;

(6) The dependency or delinquency history, if any, of the child;

(7) The recommendation, if any, of the referring party or agency;

(8) The attitudes of affected persons; and

(9) Any other circumstances that indicate that a program of informal supervision would be consistent with the welfare of the child and the protection of the public.

(c) [Filing of petition] In determining whether to file a petition under section 300 or 601 or to request the prosecuting attorney to file a petition under section 602, the social worker or probation officer shall consider:

(1) Whether any of the statutory criteria listed in rules 1482 and 1483 relating to the fitness of the child are present;

(2) Whether the alleged conduct would be a felony;

(3) Whether the alleged conduct involved physical harm or the threat of physical harm to person or property;

(4) If the alleged condition or conduct is not serious, whether the child has had serious problems in the home, school, or community which indicate that formal court action is desirable;

(5) If the alleged condition or conduct is not serious, whether the child is already a ward or dependent of the court;

(6) Whether the alleged condition or conduct involves a threat to the physical or emotional health of the child;

(7) Whether a chronic serious family problem exists after other efforts to resolve the problem have been made;

(8) Whether the alleged condition or conduct is in dispute and, if proven, whether court-ordered disposition appears desirable;

(9) The attitudes of the child and the parent or guardian;

(10) The age, maturity, and capabilities of the child;

(11) Whether the child is on probation or parole;

(12) The recommendation, if any, of the referring party or agency;

(13) The attitudes of affected persons;

(14) Whether any other referrals or petitions are pending; and

(15) Any other circumstances that indicate that the filing of a petition is necessary to promote the welfare of the child or to protect the public.

(d) [Certification to juvenile court] Copies of the certification, the accusatory pleading, any police reports, and the order of a superior or municipal court, certifying that the accused person was under the age of 18 on the date of the alleged offense, shall immediately be delivered to the clerk of the juvenile court. Upon receipt of the documents, the clerk shall immediately notify the probation officer, who shall immediately investigate the matter to determine whether to commence proceedings in juvenile court. If the child is under the age of 18 and is in custody, the child shall immediately be transported to the juvenile detention facility.

Rule 1405 adopted effective January 1, 1991.

Former Rules
Former rule 1405, relating to filing and application for petition was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1405, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1406. Filing the petition; application for petition

(a) [Discretion to file (§§325, 650)] Except as provided in sections 331, 364, 604, 653.5, 654, and 655, the social worker or probation officer shall have the sole discretion whether to file a petition under section 300 and 601. The prosecuting attorney shall have the sole discretion to file a petition under section 602.

(b) [Filing the petition (§§325, 650)] A proceeding in juvenile court to declare a child a dependent or a ward of the court is commenced by the filing of a petition.

(1) In proceedings under section 300, the social worker shall file the petition;

(2) In proceedings under section 601, the probation officer shall file the petition; and

(3) In proceedings under section 602, the prosecuting attorney shall file the petition. The prosecuting attorney may refer the matter back to the probation officer for appropriate action.

(c) [Application for petition (§§329, 331, 653, 653.5, 655)] Any person may apply to the social worker or probation officer to commence proceedings. The application shall be in the form of an affidavit alleging facts showing the child is described in section 300, 601, or 602. The social worker or probation officer shall proceed under section 329 or 653 or 653.5. The applicant may seek review of a decision not to file a petition by proceeding under section 331 or 655.

Rule 1406 adopted effective January 1, 1991.

Former Rules
Former rule 1406, similar to present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1406, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1407. Form of petition; notice of hearing

(a) [Form of petition (§§332, 333, 656, 656.1, 656.5, 661)] The petition shall be verified and may be dismissed without prejudice if not verified. The petition shall contain all of the following:

(1) The name of the court;

(2) The title of the proceeding;

(3) Each code section and subdivision under which the petition is filed, and if under section 602, the specific code sections and subdivisions alleged to have been violated, and as to each count, whether it is a misdemeanor or felony;

(4) The name, age, and address of the child;

(5) If known, the names and addresses of the parents and guardians; if not known, or if no parent or guardian resides in California, the names and addresses of any adult relative known to reside within the county, or of the adult relative residing nearest the county;

(6) A concise statement of facts, separately stated, supporting the allegation that the child is described by each section and subdivision under which the petition is filed;

(7) Whether the child is detained and, if so, the date and the precise time the child was taken into custody;

(8) A notice of the financial obligations under sections 903, 903.1, and 903.2;

(9) If a violation of Penal Code section 640.5 or 640.6 is alleged, notice to the parent or guardian that the child may be required to perform community service and to be supervised by the parent or guardian, and that the parent or guardian may be liable for payment of a fine;

(10) Notice to the parent or guardian that the parent or guardian may be liable for payment of court-ordered restitution;

(11) If applicable, the intent to aggregate other offenses under section 726; and

(12) If the petition is filed under section 601:

(A) A notice that failure to comply with compulsory school attendance is an infraction for which the parent, guardian, or caretaker of the child may be prosecuted before the juvenile court sitting as a municipal court, subject to the right of the parent, guardian, or caretaker to have the infraction charge heard by a judicial officer other than the one who is to hear the 601 proceeding; and

(B) An explanation of the provisions of section 170.6 of the Code of Civil Procedure.

(Subd (a) as amended effective January 1, 1995.)

(b) [Form of petition—§300]

(1) Effective January 1, 1991, the following Judicial Council forms are approved for optional use:

(A) Juvenile Dependency Petition (Version One) (JV-100)

(B) Additional Children Attachment (JV-101)

(C) Juvenile Dependency Petition (Version Two) (JV-110)

(D) Serious Physical Harm (JV-120)

(E) Failure to Protect (JV-121)

(F) Serious Emotional Damage (JV-122)

(G) Sexual Abuse (JV-123)

(H) Severe Physical Abuse (Child Under Five) (JV-124)

(I) Conviction of Another Child's Death (JV-125)

(J) No Provision for Support (JV-126)

(K) Freed for Adoption (JV-127)

(L) Cruelty (JV-128)

(M) Abuse of Sibling (JV-129)

(N) Supplemental Petition Attachment (JV-150)

(2) Effective July 1, 1991, the forms described in subdivision (1) are adopted for mandatory use.

(3) *(Use of forms)*

(A) Counties that file a separate petition for each child shall use the Juvenile Dependency Petition (Version One) (JV-100).

(B) Counties that file a joint petition for siblings with the same mother and father shall use either:

(i) Juvenile Dependency Petition (Version Two) (JV-110); or

(ii) Juvenile Dependency Petition (Version One) (JV-100), with Additional Children Attachment (JV-101). Petitioner shall check the box on the petition marked "Other children are listed on Additional Children Attachment."

(C) Counties that file a joint petition for half-siblings shall use Juvenile Dependency Petition (Version One) (JV-100), with Additional Children Attachment (JV-101). Petitioner shall check the box on the petition marked "Other children are listed on Additional Children Attachment."

(4) *(Combining forms)* Judicial Council forms JV-120, JV-121, JV-122, JV-123, JV-124, JV-125, JV-126, JV-127, JV-128, and JV-129 may be combined if the headings and language in the body of the forms are included as they appear. (The footer may be deleted.)

(5) *(Word processor-produced forms)*

(A) The forms in subdivision (b)(1) may be produced entirely by word processor printer or similar process.

(B) Before a county files a word processor version of a form with the court, the county shall submit a copy of the proposed form to the Administrative Office of the Courts and obtain approval.

(c) [Amending the petition (§§348, 678)] Chapter 8 of title 6 of part 2 of the Code of Civil Procedure, beginning at section 469, shall apply to variances and amendments of petitions and proceedings in the juvenile court.

(d) [Contents of notice of hearing (§§335, 336, 658, 659)] When the petition is filed, the clerk shall issue a notice of hearing with a copy of the petition attached. The notice shall contain all of the following:

(1) The name and address of the person notified;

(2) The date, time, and place of the hearing set;

(3) The name of the child;

(4) Each code section and subdivision under which the petition has been filed;

(5) A statement that:

(A) The child and the parent or guardian, or noticed adult relative, are entitled to have an attorney present at the hearing;

(B) If the child or parent or guardian or noticed adult relative is indigent and wishes to be represented by an attorney, the court should be notified promptly;

(C) If an attorney is appointed to represent the child, the parent or guardian shall be liable for all or a part of the costs, to the extent of the ability to pay;

(D) If an attorney is appointed to represent the parent or guardian or noticed adult relative, the represented person shall be liable for all or a part of the costs, to the extent of the ability to pay.

(6) A statement that the parent or guardian or adult relative may be liable for the costs of support of the child in a county institution.

(e) [Persons entitled to notice (§§335, 658)] The clerk shall cause the notice and attached copy of the petition to be served on each of the following:

(1) The child, if 10 years or older and the petition is filed under section 300;

(2) The child, if the child is eight years or older and the petition is filed under section 601 or 602;

(3) Each person described in subsection (a)(5) whose address is in the petition or becomes known to the clerk before the hearing;

(4) Attorneys for the child and parent or guardian;

(5) The district attorney, if the district attorney has requested notice; and

(6) Any court-appointed child advocate.

(Subd (e) as amended effective Jan. 1, 1992; repealed and adopted effective Jan. 1, 1991.)

(f) [Service of notice—child detained (§§337, 660)] If the child is detained, the notice and a copy of the petition shall be served on the persons described in subdivision (e) personally or by certified mail, return receipt requested:

(1) As soon as possible after the petition is filed and at least five days before the hearing; or

(2) At least 24 hours before the hearing if the hearing is set less than five days after the petition is filed.

(g) [Service of notice—child not detained (§§337, 660)] If the child is not detained, the notice and a copy of the petition shall be served on the persons designated in subdivision (e) personally or by first-class mail at least 10 calendar days before the hearing. If a person fails to appear after service by mail, the court shall order personal service.

(h) [Waiver of service (§§337, 660)] A person may waive service of notice by a voluntary appearance noted in the minutes of the court, or by a written waiver of service filed with the clerk.

(i) [Service on child's attorney (§660)] For the purposes of time requirements under subdivisions (f) and (g) in proceedings under section 601 or 602, service on the child's attorney is equivalent to service on the parent or guardian.

(j) [Oral notice (§§311, 630)] The notice required by subdivision (e) may be given orally.

(1) In a matter under section 300, notice shall be given orally if it appears that the parent, guardian, or adult relative does not read.

(2) The social worker or probation officer shall file a declaration stating that oral notice was given and to whom.

Rule 1407 as amended effective January 1, 1995; adopted effective January 1, 1991; previously amended effective January 1, 1992.

Former Rules

Former rule 1407, similar to present rule 1408, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1407, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

Rule 1408. Citation to appear; warrants of arrest; subpoenas

(a) [Citation to appear (§§338, 661)] In addition to the notice required under rule 1407(d), the court may issue a citation directing a parent or guardian to appear at a hearing.

(1) The citation shall state that the parent or guardian may be required to participate in a counseling program, and the citation may direct the present custodian of the child to bring the child to court.

(2) The citation shall be personally served at least 24 hours before the time stated for the appearance.

(b) [Warrant of arrest (§§339, 662)] The court may order a warrant of arrest to issue against the parent, guardian, or present custodian of the child if:

(1) The citation cannot be served;

(2) The person served does not obey it; or

(3) The court finds that a citation will probably be ineffective.

(c) [Protective custody or warrant of arrest for child (§§340, 663)] The court may order a protective custody warrant or a warrant of arrest for a child if the court finds that:

(1) The conduct and behavior of the child may endanger the health, person, welfare, or property of the child or others; or

(2) The home environment of the child may endanger the health, person, welfare, or property of the child.

(d) [Subpoenas (§§341, 664)] On the court's own motion or at the request of the petitioner, child, parent, guardian, or present custodian, the clerk shall issue subpoenas requiring attendance and testimony of witnesses and the production of papers at a hearing. If a witness appears in response to a subpoena, the court may order the payment of witness fees as a county charge in the amount and manner prescribed by statute.

Rule 1408 adopted effective January 1, 1991.

CHAPTER 3. General Conduct of Juvenile Court Proceedings

Rule 1410. Persons present

(a) [Separate session; restriction on persons present (§§345, 675)] All juvenile court proceedings shall be heard at a special or separate session of the court, and no other matter shall be heard at that session. No person on trial, awaiting trial, or accused of a crime, other than a parent, de facto parent, guardian, or relative of the child, shall be permitted to be present at the hearing, except while testifying as a witness.

(b) [Persons present (§§280, 332, 335, 347, 349, 353, 656, 658, 677, 679, 681, 700, 25 U.S.C. §§1911, 1931-1934)] The following persons are entitled to be present:

(1) The child;

(2) All parents, de facto parents, Indian custodians, and guardians of the child or, if no parent or guardian resides within the state or, if their places of residence are not known,

(A) any adult relatives residing within the county or, if none,

(B) any adult relatives residing nearest the court;

(3) Counsel representing the child or the parent, de facto parent, guardian, or adult relative, Indian custodian or the tribe of an Indian child;

(4) The probation officer or social worker;

(5) The prosecuting attorney, as provided in subdivisions (c) and (d);

(6) Any court-appointed special advocate;

(7) A representative of the Indian child's tribe;

(8) The court clerk;

(9) The official court reporter, as provided in rule 1411;

(10) At the court's discretion, a bailiff.

(Subd (b) as amended effective January 1, 1997; previously amended effective January 1, 1995.)

(c) [Presence of prosecuting attorney—§§601-602 proceedings (§681)] In proceedings brought under section 602, the prosecuting attorney shall appear on behalf of the people of the State of California. In proceedings brought under section 601, the prosecuting attorney may appear to assist in ascertaining and presenting the evidence if:

(1) The child is represented by counsel; and

(2) The court consents to or requests the prosecuting attorney's presence, or the probation officer requests and the court consents to the prosecuting attorney's presence.

(d) [Presence of petitioner's attorney—§300 proceedings (§317)] In proceedings brought under section 300, the county counsel or district attorney shall appear and represent the petitioner if the parent or guardian is represented by counsel, and the juvenile court requests the attorney's presence.

(e) [General public not admitted (§§346, 676)] Except as provided in sections 346 and 676, the public shall not be admitted to a juvenile court hearing.

Rule 1410 as amended effective January 1, 1997; adopted effective January 1, 1990; previously amended effective January 1, 1995.

Former Rule
Former rule 1410, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: . . . (2) amended rule 1410 to include court-appointed special advocates and a representative of an Indian child's tribe as persons entitled to be present at juvenile court proceedings; . . .

1997—Rule 1439, relating to the Indian Child Welfare Act, was amended to clarify procedures, and conforming amendments were made to rules 1410 and 1412.

Rule 1411. Court reporter; transcripts

(a) [Hearing before judge (§§347, 677)] If the hearing is before a judge or a referee acting as a temporary judge by stipulation, an official court reporter or other authorized reporting procedure shall record all proceedings.

(b) [Hearing before referee (§§347, 677)] If the hearing is before a referee not acting as a temporary judge, the judge may direct an official court reporter or other authorized reporting procedure to record all proceedings.

(c) [Preparation of transcript (§§347, 677)] If directed by the judge or if requested by a party or the attorney for a party, the official court reporter or other authorized transcriber shall prepare

a transcript of the proceedings within such reasonable time after the hearing as the judge shall designate and shall certify that the proceedings have been correctly reported and transcribed. If directed by the judge, the official court reporter or authorized transcriber shall file the transcript with the clerk of the court.

Rule 1411 adopted effective January 1, 1990.

Former Rule
Former rule 1411, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1412. General provisions—proceedings

(a) [Control of proceedings (§§350, 680)] The court shall control all proceedings with a view to the expeditious and effective ascertainment of the jurisdictional facts and of all information relevant to the present condition and welfare of the child.

(b) [Conduct of proceedings (§§350, 680)] Unless there is a contested issue of fact or law, the proceedings shall be conducted in a nonadversarial atmosphere.

(c) [Testimony of child in chambers (§350)] In a hearing pursuant to section 300 et seq., a child may testify in chambers and outside the presence of the child's parent or guardian if the parent or guardian is represented by counsel who is present, and the court determines that any of the following circumstances exist:

(1) Testimony in chambers is necessary to ensure truthful testimony; or

(2) The child is likely to be intimidated by a formal courtroom setting; or

(3) The child is afraid to testify in front of the parent or guardian. In determining whether there is a basis for the child's in-chambers testimony, the court may consider the petitioner's report or other offers of proof. The parent or guardian may elect to have the court reporter read back the child's testimony.

(d) [Burden of proof (§§350, 701.1)] In any hearing under section 300 in which the county welfare agency has the burden of proof, after completion of the agency's case, and the presentation of evidence by the child, the court may, on motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof is not met.

In any hearing under section 601 or 602, after the completion of the petitioner's case, the court may, on the motion of any party, or on the court's own motion, order whatever action the law requires if the burden of proof is not met.

If the motion is denied, the child in a section 300 or section 601 or section 602 hearing, or the parent or guardian in a section 300 hearing, may offer evidence.

(Subd (d) as amended effective July 1, 1995.)

(e) [De facto parents] Upon a sufficient showing the court may recognize the child's present or previous custodians as de facto parents and grant standing to participate as parties in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue. The de facto parent may:

(1) Be present at the hearing;

(2) Be represented by retained counsel or, at the discretion of the court, by appointed counsel;

(3) Present evidence.

(f) [Relatives] Upon a sufficient showing the court may permit relatives of the child to:

(1) Be present at the hearing;

(2) Address the court.

(g) [Right to counsel (§§317, 633, 634, 700)] At each hearing the court shall advise an unrepresented child, parent, or guardian of the right to be represented by counsel, and, if applicable, of the right to have counsel appointed, subject to a claim by the county for reimbursement as provided by law.

(h) [Appointment of counsel (§§317, 633, 634, 700)]

(1) In cases petitioned under section 300:

(A) The court shall appoint counsel for the child if it appears that the child would benefit from the appointment;

(B) The court shall appoint counsel for any parent or guardian unable to afford counsel if the child is placed in out-of-home care, or the recommendation of the petitioner is for out-of-home care, unless the court finds the parent or guardian has knowingly and intelligently waived the right to counsel. The court may also appoint counsel for the petitioner to represent the child unless the court determines that representation constitutes a conflict of interest. If the court finds a conflict exists, separate counsel shall be appointed for the child.

(2) In cases petitioned under section 601 or section 602:

(A) The court shall appoint counsel for any child who appears without counsel, unless the child knowingly and intelligently waives the right to counsel. If the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court shall appoint counsel for the child and order the parent or guardian to reimburse the county;

(B) The court may appoint counsel for a parent or guardian who desires but cannot afford counsel;

(C) If the parent has retained counsel for the child and a conflict arises, the court shall take steps to ensure that the child's interests are protected.

(i) [Tribal representatives (25 U.S.C. §§ 1911, 1931-1934] The tribe of an Indian child is entitled to intervene as a party at any stage of a dependency proceeding concerning the Indian child.

(1) The tribe may appear by counsel or by a representative of the tribe designated by the tribe to intervene on behalf of the tribe. When the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual or agency to appear as the tribe, shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.

(2) If the tribe of the Indian child does not intervene as a party, the court may permit an individual affiliated with the tribe, or if requested by the tribe a representative of a program operated by another tribe or Indian organization to:

(A) be present at the hearing;

(B) address the court;

(C) receive notice of hearings;

(D) examine all court documents relating to the dependency case;

(E) submit written reports and recommendations to the court;

(F) perform other duties and responsibilities as requested or approved by the court.

(Subd (i) adopted effective January 1, 1997.)

(j) [Advice of hearing rights (§§301, 311, 341, 630, 702.5, 827)] The court shall advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:

(1) Any right to assert the privilege against self-incrimination;

(2) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner, and the witnesses called to testify at the hearing;

(3) The right to use the process of the court to bring in witnesses;

(4) The right to present evidence to the court.

The child, parent or guardian, and their attorneys have the right (i) to receive probation officer or social worker reports, and (ii) to inspect the documents used by the preparer of the report. Unless prohibited by court order, the child, parent or guardian, and their attorneys also have the right to receive all documents filed with the court.

(Subd (j) as relettered effective January 1, 1997; adopted effective January 1, 1991, as subd (i).)

(k) [Notice] At each hearing under section 300 et seq., the court shall determine whether notice has been given as required by law, and shall make an appropriate finding noted in the minutes.

(Subd (k) as relettered effective January 1, 1997; adopted effective January 1, 1991, as subd (j).)

(*l*) [Address of parent or guardian—notice (§316.1)] At the first appearance by a parent or guardian in proceedings under section 300 et seq., the court shall order the parent or guardian, or both, to provide a mailing address.

(1) The court shall advise the parent or guardian that the mailing address provided will be used by the court, the clerk, and the social services agency for the purposes of notice of hearings and the mailing of all documents related to the proceedings.

(2) The court shall advise the parent or guardian that until and unless the parent or guardian, or the attorney of record for the parent or guardian, submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.

(3) Judicial Council form Notification of Mailing Address/Change of Mailing Address (JV-140) is the preferred method of informing the court and the social services agency of the mailing address of the parent or guardian and change of mailing address.

(A) The form shall be delivered to the parent or guardian, or both, with the petition.

(B) The form shall be available in the courtroom, in the office of the clerk, and in the offices of the social services agency.

(C) The form shall be printed and made available in both English and Spanish.

(Subd (*l*) as relettered effective January 1, 1997; adopted effective January 1, 1994, as subd (k).)

(m) [Periodic reports] The court may require the petitioner or any other agency to submit reports concerning a child subject to the jurisdiction of the court.

(Subd (m) as relettered effective January 1, 1997; adopted effective January 1, 1991, as subd (k); previously relettered to be subd (*l*) effective January 1, 1994.)

(n) [Paternity] At any noticed hearing, the court, under rule 1413, may make a finding of paternity of a child regarding whom a petition has been filed under section 300 or 601 or 602, upon presentation of evidence by testimony, declaration, or tests performed under Evidence Code section 890 et seq.

(Subd (n) as relettered effective January 1, 1997; adopted effective January 1, 1991, as subd (*l*); previously relettered to be subd (m) effective January 1, 1994; amended effective July 1, 1995.)

(o) [Restraining orders] During the pendency of a proceeding to declare a child a dependent, the court may issue restraining orders as provided in section 213.5. The restraining orders may be prepared on Judicial Council form Restraining Order—Juvenile (JV-250).

(Subd (o) as relettered effective January 1, 1997; adopted effective January 1, 1991 as subd (m); previously relettered to be subd (n) effective January 1, 1994.)

Rule 1412 as effective January 1, 1997; adopted effective January 1, 1991; previously amended effective January 1, 1994, July 1, 1995.

Former Rules
Former rule 1412, similar to the present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1412, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

(1) amended rule 1412, on general provisions of juvenile court proceedings, to conform to statutory changes on the burden of proof and to refer to new rule 1413 on paternity determinations; . . .

1997—Rule 1439, relating to the Indian Child Welfare Act, was amended to clarify procedures, and conforming amendments were made to rules 1410 and 1412.

Rule 1413. Paternity

(a) [Authority to declare] The juvenile court may establish the paternity of a child regarding whom a petition is filed under section 300, 601, or 602.

(b) [Issue raised] If at any time during any proceeding regarding the child, the issue of paternity is raised by any party or by the court, the court shall proceed as follows:

(1) Make inquiry of the person alleging paternity and of others present, if any paternity finding has been made and by what court.

(2) Direct the court clerk to prepare and transmit Judicial Council form Paternity Inquiry—Juvenile (JV-500) to the office of the district attorney requesting an inquiry as to whether or not paternity has been established through any superior court order or judgment.

(3) The office of the district attorney shall prepare and return the completed Judicial Council form Paternity Inquiry—Juvenile (JV-500) within 25 judicial days, with certified copies of such order or judgment attached.

(4) The juvenile court shall take judicial notice of the prior determination of paternity.

(c) [No prior determination] If the office of the district attorney states that there has been no prior determination of paternity of the child, the juvenile court may make such a determination.

(1) To determine paternity, the juvenile court may order the child, the mother and any alleged father to submit to blood tests and proceed under Family Code section 7550 et seq.; or

(2) The court may make its determination of paternity or nonpaternity based on the testimony, declarations or statements of the mother and alleged father. The court shall advise any alleged father indicating he wishes to be declared the father of the child that if he is declared the father he will have responsibility for the financial support of the child, and if the child receives AFDC benefits, the district attorney may file an action to obtain support payments.

(d) [Notice to district attorney] If the court establishes paternity of the child, the court shall direct the clerk to prepare and transmit Judicial Council form Paternity Declaration—Juvenile (JV-501) to the Family Support Division of the office of the district attorney.

Rule 1413 adopted effective July 1, 1995.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (2) added rule 1413 on paternity determinations; . . .

Rule 1415. General provisions—proceedings held before referees

(a) [Referees—appointment; powers (§247; Cal. Const., art. VI, §22)] One or more referees may be appointed pursuant to section 247 to perform subordinate judicial duties assigned to the referee by the presiding judge of the juvenile court.

(b) [Referee as temporary judge (Cal. Const., art. VI, §21)] If the referee is an attorney admitted to practice in this state, the parties litigant may stipulate pursuant to rule 244 that the referee shall act as a temporary judge with the same powers as a judge of the juvenile court. An official court reporter or other authorized reporting procedure shall record all proceedings.

(c) [Challenge of referee (§247.5; Code Civ. Proc., §§170, 170.6)] Sections 170 and 170.6 of the Code of Civil Procedure are applicable to referees. If a motion under those sections is granted, the presiding judge of the juvenile court may reassign the matter to another referee or judge.

Rule 1415 adopted effective January 1, 1990.

Former Rule
Former rule 1415, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1416. Conduct of proceedings held before a referee not acting as a temporary judge

(a) [General conduct (§§248, 347, 677)] Proceedings heard by a referee not acting as a temporary judge shall be conducted in the same manner as proceedings heard by a judge, except:

(1) An official court reporter or other authorized reporting procedure shall record the proceedings if directed by the court; and

(2) The referee shall inform the child and parent or guardian of the right to seek review by a juvenile court judge.

(b) [Furnishing and serving findings and order; explanation of right to review (§248)] After each hearing before a referee, the referee shall make findings and enter an order as provided elsewhere in these rules. In each case the referee shall cause all of the following to be done promptly:

(1) Furnish a copy of the findings and order to the presiding judge of the juvenile court.

(2) Furnish to the child (if the child is 14 or more years of age or, if younger, as requested) a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge.

(3) Serve the parent and guardian, and counsel for the child, parent, and guardian, a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. Service shall be by mail to the last known address and is deemed complete at the time of mailing.

Rule 1416 adopted effective January 1, 1990.

Former Rule
Former rule 1416, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1417. Orders of referees not acting as temporary judges

(a) [Effective date of order (§250)] Except as provided in subdivision (b) and subject to the right of review provided for in rule 1418, all orders of a referee shall become effective immediately and shall continue in effect unless vacated or modified upon rehearing by order of a juvenile court judge.

(b) [Orders requiring express approval of judge (§§249, 251)] The following orders made by a referee shall not become effective unless expressly approved by a juvenile court judge within two court days:

(1) Any order removing a child from the physical custody of the person legally entitled to custody; or

(2) Any order the presiding judge of the juvenile court requires to be expressly approved.

(c) [Finality date of order] An order of a referee shall become final 10 calendar days after service of a copy of the order and findings under rule 1416, if an application for rehearing has not been made within that time or if the judge of the juvenile court has not within the 10 days ordered a rehearing on the judge's own motion under rule 1418.

Rule 1417 adopted effective January 1, 1990.

Former Rule
Former rule 1417, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1418. Rehearing of proceedings before referees

(a) [Application for rehearing (§252)] An application for a rehearing of a proceeding before a referee not acting as a temporary judge may be made by the child, parent, or guardian at any time before the expiration of 10 calendar days after service of a copy of the order and findings. The application may be directed to all, or any specified part of, the order or findings and shall contain a brief statement of the factual or legal reasons for requesting the rehearing.

(b) [If no formal record (§252)] If proceedings before the referee were not recorded by an official court reporter or other authorized reporting procedure, a rehearing shall be granted.

(c) [Hearing with court reporter (§252)] If the proceedings before the referee have been recorded by an official court reporter or other authorized reporting procedure, the judge of the juvenile court may, after reading the transcript of the proceedings, grant or deny the application for rehearing. If the application is not denied within 20 calendar days following the date of receipt of the application, or within 45 calendar days if the court for good cause extends the time, the application shall be deemed granted.

(d) [Rehearing on motion of judge (§253)] Notwithstanding subdivision (a), at any time within 20 court days after a hearing before a referee, the judge may on the judge's own motion order a rehearing.

(e) [Hearing de novo (§254)] Rehearings of matters heard before a referee shall be conducted de novo before a judge of the juvenile court. A rehearing of a detention hearing shall be held within

two court days after the rehearing is granted. A rehearing of other matters heard before a referee shall be held within 10 court days after the rehearing is granted.

(f) [Advice of appeal rights] If the judge of the juvenile court denies an application for rehearing directed in whole or in part to issues arising during a contested jurisdiction hearing, the judge shall advise, either orally or in writing, the child and the parent or guardian of all of the following:

(1) The right of the child, parent, or guardian to appeal from the court's judgment;

(2) The necessary steps and time for taking an appeal;

(3) The right of an indigent appellant to have counsel appointed by the reviewing court;

(4) The right of an indigent appellant to be provided a free copy of the transcript.

Rule 1418 adopted effective January 1, 1991.

Former Rules
Former rule 1418, similar to present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1418, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1419. Prehearing motions (§700.1)

Unless otherwise ordered or specifically provided by law, prehearing motions and accompanying points and authorities shall, absent a waiver, be served on the child and opposing counsel and filed with the court:

(a) At least five judicial days before the date the jurisdiction hearing is set to begin if the child is detained or the motion is one to suppress evidence obtained as a result of an unlawful search and seizure; or

(b) At least 10 judicial days before the date the jurisdiction hearing is set to begin if the child is not detained and the motion is other than one to suppress evidence obtained as a result of an unlawful search and seizure.

Prehearing motions shall be specific, noting the grounds, and supported by points and authorities.

Rule 1419 adopted effective January 1, 1991.

Rule 1420. Prehearing discovery

(a) [General purpose] This rule shall be liberally construed in favor of informal disclosures, subject to the right of a party to show privilege or other good cause not to disclose specific material or information.

(b) [Duty to disclose police reports] Upon filing the petition, petitioner shall promptly deliver to or make accessible for inspection and copying by the child and the parent or guardian, or their counsel, copies of the police, arrest, and crime reports relating to the pending matter. Privileged information may be omitted if notice of the omission is given simultaneously.

(c) [Affirmative duty to disclose] Petitioner shall disclose any evidence or information within petitioner's possession or control favorable to the child, parent, or guardian.

(d) [Material and information to be disclosed on request] Except as provided in subdivisions (g) and (h), petitioner shall, upon timely request, disclose to the child and parent or guardian, or their counsel, the following material and information within the petitioner's possession or control:

(1) Probation reports prepared in connection with the pending matter relating to the child, parent, or guardian;

(2) Records of statements, admissions, or conversations by the child, parent, or guardian;

(3) Records of statements, admissions, or conversations by any alleged coparticipant;

(4) Names and addresses of witnesses interviewed by an investigating authority in connection with the pending matter;

(5) Records of statements or conversations of witnesses or other persons interviewed by an investigating authority in connection with the pending matter;

(6) Reports or statements of experts made regarding the pending matter, including results of physical or mental examinations and results of scientific tests, experiments, or comparisons;

(7) Photographs or physical evidence relating to the pending matter;

(8) Records of prior felony convictions of the witnesses each party intends to call.

(e) [Disclosure in section 300 proceedings] Except as provided in subdivisions (g) and (h), the parent or guardian shall, upon timely request, disclose to petitioner material and information within the parent's or guardian's possession or control that is relevant. If the parent or guardian is represented by counsel, a disclosure request shall be made through counsel.

(f) [Motion for prehearing discovery] On refusal of a party to permit disclosure of information or inspection of materials, the requesting party or counsel may move the court for an order requiring timely disclosure of the information or materials. The motion shall specifically and clearly designate the items sought, state the relevancy of the items, and state that a timely request

has been made for the items and that the other party has refused to provide them. Each court may by local rule establish the manner and time within which a motion under this subdivision shall be made.

(g) [Limits on duty to disclose—protective orders] On a showing of privilege or other good cause, the court may make orders restricting disclosures. All material and information to which a party is entitled must be disclosed in time to permit counsel to make beneficial use of them.

(h) [Limits on duty to disclose—excision] When some parts of the materials are discoverable under subdivisions (d) and (e) and other parts are not discoverable, the nondiscoverable material may be excised and need not be disclosed if the requesting party or counsel has been notified that the privileged material has been excised. Material ordered excised shall be sealed and preserved in the records of the court for review on appeal.

(i) [Conditions of discovery] An order of the court granting discovery under this rule may specify the time, place, and manner of making the discovery and inspection and may prescribe terms and conditions. Discovery shall be completed in a timely manner to avoid the delay or continuance of a scheduled hearing.

(j) [Failure to comply; sanctions] If at any time during the course of the proceedings it is brought to the attention of the court that a person has failed to comply with this rule or with an order issued under this rule, the court may order the person to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit a party from introducing in evidence the material not disclosed, dismiss the proceedings, or enter any other order the court deems just under the circumstances.

(k) [Continuing duty to disclose] If subsequent to compliance with these rules or with court orders a party discovers additional material or information subject to disclosure, the party shall promptly notify the child and parent or guardian, or their counsel, of the existence of the additional matter.

Rule 1420 adopted effective January 1, 1990.

Former Rule
Former rule 1420, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1421. Granting immunity to witnesses

(a) [Privilege against self-incrimination] If a person is called as a witness and it appears to the court that the testimony or other evidence being sought may tend to incriminate the witness, the court shall advise the witness of the privilege against self-incrimination and of the possible consequences of testifying. The court shall also inform the witness of the right to representation by counsel and, if indigent, of the right to have counsel appointed.

(b) [Authority of judge to grant immunity] If a witness refuses to answer a question or to produce evidence based upon a claim of the privilege against self-incrimination, a judge may grant immunity to the witness under subdivision (c) or (d) and order the question answered or the evidence produced.

(c) [Request for immunity—§ 602 proceedings] In proceedings under section 602, the prosecuting attorney may make a written request or an oral request on the record that the court order a witness to answer a question or produce evidence. The court shall then proceed under Penal Code section 1324. After complying with an order to answer a question or produce evidence and if, but for those Penal Code sections or this rule, the witness would have been privileged to withhold the answer given or the evidence produced, no testimony or other information compelled under the order or information directly or indirectly derived from the testimony or other information may be used against the witness in any criminal case, including any juvenile court proceeding under section 602. The prosecuting attorney may request an order granting the witness use or transactional immunity.

(Subd (c) amended effective January 1, 1998.)

(d) [Request for immunity—§§ 300, 601 proceedings] In proceedings under section 300 or 601, the prosecuting attorney or petitioner may make a written request or an oral request on the record that the judge order a witness to answer a question or produce evidence. They may also make the request jointly. If the request is not made jointly, the other party shall be given the opportunity to show why immunity is not to be granted and the judge may grant or deny the request as deemed appropriate. If jointly made, the judge shall grant the request unless the judge finds that to do so would be clearly contrary to the public interest. The terms of a grant of immunity shall be stated in the record. After complying with the order and if, but for this rule, the witness would have been privileged to withhold the answer given or the evidence produced, any answer given, evidence produced, or any information derived therefrom shall not be used against the witness in a juvenile court or criminal proceeding.

(e) [No immunity from perjury or contempt] Notwithstanding subdivision (c) or (d), a witness may be subject to proceedings under the juvenile court law or to criminal prosecution for perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

Rule 1421 amended effective January 1, 1998; adopted effective January 1, 1990.

Former Rule
Former Rule 1421, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.Advisory Committee Comment

Advisory Committee Comment
1998—This change conforms the rule to recent statutory changes regarding court processes related to witness immunity.

Rule 1422. Continuances

(a) [Cases petitioned under § 300 (§ 352)]

(1) The court shall not continue a hearing beyond the time set by statute unless the court determines the continuance is not contrary to the interests of the child. In considering the child's interests, the court shall give substantial weight to a child's needs for stability and prompt resolution of custody status, and the damage of prolonged temporary placements.

(2) Continuances shall be granted only on a showing of good cause, and only for the time shown to be necessary. Stipulation between counsel of parties, convenience of parties, and pending criminal or family law matters are not in and of themselves good cause.

(3) If a child has been removed from the custody of a parent or guardian, the court shall not grant a continuance that would cause the disposition hearing under section 361 to be completed more than 60 days after the detention hearing unless the court finds exceptional circumstances. In no event shall the disposition hearing be continued more than six months after the detention hearing.

(4) In order to obtain a continuance, written notice with supporting documents shall be filed and served on all parties at least two court days prior to the date set for hearing, unless the court finds good cause for hearing an oral motion.

(5) The court shall state in its order the facts requiring any continuance that is granted.

(b) [Cases petitioned under § 601 or § 602 (§ 682)]

(1) A continuance shall be granted only on a showing of good cause and only for the time shown to be necessary. Stipulation between counsel or parties and convenience of parties are not in and of themselves good cause.

(2) In order to obtain a continuance, written notice with supporting documents shall be filed and served on all parties at least two court days prior to the date set for the hearing, unless the court finds good cause for failure to comply with these requirements.

(3) The court shall state in its order the facts requiring any continuance that is granted.

(c) [Continuances of detention hearings (§§ 322, 635, 638)] On the motion of the child, parent, or guardian, the court shall continue the detention hearing for one court day or for a reasonable period to permit the moving party to prepare any relevant evidence on the issue of detention. Unless otherwise ordered by the court, the child shall remain in custody pending the continued hearing.

(Subd (c) adopted effective January 1, 1998.)

Rule 1422 amended effective January 1, 1998; adopted effective January 1, 1991.

Advisory Committee Comment
1998—This change provides for one-court-day continuances for detention hearings, conforming rule 1422 to new rule 1443.

Rule 1423. Confidentiality of records (§§ 827, 828)

(a) [Definitions] For the purposes of this rule, "juvenile court records" include:

(1) All documents filed in a juvenile court case;

(2) Reports to the court by probation officers, social workers of child welfare services programs, and court-appointed special advocates;

(3) Documents made available to probation officers, social workers of child welfare services programs, and court-appointed special advocates in preparation of reports to the court;

(4) Documents relating to a child concerning whom a petition has been filed in juvenile court, which are maintained in the office files of probation officers, social workers of child welfare services programs, and court-appointed special advocates;

(5) Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and

(6) Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

(b) [Inspection] Only those persons specified in sections 827 and 828 may inspect juvenile court records without authorization from the court. Juvenile court records may not be obtained or inspected by civil or criminal subpoena. Authorization for any other person to inspect, obtain, or copy juvenile court records must be ordered by the juvenile court presiding judge or a judicial officer designated by the juvenile court presiding judge.

In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court shall balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public. The court shall permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution. The court may issue protective orders to accompany authorized disclosure, discovery, or access.

(c) [Petition] With the exception of those persons permitted to inspect juvenile court records without court authorization under sections 827 and 828, every person or agency seeking to inspect or obtain juvenile court records must petition the court for authorization using Judicial Council form JV-570, Petition for Disclosure of Juvenile Court Records. The specific records sought shall be identified based on knowledge, information, and belief that such records exist and

are relevant to the purpose for which they are being sought. Petitioner shall describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the records.

(Subd (c) amended effective July 1, 1997.)

(d) [Notice] At least five days before the petition is submitted to the court, petitioner shall personally or by first-class mail serve, or attempt to serve, a copy of the petition on the following: county counsel; district attorney; child; attorney of record for the child who remains a ward or dependent of the court; parent or guardian of the child who is under 18 years of age or if a dependency petition (§300 et seq.) was filed regarding the child; and the probation department or child welfare services program, or both, if applicable.

(e) [Procedure] The court shall review the petition and grant or deny it summarily, or set a hearing. The clerk shall notice all parties of the hearing. If at the hearing the court determines that there may be information or documents in the records sought to which petitioner may be entitled, review of records shall be in camera and the juvenile court judicial officer shall assume that all legal claims of privilege are asserted. If after in-camera review the court determines that all or a portion of the records may be disclosed, the court shall make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it.

(f) [Reports of law enforcement agencies (§828)] Except for records sealed under section 389 or 781, or section 1203.45 of the Penal Code, information gathered and retained by a law enforcement agency regarding the taking of a child into custody may be disclosed without court authorization to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for the purposes of official disposition of a case. If the law enforcement agency retaining the report is notified under section 1155 that the child has escaped from a secure detention facility, the agency shall release the name of the child and any descriptive information on specific request by any agency or individual whose attempts to apprehend the child will be assisted by the information requested. In the absence of a specific request, the law enforcement agency retaining the report may release information on a child reported to have escaped from a secure detention facility if the agency determines that the information is necessary to assist in the apprehension of the child or the protection of members of the public from substantial physical harm.

Under section 828, all others seeking to inspect or obtain such reports shall petition the juvenile court for authorization, using Judicial Council form Petition for Disclosure of Law Enforcement Agency Records Concerning a Child (JV-575).

(Subd (f) as adopted effective January 1, 1994.)

(g) [School notification] When a child enrolled in a public school is found to have committed one of the offenses described in section 827(b)(2) the court shall provide written notice of the offense and the disposition to the superintendent of the school district within seven (7) days. The superintendent shall disseminate information to the principal of the school the child attends, and

the principal may disseminate information to any teacher or administrator for the purposes of the rehabilitation of the child or the protection of other students and staff.

(Subd (g) adopted effective July 1, 1995.)

(h) [Other applicable statutes] Under no circumstances shall this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law, including but not limited to Penal Code section 11165 et seq., except as provided in those statutes, or to limit access to or release of records permitted under any other federal or state statute, including, but not limited to Government Code section 13968.

(Subd (h) as amended and relettered effective July 1, 1995; adopted effective July 1, 1992 as subd (f); previously relettered to be subd (g) effective January 1, 1994.)

Rule 1423 as amended effective July 1, 1997; adopted effective July 1, 1992; previously amended effective January 1, 1994, and July 1, 1995.

Advisory Committee Comment

1992—In 1990, the Judicial Council Advisory Committee on Juvenile Court Law assumed the responsibility for drafting a rule of court to address the issue of confidentiality of juvenile court records. The committee received requests from throughout the state for clarification of Welfare and Institutions Code sections 827 and 828. County counsel, district attorneys, and representatives of probation departments and child welfare services programs, as well as judicial officers, expressed a need for guidance in this area.

Some counties have developed their own protocols for access to and release of records; others handle the issue on a case-by-case basis with no clear guidelines regarding definitions or procedures. The rules and forms subcommittee undertook a thorough analysis of the relevant statutes and cases interpreting them. As subcommittee members examined the procedures set up in different jurisdictions, and the complex issues presented, they agreed that the rule needed to define "juvenile court records."

Once the definition was established, the primary concern was recognition of both the purposes of confidentiality protections and the legitimate interests that certain agencies and individuals may have in seeking access to identified materials. Essential to the process were the notice requirements and the procedure for the court to follow in assessing the merits of a request for disclosure or release. In order to make these considerations as clear and structured as possible, the subcommittee recommended that a petition form also be prepared.

Proposed rule 1423 and proposed form JV-570, Petition for Disclosure of Juvenile Court Records, were drafted and circulated for comment. There were many responses, all of which were carefully considered by the committee as a whole, and several suggestions and amendments were incorporated. The comments universally welcomed the addition of the rule and the formalization of a procedure through the use of the form.

The rule does not attempt to set forth a procedure for access to records protected under other statutes or to include documents or materials not specifically under the authority of the juvenile

court. Thus, the files maintained by probation departments and child welfare services programs may be the subject of a JV-570 petition to disclose only if a Welfare and Institutions Code section 300, 601, or 602 petition concerning the subject child has been filed in juvenile court at some time (before, after, or concurrent with the acquisition of the materials in the files). The protection of reports of suspected child abuse is recognized and specifically identified in subdivision (f) of the rule. (Reference to Pen. Code, §11165 et seq.)

Notice to the subject child that his or her records are being sought is fundamental, as is notice to the parents of a child who has not reached majority. Because dependency files contain many references to and details of family issues, notice to parents of children on whom section 300 petitions were filed is also mandated. Because their records are most commonly the subjects of such requests, the probation department and child welfare services program were added to the list of persons and agencies requiring notice. Although the requirement of notice to both the county counsel and the district attorney was questioned by some commentators, because there are frequent "cross-overs" of purposes of disclosure, it was felt that notice to both offices would assure the court that all those interested in the records would have an opportunity to respond to the petition.

Because these are confidential records and the protection of the interests of the child is paramount, specific procedural safeguards are appropriate. The advisory committee recommends that form JV-570, Petition for Disclosure of Juvenile Court Records, be adopted by the Judicial Council effective July 1, 1992.

Drafter's Notes
1992—See note following rule 1401.

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (3) amended rule 1423 to conform to statutory changes on the disclosure of information to school personnel and to clarify access to records under section 13968 of the Government Code; . . .

CHAPTER 4. Court-Appointed Special Advocates

Adopted effective July 1, 1994.

Rule 1424. Program guidelines for court-appointed special advocate programs

Rule 1424. Program guidelines for court-appointed special advocate programs

(a) [Definitions]

(1) A "CASA program" is the local court-appointed special advocate program, or variation thereof, which has adopted and adheres to these guidelines and which has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers to be appointed by the court to help define the best interests of children in juvenile court dependency and wardship proceedings.

(2) A "CASA volunteer" is a person who has been recruited, screened, selected, and trained, who is being supervised and supported by a local CASA program, and who has been appointed by the juvenile court as a sworn officer of the court to help define the best interests of a child or children in juvenile court dependency and wardship proceedings.

(3) A "dependency proceeding" is a legal action brought on behalf of an allegedly abused, neglected, or abandoned child pursuant to Welfare and Institutions Code section 300 et seq. The action is designed to protect children, preserve and reunify families, and find permanent homes for children who cannot be returned to their parents. Dependency proceedings include actions to appoint a legal guardian, terminate parental rights, and grant adoptions for dependent children of the juvenile court.

(4) A "wardship proceeding" is a legal action involving a child under the age of 18 years who is alleged to be

(i) a person described under Welfare and Institutions Code section 601 (who is beyond parental control or habitually disobedient or truant) or

(ii) a person described under Welfare and Institutions code section 602 (who has violated any state or federal law or any city or county ordinance).

(b) [Recruiting, screening, and selecting CASA volunteers]

(1) A CASA program shall adopt and adhere to a written plan for the recruitment of potential CASA volunteers. The following considerations are essential to the effective recruitment of qualified CASA volunteers:

(A) The recruitment effort shall clearly explain the purposes of the CASA program and its role on behalf of children in juvenile court proceedings;

(B) The recruitment effort shall define the role and responsibilities of the CASA volunteer in such proceedings;

(C) The recruitment effort shall emphasize the degree and duration of the commitment expected of the CASA volunteer. The CASA volunteer should be prepared to commit a minimum of one year of service to a child and may be called upon to commit several hours per week of duty;

(D) The recruitment effort shall address the demographics of the jurisdiction by making all reasonable efforts to ensure that individuals representing all sectors of the community and all racial, ethnic, linguistic, and economic sub-groups within it are recruited and made available for appointment as CASA volunteers; and

(E) The recruitment effort should include some individuals who are able to work effectively with children who have special needs such as those with hearing, sight, or speech impairment; developmental disability; physical or mental disability; or any other condition requiring an individual with special skills for communication and advocacy.

(2) A CASA program shall adopt and adhere to a written screening procedure for potential CASA volunteers. The following considerations are essential to the effective screening of qualified CASA volunteers:

(A) The screening procedure shall be designed and implemented to ensure that those accepted for training are of good character, competent to fulfill the role of a CASA volunteer, and willing to commit the time and energy necessary to effectively present and advance the best interests of a child or children in juvenile court proceedings;

(B) The screening procedure shall include an information and orientation mechanism for aspiring CASA volunteers, presenting such topics as the role of the juvenile court, including its relationship to the child welfare agency in child abuse and neglect cases, the general CASA concept, a description of the local CASA program, and the role and responsibilities of the CASA volunteer;

(C) The screening procedure shall include a written application that generates adequate identifying data; information regarding the applicant's education, training, and experience; minimum age requirements; current and past employment; demonstrated interest in children and their welfare; personal experience with child abuse and neglect that bears upon the applicant's ability to be effective in these types of cases; and a statement of commitment to the role and responsibilities of a CASA volunteer;

(D) The screening procedure shall include notice to the applicant that a formal security check will be made including inquiries, through appropriate law enforcement agencies, regarding any criminal record, driving record, or other record of conduct that would disqualify the applicant from service as a CASA volunteer. The security check should include fingerprinting and reference to criminal registries in appropriate states. It should also ensure that the CASA volunteer has adequate motor vehicle insurance coverage if use of a motor vehicle will be necessary to the performance of duty. Refusal to consent to a formal security check shall be grounds for rejecting an applicant;

(E) The screening procedure shall include a minimum of three references regarding the character, competence, and reliability of the applicant and suitability for assuming the role of a CASA volunteer; and

(F) The screening procedure shall include a personal interview or interviews by a person or persons approved by the presiding juvenile court judge or his or her designee probing the essential areas of concern with respect to the qualities of an effective CASA volunteer. A written, confidential record of the interview and the interviewer's assessments and observations should be made, and kept in the advocate's file.

(3) A CASA program shall adopt and adhere to a written preliminary selection procedure for CASA candidates regarding entry into the CASA training program. The following considerations are essential to the effective selection of CASA volunteer trainees:

(A) The selection procedure should be designed and implemented to ensure that those selected recognize the seriousness of the role to which they aspire and the demands that it will make upon them; and

(B) The selection procedure should ensure that those not selected are treated with dignity and respect and, if possible, referred to alternative volunteer opportunities more suitable for them.

(Subd (b) as amended effective January 1, 1995.)

(c) [Training of CASA volunteers] A CASA program shall adopt and adhere to a written plan for the initial training of CASA volunteers. The following considerations are essential to the initial training and final selection of CASA volunteers:

(1) The initial training curriculum shall include at least 24 hours of formal instruction covering the following topic areas:

Child Development and Family Systems

Dynamics of Child Abuse and Neglect

The Role of Law Enforcement

The Role of the Child Welfare Agency

The Role of the Juvenile Court and Its Key Participants

Dependency Law and Procedure

An Introduction to Discovery and Evidence

Court Appearances and Testimony

Ethics, Confidentiality of Information, and Mandated Reporting

Community Resources for Children

Cross-Cultural Issues

The CASA Concept

The Local CASA Program

The Role and Responsibilities of the CASA Volunteer

Investigation

Interviewing

Report Writing and Verification

Advocacy

Any other subject deemed appropriate by the CASA program director or the juvenile court presiding judge. If volunteers will be assigned to wardship cases, the initial training shall include instruction on relevant juvenile court law.

(2) The initial training program shall include an opportunity for each trainee to visit the juvenile court while it is in session and observe proceedings similar to those in which he or she would be involved as a CASA volunteer as well as the opportunity to visit a local child welfare agency and other community agencies and institutions relevant to the work of a CASA volunteer.

(3) The initial training program shall include written materials covering the topic areas of the training curriculum. These materials should be provided to trainees in a form designed for easy access, reference, and update.

(4) Trainers and faculty of the initial training program should be persons with substantial knowledge, training, and experience in the subject matter they present and should be competent in the provision of technical training to laypersons aspiring to be CASA volunteers.

(5) CASA program staff and others responsible for the initial training program should be attentive to the participation and progress of each trainee and be able to objectively evaluate his or her abilities according to criteria developed by the CASA program for that purpose.

The final selection process is contingent on the successful completion of the initial training program, as determined by the presiding judge of the juvenile court or his or her designee.

(Subd (c) as amended effective January 1, 1995.)

(d) [Oath] At the completion of training, and before assignment to any child's case, the CASA volunteer shall take a court-approved oath describing the duties and responsibilities of the advocate. The CASA volunteer shall also sign a written affirmation of that oath. The signed affirmation shall be retained in the volunteer's file.

(e) [Duties and responsibilities]

(1) CASA volunteers serve at the discretion of the court having jurisdiction over the proceeding in which the volunteer has been appointed. A CASA volunteer is an officer of the court and is bound by all court rules.

(2) A CASA program shall develop and adopt a written description of duties and responsibilities, consistent with local court rules, which shall address at least the following:

(A) Supporting the child throughout the court proceedings;

(B) Explaining the court proceedings to the child;

(C) Establishing a relationship with the child to better understand the child's needs and desires;

(D) Reviewing available records regarding the child's family history, school behavior, medical or mental health history, etc.;

(E) Identifying and exploring potential resources that will facilitate family preservation, early family reunification, or alternative permanency planning;

(F) Explaining the CASA volunteer's role, duties, and responsibilities to all parties associated with a case;

(G) Communicating the child's needs to the court in written reports and recommendations;

(H) Ensuring that the court-approved plans for the child are being implemented;

(I) Investigating the interests of the child in judicial or administrative proceedings outside of juvenile court;

(J) Communicating and coordinating efforts with the child's social worker, probation officer, and attorney; and

(K) Other duties and responsibilities as determined by the presiding juvenile court judge or a designee.

(Subd (e) as amended effective January 1, 1995.)

(f) [The appointment of CASA volunteers]

(1) The presiding juvenile court judge and the CASA program director shall develop a written procedure for the selection of cases and the appointment of CASA volunteers for children in juvenile court proceedings. The procedure should recognize the fact that volunteers will not be available for all children, and should include criteria for determining those types of cases and children most likely to benefit from the appointment of an advocate. If volunteer resources are limited, preference in assignment should be given to children in dependency proceedings.

(2) The court may appoint a CASA volunteer at any time during dependency proceedings. In the event that appointment is made prior to the establishment of jurisdiction, the court order shall

specify that the duties of the child's advocate are limited to supporting the child and advocating for needed services. The court shall admonish the child's advocate not to investigate jurisdictional issues. In making prejurisdictional appointments, the courts and CASA programs are encouraged to follow the early assignment protocol developed by the California CASA Association.

(3) The court may appoint a CASA volunteer at any time following a declaration of wardship at a disposition hearing in wardship proceedings.

(4) In developing the criteria for selection of cases and assignment of a volunteer, the CASA program shall consider the complexity of the case; the availability of alternative support persons in the child's life; the age and sex of the child or children; the cultural, ethnic, linguistic, religious, and other background characteristics (including any disabilities) of the child and family; the potential assistance a volunteer could provide; the availability of a particular volunteer to meet the specific needs of the child; and such other factors as the CASA program may deem relevant to the assignment of the most effective CASA volunteer for the case.

(5) The procedure shall ensure that a qualified volunteer is assigned to a case as early as possible after a court referral is made.

(6) The procedure shall ensure that no conflict of interest exists with respect to the CASA volunteer and any other party or interest associated with the case.

(7) The procedure shall ensure that all appointments and assignments are made by an appropriate order of the court, and that, whenever possible, the order for appointment shall contain specific duties of the volunteer and the reasons for the appointment; that all appointments and assignments are acknowledged in writing; and that all persons entitled to notice of the hearings are notified of the appointment of the CASA program and of their opportunity to petition the court for a hearing on the matter. The advocate may request the court at any time for a clarification of CASA duties on a specific case.

(8) The procedure shall ensure that as soon as feasible after the appointment or assignment of a CASA volunteer, he or she obtains access to appropriate case materials, including the court file, the appointment order, the assignment letter, and such other documents as may be necessary to effectively present and promote the child's or children's best interests. Likewise, the CASA volunteer shall receive immediate guidance from CASA program staff in developing a plan of action for undertaking the duties and responsibilities of a CASA volunteer.

(Subd (f) as amended effective January 1, 1995.)

(g) [Oversight, support, and supervision of CASA volunteers]

(1) A CASA program shall adopt and adhere to a written plan, approved by the presiding juvenile court judge, for the oversight, support, and supervision of CASA volunteers in the performance of their duties. The following considerations are essential to the effective oversight and supervision of CASA volunteers:

(A) Case supervisors and other CASA program staff shall be persons with substantial knowledge, training, and experience regarding the CASA concept and the curriculum the volunteers have been trained in, and be competent to provide the necessary supervision, support, and evaluation services to CASA volunteers in the exercise of their duties;

(B) The written oversight, support, and supervision plan shall be designed and implemented to ensure that the CASA program staff can readily determine the status of a case assigned to a CASA volunteer; assess the needs of the volunteer for support with respect to any aspect of the case; evaluate the performance of the volunteer in presenting and promoting the best interests of the child; and provide whatever support or other intervention as may be appropriate to the circumstances of the particular case;

(C) The written oversight, support, and supervision plan shall include an accurate case-assignment record; an up-to-date calendar; a monthly case log system; and regularly scheduled case conferences during which the CASA volunteer meets personally with a CASA program staff person to review the progress, status, and prospective activities of the case(s) to which the volunteer is assigned. Case conferences should occur at least every 60 days and should be conducted with reference to the case file and a checklist or protocol adopted by the CASA program for this purpose. The checklist and a brief written record of the case review should be preserved in the case file;

(D) The plan shall ensure that CASA volunteers have ready access to CASA program staff for support, assistance, and direction. For emergency situations, the written plan should contain some provision for 24-hour coverage whether by the CASA program itself or through a local crisis hot-line or other mechanism;

(E) The plan should ensure that CASA volunteers have ready access to an attorney knowledgeable in juvenile court law provided by the CASA program, whether retained or pro bono, for advice and direction on nonroutine legal issues that may arise in the course of duty. Access to such counsel should be regulated by CASA program staff;

(F) The plan shall include an annual evaluation procedure to confirm the continuing qualification of the CASA volunteer. This procedure should include analysis of case files and the case review records; the volunteer's record with respect to ongoing training and continuing education; inquiries to the juvenile court officers in whose courts the volunteer has received assignments; follow-up security checks if warranted; and such other information as may have come to the attention of CASA program staff. A written record of the evaluation shall be maintained in the volunteer's file;

(G) The plan shall include a procedure for reviewing grievances by the volunteer or by any party brought against the volunteer; and

(H) The plan shall ensure that the presiding juvenile court judge, and other juvenile court judges and referees, have open and regular channels of communication to the CASA program director and ready access to information regarding the status of CASA cases and activities.

(2) A CASA program shall adopt and adhere to a written plan for the ongoing training and continuing education of CASA volunteers. The following considerations are essential to the effective ongoing training and continuing education of CASA volunteers:

(A) Ongoing training shall be designed and presented to maintain and improve the level of CASA volunteer knowledge and skill and to keep volunteers up-to-date on changes in law, local court procedure, the practices of other involved agencies including the local child welfare agency, CASA program policies, and developments in the fields of child development, child abuse, and child advocacy;

(B) Ongoing training opportunities should be provided at least monthly if possible and CASA volunteers shall participate in at least 10 hours of continuing education in each year of service;

(C) Ongoing training may be provided directly by the CASA program, in cooperation with another agency or agencies, including the local child welfare agency, or through an outside agency if the substance and quality of the training opportunity and its suitability for the continuing education of CASA volunteers has been approved by the CASA program. Site and field visits to agencies and institutions relevant to the work of a CASA volunteer should be included as a part of ongoing training;

(D) The program should consider having available resource persons in such areas as education, mental health, and medicine for consultation on an as-needed basis; and

(E) Trainers, consultants, and faculty of ongoing training and continuing education should be persons with substantial knowledge, training, and experience in the subject matter they present and should be competent in the provision of technical training to persons serving as CASA volunteers.

(Subd (g) as amended effective January 1, 1995.)

(h) [Removal, resignation, and termination of a CASA volunteer] The CASA program shall adopt a written plan for the removal, resignation, or involuntary termination of a CASA volunteer.

(1) A volunteer may resign or be removed from an individual case at any time by the order of the juvenile court presiding judge or a designee.

(2) A volunteer may resign from the program by submitting a written notice to the director of the program.

(3) A volunteer may be involuntarily terminated from the program by the court upon written application to the court by the program director. The court should determine by local court rule the procedure for acting on the application, including the procedure for filing a grievance.

(Subd (h) as amended effective January 1, 1995.)

(i) [CASA program administration and management]

(1) A CASA program shall adopt and adhere to a written plan for effective and efficient program governance and evaluation. The following considerations are essential to the effective governance of a CASA program:

(A) The governance plan shall include, if applicable, articles of incorporation, by-laws, and a board of directors (or other formative documents and a governing body) designed to best serve the underlying principles of the CASA concept;

(B) The governance plan shall include a clear statement of the purpose or mission of the CASA program and express goals and objectives calculated to further its purposes;

(C) The governance plan shall include a procedure for the recruitment, selection, and hiring of a highly competent chief executive officer for the CASA program. Clear lines of authority among the presiding judge of the juvenile court, the governing body, and the chief executive officer should be drawn; the chief executive officer's duties and responsibilities should be delineated; and a mechanism for regular evaluation should be specified in an employment agreement; and

(D) The governance plan shall include a mechanism for a regular evaluation of program effectiveness and reevaluation of its goals and objectives.

(2) A CASA program shall adopt and adhere to a written plan for effective and efficient program operations.

(A) The operations plan shall include an organizational chart with clear lines of authority to a governing body or official and to the presiding juvenile court judge, as applicable; and

(B) The plan should include preparation and maintenance of a program manual containing the policies and procedures indicated by these guidelines; initial and ongoing training materials; and such additional material as the CASA program may deem appropriate to the effective performance of its program functions. This manual should be made available to the CASA volunteers and serve as their key reference source in undertaking and performing their duties.

(3) A CASA program shall adopt and adhere to a written plan for effective and efficient program management. The management plan should include an administrative manual containing personnel policies, record-keeping practices, data collection practices, and other internal systems for ensuring high-quality administrative support for staff, CASA volunteers, juvenile court personnel, allied agencies, and others who collaborate in the work of the CASA program.

(4) A CASA program shall adopt and adhere to a written plan for effective and efficient fiscal control.

(A) The fiscal plan should include budgetary projections and a strategy for obtaining necessary funding to finance program operations;

(B) The fiscal plan should include policies and procedures, as applicable, to ensure the integrity and effective and economical use of funds appropriated, allocated, or donated in furtherance of the program's purposes; and

(C) The fiscal plan should include, if applicable, an annual audit or fiscal review conducted by a qualified professional consistent with generally accepted accounting principles.

(5) In conjunction with the presiding judge of the juvenile court or his or her designee, each CASA program should develop local juvenile court rules pertaining to the CASA program. Those rules may include:

(A) Definition of the role of a CASA volunteer in juvenile court proceedings;

(B) Types of cases on which a CASA volunteer will be appointed;

(C) Range of activities that can be undertaken by a CASA volunteer;

(D) Point of time in proceedings when a CASA volunteer will be appointed;

(E) Definition of the relationship among operational participants, including, but not limited to, the court, the child welfare agency, mental health professionals, attorneys, and CASA volunteers and staff;

(F) Provision for open and regular channels of communication between the CASA program director/staff and the presiding juvenile court judge, other judges and referees in the juvenile court, child welfare system officials, and officials from other participating agencies; and

(G) Access to confidential personnel and CASA case records.

(Subd (i) as amended effective January 1, 1995.)

(j) [Confidentiality] The presiding juvenile court judge and the CASA program director shall adopt a written plan governing confidentiality of case information, case records, and personnel records. The written plan shall include provisions that:

(1) All information concerning children and families in the juvenile court process is confidential. Volunteers shall not give case information to anyone other than the court parties, their attorneys, and CASA staff;

(2) CASA volunteers are required by law (Pen. Code, §11166 et seq.) to report any reasonable suspicion that a child is a victim of child abuse or serious neglect as described by Penal Code section 273;

(3) The child's case file shall be maintained in the CASA office by a custodian of records. No one shall have access to that file except upon approval of the CASA program director. The office shall establish a written procedure for the maintenance and destruction of case files; and

(4) The volunteer's personnel file is confidential. No one shall have access to the personnel file except the volunteer, the CASA program director or his or her designee, or the presiding judge of the juvenile court. Local court rules should determine standards and procedures for access by other parties, including the process by which such documents can be subpoenaed.

(Subd (j) as amended effective January 1, 1995.)

Rule 1424 as amended effective January 1, 1995; adopted effective July 1, 1994.

Advisory Committee Comment

1995—These guidelines implement the requirements of Welfare and Institutions Code section 100, which establishes a grant program administered by the Judicial Council to establish or expand court-appointed special advocate (CASA) programs to assist children involved in juvenile dependency proceedings, including guardianships, adoptions, and actions to terminate parental rights to custody and control.

CASA programs provide substantial benefits to children appearing in dependency proceedings and to the juvenile court having responsibility for these children. Child advocates improve the quality of judicial decision making by providing information to the court concerning the child. Advocates help identify needed services for the children they are assisting, and provide a consistent friend and support person for children throughout the long and complex dependency process.

The CASA concept was first implemented in Seattle in 1977. As of 1994, there were more than 30,000 volunteers working in more than 525 CASA programs in nearly every state. The programs recruit, screen, select, train, and supervise lay volunteers to become effective advocates in the juvenile court.

Currently, numerous jurisdictions in California utilize some variation of the CASA concept. These programs have developed over the past several years under the supervision of local juvenile courts pursuant to California Welfare and Institutions Code sections 356.5 and 358. Each program is unique and was designed to respond to the specific needs of the local jurisdiction and community it serves.

These guidelines provide a framework for ensuring the excellence of California CASA programs and volunteers. They are intended to be consistent with the guidelines established by the National CASA Association and to conform with the requirements of California law and procedure. The California CASA Association has assisted in developing these guidelines, which are meant to give the local bench, bar, child welfare professionals, children's advocates, and other interested citizens full rein to adapt the CASA concept to the special needs and circumstances of local communities.

Central to the intent of these guidelines is the effort to provide a vehicle for the presiding judge of the local juvenile court to exercise fully informed and effective oversight of the local CASA program and CASA volunteers. These guidelines are also intended to help CASA programs and juvenile courts develop local court rules. Nothing in these guidelines shall limit or restrict the local juvenile court from developing and supporting multiple branches of a CASA program within the community to enable a county to offer comprehensive volunteer advocacy programs for children.

Drafter's Notes
1994—Following the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) added rules 270 and 1437 on emancipation procedures; (2) added rule 1424 on guidelines for Court Appointed Special Advocate (CASA) programs, and repealed section 24.5 of the Standards of Judicial Administration; (3) amended rule 1463 on selection of a permanent plan to conform to statutory procedures and clarify procedures; and (4) amended rule 1465 on hearings subsequent to a permanent plan to clarify procedures on terminating guardianships established under section 366.25 or 366.26 of the Welfare and Institutions Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: . . . (3) amended rule 1424 on program guidelines for court-appointed special advocate programs to clarify that plans required by the rule must be in writing; . . .

CHAPTER 5. Intercounty Transfers

Adopted effective July 1, 1989, as Chapter 4. Renumbered effective July 1, 1994.

Rule 1425. Transfer-out hearing

(a) [Determination of residence—special rule on intercounty transfers (§§375, 750)] For purposes of rules 1425 and 1426, the residence of the child shall be the residence of the person who has the legal right to custody of the child according to prior court order, including

(1) a juvenile court order under §361.2 and

(2) an order appointing a guardian of the person of the child.

If there is no order determining custody, custody shall be with both parents.

The juvenile court may make a finding of paternity under rule 1412. If there is no finding of paternity, custody shall be with the mother.

Residence of a ward may be with the person with whom the child resides with approval of the court.

(b) [Verification of residence] The residence of the person entitled to custody may be verified by the person in court or by declaration by a probation officer in the transferring or receiving county.

(c) [Transfer to county of child's residence (§§375, 750)] After making its jurisdictional finding, the court may order the case transferred to the juvenile court of the county of the residence of the child if:

(1) The petition was filed in a county other than that of the residence of the child, or

(2) The residence of the child was changed to another county after the petition was filed.

If the court decides to transfer the case, the court shall order the transfer before beginning the 602 disposition hearing without adjudging the child to be a ward. The court may transfer before or after the 300 disposition hearing.

(d) [Transfer on subsequent change in child's residence (§§375, 750)] If after the child has been placed under a program of supervision the residence is changed to another county, the court may upon an application for modification under rule 1432 transfer the case to the juvenile court of the other county.

(e) [Conduct of hearing] After the court determines the identity and residence of the child's custodian, the court shall consider whether transfer of the case would be in the child's best interests. The court shall not transfer the case unless it determines that the transfer will protect or further the child's best interests.

(Subd (e) as amended effective January 1, 1993; repealed and adopted effective January 1, 1990.)

(f) [Order of transfer (§§377, 752)] The order of transfer shall be entered on Judicial Council form Juvenile Court Transfer Orders (JV-550), which shall include all required information and findings.

(Subd (f) as amended effective January 1, 1993; repealed and adopted effective January 1, 1990.)

(g) [Transport of child and transmittal of documents (§§377, 752)] If the child is ordered transported to the receiving county in custody, the child shall be delivered to the receiving county within seven court days, and the clerk of the court of the transferring county shall prepare all papers contained in the files so that they may be transported with the child to the court of the receiving county. If the child is not ordered transported in custody, the clerk of the court of the transferring county shall transmit to the clerk of the court of the receiving county within 15 days all papers contained in the files. Certified copies shall be deemed originals.

(Subd (g) as amended effective January 1, 1993; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992.)

(h) [Appeal of transfer order (§§379, 754)] The order of transfer may be appealed by the transferring or receiving county and notice of appeal shall be filed in the transferring county, under rule 39. Notwithstanding the filing of a notice of appeal, the receiving county shall assume jurisdiction of the case on receipt and filing of the order of transfer.

(Subd (h) as amended effective January 1, 1992; repealed and adopted effective January 1, 1990.)

Rule 1425 as amended effective January 1, 1993; adopted effective January 1, 1990; previously amended effective January 1, 1992.

Former Rule
Former rule 1425, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Advisory Committee Comment
1993—Juvenile court judicial officers throughout the state have expressed concern that in determining whether or not to transfer a juvenile court case, the best interests of the subject child are being overlooked or at least outweighed by a desire to shift the financial burdens of case management and foster care. The advisory committee has clarified rule 1425 in order to stress that in considering an intercounty transfer, as in all matters relating to children within its jurisdiction, the court has a mandate to act in the best interests of the subject children.

Judicial Council form Juvenile Transfer Orders (JV-550) was adopted for mandatory use commencing January 1, 1992. Although the finding regarding the best interests of the child was noted on the original form, the language has been emphasized on the amended form.

Rule 1426. Transfer-in hearing

(a) [Procedure on transfer (§§378, 753)] On receipt and filing of an order of transfer, the receiving court shall take jurisdiction of the case. The receiving court may not reject the case. The clerk shall immediately place the transfer order on the court calendar for hearing by the court (1) within two court days after the order is filed if the child is detained in custody or (2) within 10 court days if the child is not detained in custody or is in placement. The clerk shall immediately cause notice to be given to the child and the parent or guardian, orally or in writing, of the time and place of the transfer-in hearing.

(Subd (a) as amended effective January 1, 1992; repealed and adopted effective January 1, 1990.)

(b) [Conduct of hearing] At the transfer-in hearing, the court shall:

(1) Advise the child and the parent or guardian of the purpose and scope of the hearing;

(2) Provide for the appointment of counsel if appropriate; and

(3) If the child was transferred to the county in custody, determine whether the child shall be further detained pursuant to rule 1440 or 1470.

(c) [Subsequent proceedings] The proceedings in the receiving court shall commence at the same phase as when the case was transferred. The court may continue the hearing for an investigation and report to a date not to exceed 10 court days if the child is in custody or 30 calendar days if the child is not detained in custody.

(d) [Limitation on more restrictive custody (§§387, 777)] If a disposition order has already been made in the transferring county, a more restrictive level of physical custody shall not be ordered in the receiving county except after a hearing upon a supplemental petition under rule 1431.

(e) [Setting six-month review (§366)] When an order of transfer is received and filed relating to a child who has been declared a dependent, the court shall set a date for a six-month review within six months of the disposition or the most recent review hearing.

(f) If the receiving court believes that a change of circumstances or additional facts indicates that the child does not reside in the receiving county, a transfer-out hearing shall be held under rules 1425 and 1432. The court may direct the department of social services or the probation department to seek a modification of orders under section 388 or 778 and under rule 1432.

(Subd (f) adopted effective January 1, 1992.)

Rule 1426 as amended effective January 1, 1992; adopted effective January 1, 1990.

Former Rule
Former rule 1426, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1427. Courtesy supervision (§§380, 755)

The court may authorize a child placed on probation, a ward, or a dependent child to live in another county and to be placed under the supervision of the other county's probation officer with the probation officer's consent. The court in the county ordering placement shall retain jurisdiction over the child.

Rule 1427 adopted effective January 1, 1990.

Former Rule
Former rule 1427, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

CHAPTER 6. Subsequent Petitions; Modifications; Appeals; Emancipation of minors

Adopted effective July 1, 1989, as Chapter 5. Amended and renumbered effective July 1, 1994.

Rule 1430. General provisions

(a) [General authority of the court (§§385, 775)] Subject to the procedural requirements prescribed by this chapter, an order made by the court may at any time be changed, modified, or set aside.

(b) [Subsequent petitions (§§342, 360(b), 364)] Petitioner shall file a subsequent petition if:

(1) A child has previously been found to be a person described by section 300 and the petitioner alleges new facts or circumstances, other than those sustained in the original petition, sufficient to again describe the child as a person under section 300 based on these new facts or circumstances; or

(2) At or after the disposition hearing the court has ordered that a parent or guardian retain custody of the dependent child and the petitioner receives information providing reasonable cause to believe the child is now, or once again, described by section 300(a), (d), or (e); or

(3) The family is unwilling or unable to cooperate with services previously ordered pursuant to §330.

All procedures and hearings required for an original petition shall be required for a subsequent petition.

(c) [Supplemental petition (§§387, 777)] A supplemental petition shall be used if:

(1) Petitioner concludes that a previous disposition has not been effective in the rehabilitation or protection of a child adjudged to be a ward or probationer under section 601 or 602 or declared a dependent under section 300 and seeks a more restrictive level of physical custody. For purposes of this chapter, a more restrictive level of custody shall be, in ascending order:

(A) Placement in the home of the person entitled to legal custody;

(B) Placement in the home of a noncustodial parent;

(C) Placement in the home of a relative or friend;

(D) Placement in a foster home;

(E) Commitment to a private institution;

(F) Commitment to a county institution;

(G) Commitment to the California Youth Authority;

(2) The petition alleges a violation of a condition of probation and seeks commitment of a ward to a county juvenile institution for a period of 30 days or less or seeks a less restrictive level of physical custody.

Before any period of commitment in excess of 15 days is ordered, the court shall consider the effect of an extended commitment on the child's schooling, including possible loss of credits, and on the child's employment.

(d) [Stayed commitment order (§777(e))] Notwithstanding subdivision (c), if a previous order imposing 30 days or less in custody in a county institution has been stayed as a condition of probation, the court may conduct a hearing under rule 1433.

(e) [Petition for modification hearing (§§388, 778)] A petition for modification hearing shall be used if there is a change of circumstances or new evidence that may require the court to:

(1) Change, modify, or set aside an order previously made; or

(2) Terminate the jurisdiction of the court over the child.

(f) [Filing of petition (§§388, 778)] A petition for modification hearing may be filed by:

(1) The probation officer, the parent or guardian, the child, the attorney for the child, or any other person having an interest in a child who is a ward if the requested modification is not for a more restrictive level of custody;

(2) The social worker, regarding a child who is a dependent, if the requested modification is not for a more restrictive level of custody; or

(3) The parent or guardian, the child, the attorney for the child, or any other person having an interest in a child who is a dependent.

(g) [Clerical errors] Clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time on the court's own motion or on motion of any party and may be entered nunc pro tunc.

Rule 1430 adopted effective January 1, 1991.

Former Rules
Former rule 1430, similar to present the rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1430, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1431. Hearing on subsequent and supplemental petitions (§§342, 364, 386, 387, 776, 777)

(a) [Contents of subsequent and supplemental petitions (§§342, 364, 387, 777)] A subsequent petition and a supplemental petition shall be verified and contain the information required in an original petition as described in rule 1407. A supplemental petition shall also contain a concise statement of facts sufficient to support:

(1) The conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child; or

(2) The conclusion that the ward or probationer has violated a condition of probation and commitment to a county juvenile institution for 30 days or less or a less restrictive disposition is in the best interest of the child.

(Subd (a) as amended effective January 1, 1992; repealed and adopted effective January 1, 1990.)

(b) [Filing a supplemental petition (§777)] If a supplemental petition alleges commission of a crime by a 602 ward, the district attorney may file the supplemental petition at the request of the probation officer. If a petition alleges that the 602 ward has violated a condition of probation not amounting to a crime or the child is a 601 ward or probationer, the probation officer may file the supplemental petition.

(c) [Setting the hearing; notice of hearing (§§342, 364, 386, 387, 777)] When a subsequent or supplemental petition is filed, the clerk shall immediately set it for hearing. The hearing shall begin within the time limits prescribed for jurisdiction hearings on original petitions under rule 1447 or 1485, as appropriate. Petitioner shall cause notice of the hearing to be served on the persons and in the same manner prescribed by rule 1407. The present custodian of a dependent child and the tribe of a dependent Indian child shall be similarly notified.

(Subd (c) as amended effective July 1, 1995; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992.)

(d) [Detention hearing (§§387, 777)] Chapter 7 part 1 or chapter 8 part 1 of these rules shall apply to a child detained on a supplemental or subsequent petition.

(e) [Requirement for bifurcated hearing] The hearing on a subsequent or supplemental petition shall be conducted as follows:

(1) The procedures relating to jurisdiction hearings prescribed in chapter 7 for dependent children and chapter 8 for delinquent children shall apply to the determination of the allegations of a subsequent or supplemental petition. At the conclusion of the hearing on a subsequent petition the court shall make a finding that the allegations of the petition are or are not true. At the conclusion of the hearing on a supplemental petition the court shall make findings that:

(A) The factual allegations are or are not true; and

(B) The allegation that the previous disposition has not been effective is or is not true; or that commitment to a county juvenile institution for a period of 30 days or less or a less restrictive disposition is or is not in the best interest of the child.

(2) The procedures relating to disposition hearings prescribed in chapter 7 for dependent children and chapter 8 for delinquent children shall apply to the determination of disposition on a subsequent or supplemental petition. If the court finds under a subsequent petition the child is described by section 300(a), (d), or (e), the court shall remove the child from the physical custody of the parent or guardian.

(f) [Supplemental petition (§387)—permanency planning] If a dependent child was returned to the custody of a parent or guardian at the 12-month review or the 18-month review or at an interim review between 12 and 18 months and a 387 petition is sustained and the child removed once again, the court shall:

(1) Set a hearing under section 366.25 if dependency was declared before January 1, 1989, unless the court finds there is a substantial probability of return within the next six months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period; or

(2) Set a hearing under section 366.26 if dependency was declared after January 1, 1989, unless the court finds there is a substantial probability of return within the next six months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period.

Rule 1431 as amended effective July 1, 1995; adopted effective January 1, 1990; previously amended effective January 1, 1992.

Former Rule
Former rule 1431, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (4) amended rules 1431, 1432, and 1463 to ensure proper notice consistent with the Indian Child Welfare Act and rule 1439; . . .

Rule 1432. Petition for modification

(a) [Contents of petition (§§388, 778)] A petition for modification shall be liberally construed in favor of its sufficiency. The petition shall be verified and shall contain the following:

(1) The name of the court to which the petition is addressed;

(2) The title and action number of the original proceeding;

(3) The name, age, and address of the child;

(4) The name and residence address, if known, of the parent or guardian or an adult relative of the child, if appropriate under circumstances described in rule 1407;

(5) The date and general nature of the order sought to be modified;

(6) A concise statement of any change of circumstance or new evidence that requires changing the order;

(7) A concise statement of the proposed change of the order;

(8) A statement of the petitioner's relationship or interest in the child, if the application is made by a person other than the child;

(9) A statement whether or not all parties agree to the proposed change.

(b) [Denial of hearing] If the petition fails to state a change of circumstance or new evidence that might require a change of order or termination of jurisdiction, the court may deny the application ex parte.

(c) [Grounds for grant of petition (§§388, 778)] If the petition states a change of circumstance or new evidence and it appears that the best interest of the child may be promoted by the proposed change of order or termination of jurisdiction, the court may grant the petition after following the procedures in subdivisions (d) and (e).

(d) [Hearing on petition] If all parties stipulate to the requested modification, the court may order modification without a hearing. If it appears to the court that the requested modification will be contested or if the court desires to receive further evidence on the issue, the court shall order that a hearing on the petition for modification be held within 30 calendar days after the petition is filed.

(e) [Notice of petition and hearing (§§388, 778)] The clerk shall cause notice of the hearing to the persons and in the same manner prescribed by rule 1406. The present custodian of a dependent child and the tribe of a dependent Indian child shall be similarly notified.

(Subd (e) as amended effective July 1, 1995; repealed and adopted effective January 1, 1991; previously amended effective January 1, 1992.)

(f) [Conduct of hearing—§388] The party requesting the modification under section 388 shall have the burden of proof. If the request is for the removal of the child from the child's home, the party must show by clear and convincing evidence that the grounds for removal in section 361(b) exist. If the request is for removal to a more restrictive level of placement, the party must show by clear and convincing evidence that the change is necessary to protect the physical or emotional

well-being of the child. All other requests require a preponderance of the evidence to show that the child's welfare requires such a modification.

With the exception of a request for removal from the home of the parent or guardian or removal to a more restrictive level of placement, proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court. The hearing on a request for removal from the home of the parent or guardian, or for removal to a more restrictive level of placement, shall be conducted as a disposition hearing under rules 1455 and 1456.

(g) [Conduct of hearing—§778] The party requesting the modification under section 778 shall have the burden of proving by a preponderance of the evidence that the ward's welfare requires the modification. Proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.

Rule 1432 as amended effective July 1, 1995; adopted effective January 1, 1991; previously amended effective January 1, 1992.

Former Rule
Former rule 1432, similar to present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1432, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (4) amended rules 1431, 1432, and 1463 to ensure proper notice consistent with the Indian Child Welfare Act and rule 1439; . . .

Rule 1433. Hearing on imposition of commitment order (§777(e))

(a) [Notice of hearing] Notice of a hearing to be held under section 777(e) shall be served as provided in rule 1407. The notice shall contain the following:

(1) The name of the child;

(2) The date, time, and place of the hearing;

(3) The purpose and scope of the hearing;

(4) A statement of the right of the child to be represented by counsel at the hearing and, if applicable, of the right to appointed counsel.

(Subd (a) as amended effective January 1, 1992; repealed and adopted effective January 1, 1990.)

(b) [Report of probation officer] Before every hearing the probation officer shall prepare a report on those matters relevant to a determination of whether the child has violated a condition of probation. The report shall be furnished to all parties at least 48 hours before the beginning of the hearing unless the child is represented by counsel and waives the right to service of the report.

(c) [Evidence considered] The court shall consider the report prepared by the probation officer and other relevant and material evidence offered by the parties to the proceeding.

Rule 1433 as amended effective January 1, 1992; adopted effective January 1, 1990.

Former Rule
Former rule 1433, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1435. Review by appeal

(a) [Right to appeal—§§601-602 proceedings] In proceedings under section 601 or 602, the child may appeal from any judgment, order, or decree specified in section 800. The parent or guardian may appeal from any judgment, order, or decree specified in section 800 in which the child is removed from the physical custody of the parent or guardian. The child and parent or guardian are entitled to representation by counsel on appeal and, if indigent, may have counsel appointed by the reviewing court. In the absence of an actual conflict of interest, it is presumed that one attorney may represent the interests of both the child and the parent or guardian.

(b) [Right to appeal—§300 proceedings] In proceedings under section 300, the petitioner, child, and the parent or guardian each has the right to appeal from any judgment, order, or decree specified in section 395, with the exception of an order under section 366.25 authorizing the filing of a petition under former Civil Code section 232, part 4 (commencing with section 7800) of division 12 of the Family Code or the initiation of a guardianship proceeding. Any judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the procedures in rules 39.1B and 1436.5 have been followed. All appellants are entitled to representation by counsel and the reviewing court may appoint counsel to represent an indigent child, parent, or guardian.

(Subd (b) as amended effective January 1, 1995; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993, January 1, 1994.)

(c) [Stay of execution of order or judgment (§§395, 800)] The court shall not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.

(d) [Advice of appeal rights—rule 251] If at a contested hearing on an issue of fact or law the court finds that the child is described by section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order shall advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of:

(1) The right of the child and parent or guardian to appeal from the court order;

(2) The necessary steps and time for taking an appeal;

(3) The right of an indigent appellant to have counsel appointed by the reviewing court;

(4) The right of an indigent appellant to be provided with a free copy of the transcript.

(e) [Advice of rights; §366.26] When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, 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 Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file a writ petition and request for record and a Writ Petition—Juvenile form (JV-825) or other petition for extraordinary writ. Within 24 hours of the hearing, notice by first class mail shall be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26. Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and Judicial Council form Notice of Intent to File Writ Petition and Request for Record (JV-820) shall be available in the courtroom, and shall accompany all mailed notices of the advice.

(Subd (e) as adopted effective January 1, 1995.)

(f) [Time for filing notice of appeal] Notice of appeal shall be filed within 60 days after the making of an appealable order or, if the matter was heard by a referee who was not sitting as a temporary judge, within 60 days after the order becomes final under rule 1417(c). Notice of appeal may be filed on Judicial Council form Notice of Appeal—Juvenile (JV-800).

(Subd (f) as relettered effective January 1, 1995; adopted effective January 1, 1992, as subd (e); previously amended effective January 1, 1993.)

(g) [Procedure] Procedures for appeals from juvenile court are in rules 39, 39.1, 39.1A, and 39.1B.

(Subd (g) as relettered effective January 1, 1995; repealed and adopted effective January 1, 1990, as subd (e); previously relettered to be subd (f) effective January 1, 1992.)

Rule 1435 as amended effective January 1, 1995; adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994.

Former Rule
Former rule 1435, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

1995—In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

Rule 1436. Review by extraordinary writ—§300 proceedings

If review by petition for extraordinary writ is sought regarding judgments, orders, or decrees other than those described in rules 39.1B and 1436.5, Judicial Council form Writ Petition—Juvenile (JV-825) may be utilized.

Rule 1436 as amended effective January 1, 1995; adopted effective January 1, 1993; previously amended effective January 1, 1994.

Drafter's Notes
1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

1995—In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

Rule 1436.5. Writ petition after orders setting hearing under section 366.26; appeal

(a) [Applicability of rule] This rule describes how a party including the petitioner, child, and parent or guardian shall proceed if seeking appellate court review of findings and orders of the juvenile court made at a hearing at which the court orders that a hearing under section 366.26 be held.

(b) [Failure to file writ petition; precludes appeal] Failure by a party to file a petition for extraordinary writ as specified by this rule and rule 39.1B shall preclude that party from obtaining

subsequent review on appeal of the findings and orders of the court in setting a hearing under section 366.26.

(c) [Appeal from orders at hearing under 366.26] An appeal of a judgment, order, or decree under section 366.26 may challenge the findings and orders made by the court at that hearing. The findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

Failure to file a petition for extraordinary writ review within the period specified by this rule and rule 39.1B shall preclude subsequent review on appeal of the findings and orders made by the juvenile court in setting the hearing under section 366.26.

(d) [Advice of rights; §366.26] When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, 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 Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file a writ petition and request for record and a Writ Petition—Juvenile form (JV-825) or other petition for extraordinary writ. Within 24 hours of the hearing, notice by first class mail shall be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26. Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and Judicial Council form Notice of Intent to File Writ Petition and Request for Record (JV-820) shall be available in the courtroom, and shall accompany all mailed notices of the advice.

(e) [Notice of intent to file writ petition and request for record; service; jurisdiction] To permit determination of the writ petition prior to the scheduled date for the hearing under section 366.26 of the Welfare and Institutions Code on the selection of the permanent plan, a notice of intent to file a writ petition and request for record shall be filed with the clerk of the juvenile court within 7 days of the date of the order setting a hearing under section 366.26. The period for filing a notice of intent to file a writ petition and request for record shall be extended 5 days, if the party received notice of the order setting the hearing under section 366.26 of the Welfare and Institutions Code only by mail. Judicial Council form Notice of Intent to File Writ Petition and Request for Record (JV-820) may be used. The notice of intent to file a writ petition shall include, if known, all dates of the hearing that resulted in the order setting the hearing under section 366.26 of the Welfare and Institutions Code. The clerk shall serve a copy of the notice of intent to file a writ petition on each party, including the child, parent, legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile

court proceedings, and on the probation officer or social worker, each counsel of record, present custodian of a dependent child, and any court-appointed child advocate, as prescribed by rule 1407. The clerk shall also serve, by first class mail or fax, on the clerk of the reviewing court, a copy of the notice of intent to file a writ petition and a proof of service list. Upon receipt of the notice of intent to file a writ petition, the clerk of the reviewing court shall lodge the notice, whereupon the reviewing court acquires jurisdiction of the writ proceedings.

(Subd (e) as amended effective January 1, 1996; previously amended effective July 1, 1995.)

(f) [Record] Immediately on the filing of the notice of intent to file a writ petition and request for record, the clerk of the juvenile court shall assemble the record

(1) notifying each court reporter by telephone and in writing to prepare a reporter's transcript of each session of the hearing and to deliver the transcript to the clerk no more than 12 days after the notice of intent to file a writ petition and request for record is filed, and

(2) preparing the clerk's transcript under rule 35(a).

The record shall include all reports and minute orders contained in the juvenile court file, a reporter's transcript of all sessions of the hearing at which the order setting a hearing under section 366.26 was made, and any additional evidence or documents considered by the court at that hearing.

Immediately on completion of the transcript, the clerk shall certify the record as correct, and deliver it by the most expeditious means to the reviewing court, and transmit copies to the petitioner and parties or counsel of record, by any method as fast as the express mail service of the United States Postal Service. Upon receipt of the transcript and record, the clerk of the reviewing court shall notify all parties that the record has been filed and indicate the date on which the 10-day period for filing the writ petition will expire.

(Subd (f) as amended effective January 1, 1996.)

(g) [Petitioner; trial counsel] Trial counsel for the petitioning party, or in the absence of trial counsel, the party, is responsible for filing the petition for extraordinary writ. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedures.

(h) [Petition for extraordinary writ; JV-825] The petition for extraordinary writ may be filed on Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ. Petitions for extraordinary writ submitted on Judicial Council form Writ Petition—Juvenile (JV-825) shall be accepted for filing by the appellate court. All petitions shall be liberally construed in favor of their sufficiency.

(i) [Time for filing petition] The petition for extraordinary writ shall be served and filed within 10 days after filing any record in the reviewing court.

(j) [Contents of petition for writ; service] The petition for extraordinary writ shall summarize the factual basis for the petition. Petitioner need not repeat facts as they appear in any attached or

submitted record, provided, however, that references to specific portions of the record, their significance to the grounds alleged, and disputed aspects of the record will assist the reviewing court and shall be noted. Petitioner shall attach applicable points and authorities. Petitioner shall give notice to all parties entitled to receive notice under rule 1407.

(Subd (j) as amended effective January 1, 1996.)

Rule 1436.5 as amended effective January 1, 1996; adopted effective January 1, 1995; previously amended effective July 1, 1995.

Drafter's Notes

January 1995—In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

July 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council made technical amendments to rules 39.1B(f) and 1436.5(e) specifying that the trial clerk shall serve a copy of any notice of intent to file a writ petition on the clerk of the reviewing court.

1996—The council has amended rules 39.1B and 1436.5 on appellate review by extraordinary writ of orders setting hearings under section 366.26 of the Welfare and Institutions Code to (1) clarify notice and filing requirements; (2) designate when the reviewing court acquires jurisdiction; (3) require that petitioner reference specific portions of the record and attach points and authorities; and (4) clarify oral argument procedures.

In relation to the above rule changes, the council (1) revised the optional Notice of Intent to File Writ Petition and Request for Record form (JV-820) to provide space to specify all known dates of the hearing at which the court set a hearing under section 366.26 of the Welfare and Institutions Code; and (2) revised the optional Petition for Extraordinary Writ—Juvenile Dependency form (JV-825) to require that petitioner reference specific portions of the record and attach points and authorities.

Rule 1437. Emancipation of minors

(a) [Petition] A petition for declaration of emancipation of a minor shall be submitted on Judicial Council form MC-300. Only the minor may petition the court for emancipation, and the petition may be filed in the county in which the minor can provide a verifiable residence address. The petitioner shall complete and attach to the petition Judicial Council form MC-306—Emancipation of Minor—Income and Expense Declaration.

(b) [Dependents and wards of the juvenile court] Petitions to emancipate a child who is a dependent or ward of the juvenile court shall be filed and heard in juvenile court.

(Subd (b) as amended effective January 1, 1995.)

(c) [Court] The petition to emancipate a minor other than a dependent or ward of the juvenile court shall be filed and heard in juvenile court or other superior court department so designated by local rule or by order of the presiding judge.

(d) [Filing fee] Unless waived, the petitioner shall pay the filing fee as specified. The ability or inability to pay the filing fee is not in and of itself evidence of the financial responsibility of the minor as required for emancipation.

(e) [Declaration of emancipation without hearing] If the court finds that all notice and consent requirements have been met or waived, and that emancipation is not contrary to the best interests of the petitioner, the court may grant the petition without a hearing. The presiding judge of the superior court shall develop a protocol for the screening, evaluation, or investigation of petitions.

(f) [Time limits] The clerk of the court in which the petition is filed shall immediately provide or direct the petitioner to provide the petition to the court. Within thirty days from the filing of the petition, the court shall either (i) grant the petition; or (ii) deny the petition; or (iii) set a hearing on the petition to be conducted within 30 days thereafter. The clerk shall immediately provide the petitioner with an endorsed-filed copy of the court's order.

(g) [Notice] If the court orders the matter set for hearing, the clerk shall notify the district attorney of the time and date of the hearing, which shall be within 30 days of the order prescribing notice and setting for hearing. The petitioner is responsible for notifying all other persons to whom the court requires notice.

Rule 1437 as amended effective January 1, 1995; adopted effective July 1, 1994.

Drafter's Notes
1994—Following the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) added rules 270 and 1437 on emancipation procedures; (2) added rule 1424 on guidelines for Court Appointed Special Advocate (CASA) programs, and repealed section 24.5 of the Standards of Judicial Administration; (3) amended rule 1463 on selection of a permanent plan to conform to statutory procedures and clarify procedures; and (4) amended rule 1465 on hearings subsequent to a permanent plan to clarify procedures on terminating guardianships established under section 366.25 or 366.26 of the Welfare and Institutions Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: . . . (4) amended rule 1437 to clarify that petitions to emancipate a dependent child or ward of the juvenile court shall not only be filed in but also heard in the juvenile court; . . .

CHAPTER 7. Cases Petitioned Under Section 300

Adopted effective July 1, 1989, as Chapter 6. Renumbered effective July 1, 1994.

PART I. Attorneys for Parties

Adopted effective January 1, 1996. Former Part I, entitled "Indian Child Welfare Act," consisting of rule 1439, was adopted effective January 1, 1995, and renumbered to be Part II effective January 1, 1996. Former Part I, entitled "Detention," consisting of rules 1440-1447, was renumbered to be Part II effective January 1, 1995.

Rule 1438. Attorneys for parties (§§ 317, 317.6)

Rule 1438. Attorneys for parties (§§ 317, 317.6)

(a) [Local rules] On or before July 1, 1996, the superior court of each county shall adopt local rules regarding the representation of parties in dependency proceedings.

(1) The local rules shall be drafted after consultation by the court with representatives of the State Bar of California, local offices of the county counsel, district attorney, public defender, and other attorneys appointed to represent parties in these proceedings, county welfare departments, child advocates, and others selected by the court in accordance with section 24(c) of the Standards of Judicial Administration.

(2) The rules shall address the following as needed:

(A) Timelines and procedures for settlements, mediation, discovery, protocols, and other issues related to contested matters;

(B) Procedures for the screening, training, and appointment of attorneys representing parties;

(C) Establishment of minimum standards of experience, training, and education of attorneys representing parties;

(D) Procedures for reviewing and resolving complaints by parties regarding the performance of attorneys; and

(E) Procedures for informing the court of interests of the dependent child requiring further investigation, intervention, or litigation.

(3) Appropriate local forms may be utilized.

(b) [Competent counsel] Every party in a dependency proceeding who is represented by an attorney shall be entitled to competent counsel.

(1) *(Definition)* "Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.

(2) *(Evidence of competence)* The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding.

(3) *(Experience and education)* Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, shall be appointed to represent parties. In addition to a summary of dependency law and related statutes, training and education for attorneys shall include information on child development, child abuse and neglect, family reunification and preservation, and reasonable efforts. Within every three years attorneys are expected to complete at least 8 hours of continuing education related to dependency proceedings.

(4) *(Standards of representation)* Attorneys are expected to meet regularly with clients, including clients who are children, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without hearing, and to adhere to the mandated timelines.

(c) [Client complaints] The court shall establish a process for the review and resolution of complaints or questions by a party regarding the performance of an appointed attorney. Each party shall be informed of the procedure for lodging the complaint. If it is determined that an

appointed attorney has acted improperly or contrary to the rules or policies of the court, the court shall take appropriate action.

(d) [Interests of the child] At any time following the filing of a petition under section 300 and until juvenile court jurisdiction is terminated, any interested person may advise the court of information regarding an interest or right of the child to be protected or pursued in other judicial or administrative forums.

(1) Judicial Council forms Juvenile Dependency Petition (JV-100) and Modification Petition Attachment (JV-180) may be utilized.

(2) If the attorney for the child learns of any such interest or right, the attorney shall notify the court immediately and seek instructions from the court as to any appropriate procedures to follow.

(3) If the court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the court shall do one or all of the following:

(A) Refer the matter to the appropriate agency for further investigation, and require a report to the court within a reasonable time;

(B) Appoint an attorney for the child if the child is unrepresented;

(C) Authorize and direct the child's attorney to initiate and pursue appropriate action;

(D) Appoint a guardian ad litem for the child if one is required to initiate appropriate action; or

(E) Take any other action to protect the interests and rights of the child.

Rule 1438 adopted effective January 1, 1996.

Drafter's Notes
1996—Legislation enacted by Statutes 1994, chapter 1073 (Sen. Bill No. 783—Lockyer) added section 317.6 to require the Judicial Council, on or before January 1, 1996, to adopt rules of court regarding the appointment of counsel in juvenile dependency proceedings, including the following: (1) screening and appointment; (2) minimum standards of experience and education; (3) procedures for handling client complaints; and (4) procedures for informing the court of any interests the child may need to be protected in other proceedings. The legislation also requires each superior court, on or before July 1, 1996, to adopt local rules regarding the conduct of proceedings.

PART II. Indian Child Welfare Act

Part II, entitled "Indian Child Welfare Act," consisting of rule 1439, renumbered effective January 1, 1996; adopted as Part I effective January 1, 1995. Former Part II, entitled "Detention,"

consisting of rules 1440-1447, was adopted as Part I, renumbered to be Part II effective January 1, 1995, and renumbered to be Part III effective January 1, 1996. Former Part II, entitled "Jurisdiction," consisting of rules 1449-1452, was renumbered to be Part III effective January 1, 1995.

Rule 1439. Indian Child Welfare Act (25 U.S.C. §1901 et seq.)

Rule 1439. Indian Child Welfare Act (25 U.S.C. §1901 et seq.)

(a) [Definitions; 25 U.S.C. §1903] As used in this rule, unless the context or subject matter otherwise requires:

(1) "Indian child" means an unmarried person under the age of 18 who:

(A) is a member of an Indian tribe, or

(B) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(2) "Indian child's tribe" means:

(A) the Indian tribe in which the child is a member or is eligible for membership; or

(B) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

(3) "Indian custodian" means any Indian who has:

(A) legal custody of an Indian child under tribal law or custom, or under state law; or

(B) temporary physical care, custody, and control of an Indian child whose parent or parents have transferred custody to that person.

(4) "Parent of an Indian child" means the biological parent of an Indian child or any Indian person who has lawfully adopted a child, including adoptions under tribal law or custom. (This definition does not include a non-Indian adoptive parent, or an unwed alleged father where paternity has not been determined or acknowledged.)

(5) "Custody" means legal or physical custody or both as provided under state law or tribal law or custom.

(6) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States Code.

(7) “Extended family” means those persons defined by the law or custom of the Indian child’s tribe, or in the absence of such law or custom, an adult grandparent, aunt, uncle, brother, sister, sister-in-law, brother-in-law, niece, nephew, first or second cousin, or stepparent of the Indian child.

(8) “Child custody proceeding” means and includes a proceeding at which the court considers foster care placement, appointment of a guardian, termination of parental rights, preadoptive placement, or adoptive placement.

(9) “Foster care placement” means any temporary placement from which a child may not be removed by the parent or Indian custodian upon demand, including a shelter care home, foster home, institution, or the home of a guardian or conservator.

(10) “Qualified expert witness” means a person qualified to address the issue of whether continued custody by a parent or Indian custodian is likely to result in serious physical or emotional damage to the child. Persons most likely to be considered such an expert are:

(A) a member of a tribe with knowledge of Indian family organization and child rearing; or

(B) a lay expert with substantial experience in Indian child and family services and extensive knowledge of the social and cultural standards and child-rearing practices of Indian tribes, specifically the child’s tribe, if possible; or

(C) a professional person with substantial education and experience in Indian child and family services and in the social and cultural standards of Indian tribes, specifically the child’s tribe, if possible; or

(D) a professional person having substantial education and experience in the area of his or her specialty.

(11) “Act” means the Indian Child Welfare Act (25 U.S.C. §§1901-1963).

(12) “Tribal court” means a court with jurisdiction over child custody proceedings, identified as a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings. If applicable, the tribal court has met the requirements for resumption of jurisdiction over child custody proceedings as approved by the Department of the Interior.

(b) [Applicability of rule; 25 U.S.C. §§1911, 1912] This rule applies to all proceedings under section 300 et seq., including detention hearings, jurisdiction hearings, disposition hearings, reviews, hearings under section 366.26, and subsequent hearings affecting the status of the Indian child.

(Subd (b) as amended effective January 1, 1997.)

(c) [Jurisdiction; 25 U.S.C. §1911]

(1) If the Indian child resides or is domiciled on an Indian reservation that exercises exclusive jurisdiction under the Act over child custody proceedings, the petition under section 300 must be dismissed. At present, no California tribe is authorized under the Act to exercise exclusive jurisdiction.

(A) If the Indian child is temporarily off a reservation that exercises exclusive jurisdiction, the juvenile court shall exercise temporary jurisdiction if there is an immediate threat of serious physical harm to the child.

(B) Absent extraordinary circumstances, temporary emergency custody shall terminate within 90 days, unless the court determines by clear and convincing evidence, including the testimony of at least one qualified expert witness, that return of the child is likely to cause serious damage to the child.

(C) The child shall be returned immediately to the parent or Indian custodian when the emergency placement is no longer necessary to prevent serious harm to the child.

(2) If the Indian child is not domiciled or residing on a reservation that exercises exclusive jurisdiction, the tribe, parent, or Indian custodian may petition the court to transfer to the tribal jurisdiction, and the juvenile court shall transfer jurisdiction to tribal jurisdiction unless there is good cause not to do so.

(A) Either parent may object to the transfer.

(B) The tribe may decline the transfer of jurisdiction.

(3) If the tribe does not intervene or the tribal court does not request transfer to tribal jurisdiction, or if there is no response to the notice, the court should proceed to exercise its jurisdiction under section 300 et seq., in accordance with the procedures and standards of proof as required by the Act.

(Subd (c) as amended effective January 1, 1997.)

(d) [Inquiry] The court and the county welfare department have an affirmative duty to inquire whether a child for whom a petition under section 300 is to be, or has been, filed is or may be an Indian child.

(1) Section 1.1 of the Juvenile Dependency Petition (JV-100) must be checked if there is reason to believe the child may be an Indian child.

(2) The circumstances that may provide probable cause for the court to believe the child is an Indian child include, but are not limited to, the following:

(A) A party, including the child, an Indian tribe, an Indian organization, an officer of the court, or a public or private agency, informs the court or the welfare agency or provides information suggesting that the child is an Indian child;

(B) The residence of the child, the child's parents, or an Indian custodian is in a predominantly Indian community.

(e) [Proceedings; 25 U.S.C. §1912] If section 1.1 of the Juvenile Dependency Petition (JV-100) is checked, or if, upon inquiry, or based on other information, the court has reason to believe the child may be an Indian child, the court shall proceed as if the child is an Indian child and shall proceed with all dependency hearings, observing the Welfare and Institutions Code time lines while complying with the Act and this rule. A determination by the identified tribe or the Bureau of Indian Affairs (BIA) that the child is not an Indian child, shall be definitive.

(Subd (e) adopted effective January 1, 1997.)

(f) [Notice; 25 U.S.C. §1912] The parent and Indian custodian of an Indian child, and the Indian child's tribe, must be notified of the pending petition and the right of the tribe to intervene in the proceedings. If at any time after the filing of the petition the court knows or has reason to know that the child is or may be an Indian child, the following notice procedures must be followed:

(1) Notice must be sent by registered or certified mail with return receipt requested, and additional notice by first class mail is recommended.

(2) Notice to the tribe shall be to the tribal chairman unless the tribe has designated another agent for service.

(3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership.

(4) If the identity or location of the parent or Indian custodian or the tribe cannot be determined, notice shall be sent to the specified office of the Secretary of the Interior, which has 15 days to provide notice as required.

(5) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter unless and until it is determined that the child is not an Indian child.

(Subd (f) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (e).)

(g) [Determination of status; 25 U.S.C. §1911] Determination of tribal membership or eligibility for membership is made exclusively by the tribe.

(1) A tribe's determination that the child is or is not a member of or eligible for membership in the tribe is conclusive.

(2) Information that the child is not enrolled in the tribe is not determinative of status as an Indian child.

(3) The tribe must be a federally recognized tribe, group, or community as defined by the Bureau of Indian Affairs (BIA) of the Department of the Interior as eligible for services provided to

Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States Code.

(4) Absent a contrary determination by the tribe, a determination by the BIA that a child is or is not an Indian is conclusive.

(Subd (g) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (f).)

(h) [Proceedings after notice; 25 U.S.C. §1911] If it is determined that the Act applies, the juvenile court hearing shall not proceed until at least 10 days after those entitled to notice under the Act have received notice. If requested, the parent, Indian custodian, or tribe shall be granted a continuance of up to 20 days to prepare for the proceeding. The tribe may intervene at any point in the proceeding.

(1) The indigent parent and indigent Indian custodian have a right to court-appointed counsel.

(2) All parties, including the parent, Indian child, Indian custodian, and tribe, and their respective attorneys, have the right to examine all court documents related to the dependency case.

(Subd (h) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (g).)

(i) [Required procedures, findings, and orders for foster care placement and guardianships; 25 U.S.C. §1912] The court may not order foster care placement of an Indian child, or establish a guardianship of an Indian child, unless the court finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage.

(1) Testimony by a qualified expert witness is required.

(2) Stipulation by the parent or Indian custodian or failure to object may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently, and voluntarily waived them.

(3) Failure to meet non-Indian family and community child-rearing standards, or the existence of other behavior or conditions that meet the removal standards of section 361 will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

(4) In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful. Stipulation by the parent or Indian custodian or failure to object may waive the requirement of this finding only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently, and voluntarily waived them.

(A) The court shall consider all available information regarding the prevailing social and cultural conditions of the Indian child's tribe.

(B) Efforts to provide services shall include attempts to utilize the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.

(Subd (i) adopted effective January 1, 1997.)

(j) [Placement of an Indian child in a foster care placement; 25 U.S.C.§1912] If it is determined that the Act applies, the court may not order foster care placement of an Indian child unless the court finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage.

(1) Testimony by a qualified expert witness is required.

(2) Stipulation by the parent, Indian custodian, or tribe or failure to object may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently, and voluntarily waived them.

(3) If it is determined that the Act applies, failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of section 361 will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

(Subd (j) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (h).)

(k) [Standards and preferences in placement of an Indian child; 25 U.S.C. §1915] Foster and adoptive placements of Indian children must follow a specified order in the absence of good cause to the contrary. Placement standards shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family member resides, or with which the parent or extended family member maintains social and cultural contacts. The foster or pre-adoptive placement must be in the least restrictive setting, within reasonable proximity to the Indian child's home, and capable of meeting any special needs of the Indian child.

(1) In a foster or pre-adoptive placement, preference must be given in the following order:

(A) to a member of the Indian child's extended family;

(B) to a foster home licensed or approved by the Indian child's tribe;

(C) to a state- or county-licensed or certified Indian foster home;

(D) to a children's institution approved by the tribe or operated by an Indian organization and offering a program to meet the Indian child's needs;

(2) In an adoptive placement, preference must be given in the following order:

(A) to a member of the Indian child's extended family;

(B) to other members of the Indian child's tribe;

(C) to other Indian families.

(3) An Indian child may be placed in a non-Indian home only if the court finds that a diligent search has failed to locate a suitable Indian home.

(4) The court may modify the preference order only for good cause, which may include the following considerations:

(A) the requests of the parent or Indian custodian;

(B) the requests of the Indian child;

(C) the extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness;

(D) the unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria.

(5) The burden of establishing good cause for the court to alter the preference order shall be on the party requesting that a different order be considered.

(6) The tribe, by resolution, may establish a different preference order, which shall be followed if it provides for the least restrictive setting.

(7) The preferences and wishes of the Indian child and the parent shall be considered, and weight given to a consenting parent's request for anonymity.

(Subd (k) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (i).)

***(l)* [Reasonable efforts; 25 U.S.C. §1912]** In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, or to issue orders under section 366.26, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful.

(1) The court shall consider the prevailing social and cultural conditions of the Indian child's tribe.

(2) Efforts to provide services shall include attempts to utilize the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.

(Subd (*l*) as amended and relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (j).)

(m) [Termination of parental rights; 25 U.S.C. §1912] The court may not terminate parental rights to an Indian child unless there is proof beyond a reasonable doubt that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(1) The evidence must be supported by the testimony of a qualified expert witness.

(2) Stipulation by the parent or Indian custodian or failure to object may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently and voluntarily waived them.

(3) Consent to a voluntary termination of parental rights, relinquishment of parental rights, or consent to adoption shall be executed in writing and recorded before a judicial officer of competent jurisdiction. The court must certify that the terms and consequences of the consent were explained in detail, in the language of the parent or Indian custodian, and fully understood by the parent or Indian custodian. If confidentiality is requested or appropriate, the consent may be executed in chambers.

(4) In order to terminate parental rights to an Indian child the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful. Stipulation by the parent or Indian custodian or failure to object may waive the requirement of this finding only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently and voluntarily waived them.

(Subd (m) as amended and relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (k).)

(n) [Petition to invalidate orders of removal or termination of parental rights; 25 U.S.C. §1914] If it is determined that the Act applies, the Indian child, a parent, an Indian custodian, or the child's tribe may petition any court of competent jurisdiction to invalidate a foster placement or termination of parental rights.

(1) If the Indian child is a dependent child of the juvenile court or the subject of a pending petition, the juvenile court is the only court of competent jurisdiction with the authority to hear the petition to invalidate the foster placement or termination of parental rights.

(2) If a final decree of adoption is set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may petition for a return of custody of the Indian child.

(A) The court shall grant the petition for return unless there is a showing that return is contrary to the best interests of the Indian child.

(B) The hearing on the petition to return shall be conducted in accordance with the Act and the relevant sections of this rule.

(Subd (n) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (*l*).)

(o) [Post-hearing actions; 25 U.S.C. §1916] Whenever an Indian child is removed from a foster home or institution for placement in a different foster home, institution, or pre-adoptive or adoptive home, the placement shall be in accordance with the Act and the relevant sections of this rule.

(Subd (o) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (m).)

(p) [Recordkeeping; 25 U.S.C. §1951]

(1) Upon granting a decree of adoption of an Indian child, the court shall provide the Secretary of the Interior with a copy of the decree and other information needed to show:

(A) the name and tribal affiliation of the Indian child;

(B) the names and addresses of the biological parents;

(C) the names and addresses of the adoptive parents; and

(D) the agency maintaining files and records regarding the adoptive placement.

(2) If a biological parent has executed an affidavit requesting that his or her identity remain confidential, the court shall provide the affidavit to the Secretary of the Interior, who shall ensure the confidentiality of the information.

(Subd (p) as relettered effective January 1, 1997; adopted effective January 1, 1995, as subd (n).)

Rule 1439 as amended effective January 1, 1997; adopted effective January 1, 1995.

Former Rules
Former rule 1439, a transition rule for section 300 petitions, was adopted effective January 1, 1990, expired December 31, 1990, and was repealed effective January 1, 1994.

Former rule 1439, similar to the repealed rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: . . . (5) and adopted rule 1439 on implementation of the Indian Child Welfare Act.

1997—Rule 1439, relating to the Indian Child Welfare Act, was amended to clarify procedures, and conforming amendments were made to rules 1410 and 1412.

PART III. Initial Hearing

Part III, entitled "Initial Hearing," consisting of new rules 1440-1447 was adopted effective January 1, 1998. Former Part III, entitled "Detention," consisting of former rules 1440-1447 was repealed effective January 1, 1998; renumbered effective January 1, 1996; adopted as Part I; previously renumbered to be Part II effective January 1, 1995. Former Part III, entitled "Jurisdiction," consisting of rules 1449-1452, was adopted as Part II, renumbered to be Part III effective January 1, 1995, and renumbered to be Part IV effective January 1, 1996. Former Part III, entitled "Disposition," consisting of rules 1455-1459, was renumbered to be Part IV effective January 1, 1995.

Rule 1440. Service and notice

(a) [Petition and notice of hearing (§ 311)] Immediately upon the filing of a petition, the social worker shall serve each parent or guardian whose whereabouts can be ascertained by due diligence, the child if the child is 10 years of age or older, and each attorney of record with a copy of the petition and written or oral notice of the detention hearing or initial appearance hearing. If there is no parent or guardian residing in California, or if the residence is unknown, the social worker shall serve the petition and notify any adult relative residing within the county, or if none, the adult relative residing nearest the court.

(b) [Language of notice] If it appears that the parent or guardian does not read English, the social worker shall provide notice in the language believed to be spoken by the parent or guardian.

Rule 1440 repealed and adopted January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1441. Commencement of hearing—explanation of proceedings (§ 316)

At the beginning of the initial hearing on the petition, whether the child is detained or not detained, the court shall give the advice required by rule 1412 and shall inform each parent or guardian present, and the child, if present:

(1) Of the contents of the petition;

(2) Of the nature of, and possible consequences of, juvenile court proceedings;

(3) If the child has been taken into custody, of the reasons for the initial detention and the purpose and scope of the detention hearing;

(4) If the petition is sustained and the child is declared a dependent of the court and removed from the custody of the parent or guardian, that court-ordered reunification services shall not exceed 12 months for a child aged three or over at the time of the initial removal, and shall not exceed six months for a child who was under the age of three at the time of the initial removal if the parent or guardian fails to participate regularly in any court-ordered treatment program.

Rule 1441 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1442. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation

(a) [Child not detained; filing petition, setting hearing] If the social worker does not take the child into custody, but determines that a petition concerning the child should be filed, the social worker shall file a petition with the clerk of the juvenile court as soon as possible. The clerk shall set an initial hearing on the petition within 15 court days.

(b) [Time limit on custody, filing petition, setting hearing (§§ 311, 313)] If the social worker takes the child into custody, the social worker shall immediately file a petition with the clerk of the juvenile court, and the clerk shall immediately set the matter for hearing on the detention hearing calendar. A child who is detained shall be released within 48 hours, excluding noncourt days, unless a petition has been filed.

(c) [Detention—child in medical facility (§ 309)] For purposes of these rules, a child shall be deemed taken into custody and delivered to the social worker if the child is under medical care and cannot immediately be moved and there is reasonable cause to believe the child is described by section 300.

(d) [Detention hearing—time of (§ 315)] Unless the child has been released sooner, the matter concerning a child who is taken into custody shall be brought before the juvenile court for a detention hearing as soon as possible, but in any event before the end of the next court day after a petition has been filed. At the detention hearing, the court shall determine whether the child is to continue to be detained in custody. If the detention hearing is not commenced within that time, the child shall be immediately released from custody.

(e) [Detention hearing—warrant cases, transfers in, changes in placement] Notwithstanding subdivision (c), and unless the child has been released sooner, a detention hearing shall be held as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a facility within the county if:

(1) The child was taken into custody in another county and transported in custody to the requesting county under a protective custody warrant issued by the juvenile court; or

(2) The child was taken into custody in the county in which a protective custody warrant was issued by the juvenile court; or

(3) The matter was transferred from the juvenile court of another county under rule 1425 and the child was ordered transported in custody.

At the hearing the court shall determine whether the child is to continue to be detained in custody. If the hearing is not commenced within that time, the child shall be immediately released from custody.

(f) [Setting jurisdiction hearing (§ 334)] If the child is not detained, the court shall set a jurisdiction hearing to be held within 30 days of the date the petition is filed. If the court orders the child to be detained, the court shall set a jurisdiction hearing within 15 court days of the order of detention.

(g) [Visitation] The court shall consider the issue of visitation between the child and other persons, including siblings, determine if contact pending the jurisdiction hearing would be beneficial or detrimental to the child, and make appropriate orders.

Rule 1442 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1443. Continuances

(a) [Detention hearing; right to one-day continuance; custody pending continued hearing (§ 322)] On motion of the child, parent, or guardian, the court shall continue the detention

hearing for one court day. Unless otherwise ordered by the court, the child shall remain detained pending completion of the detention hearing or a rehearing.

(b) [Initial hearing; child not detained] If the child is not detained, motions for continuances of the initial hearing shall be made and ruled on under rule 1422.

Rule 1443 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1444. Conduct of hearing; admission, no contest, submission

(a) [Admission, no contest, submission] At the initial hearing, whether or not the child is detained, the parent or guardian may admit the allegations of the petition, plead no contest, or submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing.

If the court accepts an admission, a plea of no contest, or a submission from each parent or guardian with standing to participate as a party, the court shall then proceed according to rules 1449 and 1451.

(b) [Detention hearing; examination by court (§ 319)] Subject to subdivision (c), the court shall examine the child's parent, guardian, or other person having knowledge relevant to the issue of detention, and shall receive any relevant evidence that petitioner, the child, the parent or guardian, or counsel for a party wishes to present.

(c) [Detention hearing; rights of child, parent, or guardian (§§ 311, 319)] At the detention hearing, the child, the parent, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

(1) The preparer of a police report, probation or social work report, or other document submitted to the court; and

(2) Any person examined by the court under subdivision (b). If the child, parent, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court shall not consider any such report or document unless the preparer is made available for cross-examination.

Rule 1444 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

Rule 1445. Requirements for detention

(a) [Requirements for detention (§ 319)] No child shall be ordered detained by the court unless the court finds:

(1) A prima facie showing has been made that the child is described by section 300; and

(2) One or more of the grounds for detention in rule 1446 is found.

(b) [Evidence required at detention hearing] In making the findings required to support an order of detention, the court may rely solely on written police reports, probation or social worker reports, or other documents.

The reports relied on shall include:

(1) A statement of the reasons the child was removed from the parent's custody;

(2) A description of the services that have been provided, including those under section 306, and of any available services that would prevent the need for the child to remain in custody;

(3) Identification of the need, if any, for the child to remain in custody; and

(4) If continued detention is recommended, information about any parent of the child with whom the child was not residing at the time the child was taken into custody, or about any relative with whom the child may be detained.

Rule 1445 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

1996—The council amended rules 1445 and 1477 to conform them to federal mandates to ensure continued federal funding for foster care. These amendments were adopted in response to the most recent federal Title IV-E Aid to Families with Dependent Children—Foster Care (AFDC—FC) audit in which the largest number of error findings (33 percent of total errors) concerned court orders that failed to meet federal requirements on reasonable efforts.

Rule 1446. Grounds for detention; factors to consider and findings

(a) [Grounds for detention (§ 319)] The court shall order the child detained in custody in a suitable place or home designated by the court only if the court finds that one or more of the following grounds exist:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means to protect the child's physical or emotional health without removing the child from the parent's or guardian's physical custody;

(2) The child is a dependent of the juvenile court who has left a placement;

(3) The parent, guardian, or responsible relative is likely to flee the jurisdiction of the court with the child;

(4) The child is unwilling to return home and the petitioner alleges that the child has been physically or sexually abused by a person residing in the home.

(b) [Factors to consider] In determining whether to release or detain the child under subdivision (a), the court shall consider whether the child can be returned home if the court orders services to be provided, including services under section 306.

(c) [Findings in support of detention (§ 319, 42 U.S.C. § 600 et seq.)] If the court orders the child detained, the court shall make the following findings on the record and in the written orders:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means to protect the child's physical or emotional health without removing the child from the parent's or guardian's physical custody, and continued residence in the home of the parent or legal guardian is contrary to the child's welfare; and

(2) Temporary placement and care is vested with the county welfare department pending disposition or further order of the court.

(d) [Findings of the court—reasonable efforts (§ 319, 42 U.S.C. § 600 et seq.)] The court shall read any reports submitted by the child welfare agency and any relevant evidence submitted by any party or counsel.

(1) Whether the child is released or detained at the hearing, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal and shall make one of the following findings:

(A) Reasonable efforts have been made; or

(B) Reasonable efforts have not been made; or

(C) The lack of effort was reasonable because of the emergency nature of the removal.

(2) The court shall not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services that would prevent the need to detain the child or that would permit the child to return home.

(3) If the court orders the child detained the court shall:

(A) Determine if there are services that would permit the child to return home pending the next hearing, and state the factual bases for the decision to detain the child;

(B) Specify why the initial removal was necessary; and

(C) If appropriate, order services to be provided as soon as possible to reunify the child and the child's family.

Rule 1446 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1447. Detention rehearings; prima facie hearings

(a) [No parent or guardian present and not noticed (§ 321)] If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk shall set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court shall proceed under rules 1442-1446.

(b) [Parent or guardian noticed, not present (§ 321)] If the court determines that the parent or guardian received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, the request of the parent or guardian for a detention rehearing shall be denied absent a finding that the failure to appear at the hearing was due to good cause.

(c) [Parent or guardian present; preparers available (§ 321)] If a parent or guardian has received notice of the detention hearing, is present at the hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present in court or otherwise available for cross-examination, there shall be no right to a detention rehearing.

(d) [Hearing for further evidence; prima facie case (§ 321)] If the court orders the child detained, and the child, a parent, a guardian, or counsel requests that evidence of the prima facie case be presented, the court shall set a prima facie hearing for a time within three court days to consider evidence of the prima facie case, or shall set the matter for jurisdiction hearing within 10 court days. If at the hearing petitioner fails to establish the prima facie case, the child shall be released from custody.

Rule 1447 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1440-1447 and the adoption of new rules 1440-1447 clarifies the juvenile court processes applicable to the initial stages of dependency cases after the filing of a petition. "Initial Hearings" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

PART IV. Jurisdiction

Part IV, entitled "Jurisdiction," consisting of rules 1449-1452, renumbered effective January 1, 1996; adopted as Part II; previously renumbered to be Part III effective January 1, 1995. Former Part IV, entitled "Disposition," consisting of rules 1455-1459, was adopted as Part III, renumbered effective January 1, 1995, and renumbered to be Part V effective January 1, 1996. Former Part IV, entitled "Reviews, Permanent Planning," consisting of rules 1460-1465, was renumbered to be Part V effective January 1, 1995.

Rule 1449. Commencement of jurisdiction hearing—advice of trial rights; admission; no contest; submission
Rule 1450. Contested hearing on petition
Rule 1451. Continuance pending disposition hearing
Rule 1452. Failure to cooperate with services (§360(b))

Rule 1449. Commencement of jurisdiction hearing—advice of trial rights; admission; no contest; submission

(a) [Petition read and explained (§353)] At the beginning of the jurisdiction hearing, the petition shall be read to those present. On request of the child or the parent, guardian, or adult relative, the court shall explain the meaning and contents of the petition and the nature of the hearing, its procedures, and possible consequences.

(b) [Rights explained (§§341, 353)] After giving the advice required by rule 1412, the court shall advise the parent or guardian of the following rights:

(1) The right to a hearing by the court on the issues raised by the petition;

(2) The right to assert the privilege against self-incrimination;

(3) The right to confront and to cross-examine all witnesses called to testify against the parent or guardian;

(4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian.

(c) [Admission of allegations; prerequisites to acceptance] The court shall then inquire whether the parent or guardian intends to admit or deny the allegations of the petition. If the parent or guardian neither admits nor denies the allegations, the court shall state on the record that the parent or guardian does not admit the allegations. If the parent or guardian wishes to admit the allegations, the court shall first find and state on the record that it is satisfied that the parent or guardian understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in subdivision (b).

(d) [Parent or guardian must admit] An admission by the parent or guardian shall be made personally by the parent or guardian.

(e) [Admission, no contest, submission] The parent or guardian may elect to admit the allegations of the petition, plead no contest, or submit the jurisdictional determination to the court based on the information provided to the court, and waive further jurisdictional hearing.

(f) [Findings of court (§356)] Upon admission, plea of no contest, or submission, the court shall make the following findings noted in the order of the court:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The parent or guardian has knowingly and intelligently waived the right to a trial on the issues by the court, the right to assert the privilege against self-incrimination, and the right to confront and to cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the parent or guardian's behalf;

(4) The parent or guardian understands the nature of the conduct alleged in the petition and the possible consequences of an admission, plea of no contest, or submission;

(5) The admission, plea of no contest, or submission by the parent or guardian is freely and voluntarily made;

(6) There is a factual basis for the parent or guardian's admission;

(7) Those allegations of the petition as admitted are true as alleged;

(8) The child is described under one or more specific subdivisions of section 300.

(g) [Disposition] After accepting an admission, plea of no contest, or submission, the court shall proceed to disposition hearing under rules 1451 and 1455.

Rule 1449 adopted effective January 1, 1991.

Former Rules
Former rule 1449, similar to the present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1449, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1450. Contested hearing on petition

(a) [Contested jurisdiction hearing (§ 355)] If the parent or guardian denies the allegations of the petition, the court shall hold a contested hearing and determine whether the allegations in the petition are true.

(b) [Admissibility of evidence—general (§§ 355, 355.1)] Except as provided in section 355.1 and subdivisions (c), (d), and (e), the admission and exclusion of evidence shall be in accordance with the Evidence Code as it applies to civil cases.

(Subd (b) amended effective July 1, 1997.)

(c) [Reports] A social study, with hearsay evidence contained in it, is admissible and is sufficient to support a finding that the child is described by section 300.

(1) The social study shall be provided to all parties and their counsel by the county welfare department within a reasonable time before the hearing.

(2) The preparer of the report shall be made available for cross-examination on the request of any party. The preparer may be on telephone standby if the preparer can be present in court within a reasonable time.

(Subd (c) amended effective July 1, 1997.)

(d) [Hearsay in the report (§ 355)] If a party makes an objection with reasonable specificity to particular hearsay in the report and provides petitioner a reasonable period to meet the objection, that evidence shall not be sufficient in and of itself to support a jurisdictional finding, unless:

(1) The hearsay is admissible under any statutory or judicial hearsay exception;

(2) The hearsay declarant is a child under 12 years of age who is the subject of the petition, unless the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is therefore unreliable;

(3) The hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher and the statement would be admissible if the declarant were testifying in court; or

(4) The hearsay declarant is available for cross-examination.

(Subd (d) amended effective July 1, 1997.)

(e) [Inapplicable privileges (Evid. Code, §§ 972, 986)] The privilege not to testify or to be called as a witness against a spouse, and the confidential marital communication privilege, shall not apply to dependency proceedings.

(Subd (e) amended effective July 1, 1997.)

(f) [Findings of court—allegations true (§ 356)] If the court determines by a preponderance of the evidence that the allegations of the petition are true, the court shall make findings on each of the following, noted in the minutes:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The allegations of the petition are true;

(4) The child is described under one or more specific subdivisions of section 300.

(g) [Disposition (§356)] After making the findings in subdivision (f), the court shall proceed to disposition hearing under rules 1451 and 1455.

(Subd (g) amended effective July 1, 1997.)

(h) [Findings of court—allegations not proved (§ 356)] If the court determines that the allegations of the petition have not been proved by a preponderance of the evidence, the court shall dismiss the petition, terminate any detention orders relating to the petition, and make the following findings, noted in the order of the court:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The allegations of the petition are not proved.

(Subd (h) amended effective July 1, 1997.)

Rule 1450 amended effective July 1, 1997; adopted effective January 1, 1991.

Former Rules
Former rule 1450, similar to the present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1450, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1451. Continuance pending disposition hearing

(a) [Continuance pending disposition hearing (§ 358)] Except as provided in subdivision (b), the court may continue the disposition hearing to a date not to exceed 10 court days if the child is detained or, if the child is not detained, to a date not to exceed 30 calendar days from the date of the finding under section 356. The court may for good cause continue the hearing for an additional 15 calendar days if the child is not detained.

(b) [Continuance if nonreunification is requested] If petitioner alleges that section 361.5(b) is applicable, the court shall continue the proceedings not more than 30 calendar days. The court shall order the petitioner to notify each parent of the contents of section 361.5(b) and shall inform each parent that if reunification is not ordered at the disposition hearing, a section 366.26 implementation hearing will be held and parental rights may be terminated.

(c) [Detention pending continued hearing (§358)] The court in its discretion may order release or detention of the child during the continuance.

Rule 1451 adopted effective January 1, 1990.

Former Rule
Former rule 1451, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Rule 1452. Failure to cooperate with services (§360(b))

(a) [Petition] If the court has ordered services under section 360(a), and within the time period consistent with section 330 the family is unable or unwilling to cooperate with the services provided, a petition may be filed as provided in section 360(b).

(b) [Order] At the hearing on the petition the court shall dismiss the petition or order a new disposition hearing to be conducted under rule 1455.

Rule 1452 adopted effective January 1, 1990.

Former Rule
Former rule 1452, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

PART V. Disposition

Part V, entitled "Disposition," consisting of rules 1455-1459, renumbered effective January 1, 1996; adopted as Part III, previously renumbered to be Part IV effective January 1, 1995. Former Part V, entitled "Reviews, Permanent Planning," consisting of rules 1460-1466, was adopted as Part IV, renumbered to be Part V effective January 1, 1995, and renumbered to be Part VI effective January 1, 1996.

Rule 1455. General conduct of disposition hearing

(a) [Social study (§§280, 358, 358.1, 360)] The petitioner shall prepare a social study of the child, that shall include all matters relevant to disposition, and a recommendation for disposition. If petitioner recommends that the court appoint a legal guardian, petitioner shall prepare an assessment under section 360(a) to be included in the social study report prepared for disposition, or in a separate document. If petitioner recommends removing the child from the home, the report shall include a discussion of the reasonable efforts made to prevent or eliminate removal and a recommended plan for reuniting the child with the family, including a plan for visitation. If petitioner alleges that section 361.5(b) applies, the social study shall state why reunification services should not be provided.

The petitioner shall submit the social study and copies of it to the clerk at least 48 hours before the disposition hearing is set to begin, and the clerk shall make the copies available to the parties and attorneys. A continuance within statutory time limits shall be granted on the request of a party who has not been furnished a copy of the social study in accordance with this rule.

(Subd (a) as amended effective July 1, 1995.)

(b) [Evidence considered (§§358, 360)] The court shall receive in evidence and consider the social study, a guardianship assessment, the report of any court-appointed child advocate, and any relevant evidence offered by petitioner, the child, or the parent or guardian. The court may require production of other relevant evidence on its own motion. In the order of disposition, the

court shall state that the social study and the study or evaluation by the child advocate, if any, have been read and considered by the court.

(Subd (e) as amended effective July 1, 1995.)

Rule 1455 as amended effective July 1, 1995; adopted effective January 1, 1991.

Former Rules
Former rule 1455, similar to the present rule, was adopted effective January 1, 1990 and repealed effective January 1, 1991.

Former rule 1455, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (5) amended rules 1455, 1456, 1460, 1461, and 1462 to conform to statutory changes on the establishment of a guardianship; . . .

Rule 1456. Orders of the court

(a) [Orders of the court (§§245.5, 358, 360, 361, 361.2, 390)] At the disposition hearing, the court may:

(1) Dismiss the petition with specific reasons stated in the minutes; or

(2) Place the child under a program of supervision as provided in section 301 and order that services be provided; or

(3) Appoint a legal guardian for the child; or

(4) Declare dependency and appoint a legal guardian for the child; or

(5) Declare dependency, permit the child to remain at home and order that services be provided; or

(6) Declare dependency, permit the child to remain at home, limit the control to be exercised by the parent or guardian and order that services be provided; or

(7) Declare dependency, remove physical custody from the parent or guardian, and

(A) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, terminate jurisdiction, and direct that Judicial Council form Custody Order—Juvenile (JV-200) be prepared and filed under rule 1457; or

(B) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent with services to one or both parents; or

(C) Make a general placement order and consider granting specific visitation rights to the child's grandparents.

(Subd (a) as amended effective July 1, 1995.)

(b) [Appointment of a legal guardian (§360)]

(1) At the disposition hearing, the court may appoint a legal guardian for the child if:

(A) the parent has advised the court that the parent does not wish to receive family maintenance services or family reunification services; and

(B) the court finds that the parent, and the child if of sufficient age and comprehension, knowingly and voluntarily waive their rights to reunification services, and agree to the appointment of the legal guardian; and

(C) the court finds that the appointment of the legal guardian is in the best interest of the child.

(2) If the court appoints a legal guardian, it shall:

(A) state on the record or in the minutes that it has read and considered the assessment; and

(B) state on the record or in the minutes its findings and the factual bases for them; and

(C) advise the parent that no reunification services will be offered or provided; and

(D) make any appropriate orders regarding visitation between the child and the parent or other relative, including any sibling; and

(E) order that letters of guardianship issue.

(3) The court may appoint a legal guardian without declaring the child a dependent of the court. If dependency is declared, a six-month review hearing shall be set.

(Subd (b) adopted effective July 1, 1995.)

(c) [Limitations on parental control (§§245.5, 361, 362, Educ. Code §56156, Gov. Code §7579.5)]

(1) If a child is declared a dependent, the court may clearly and specifically limit the control over the child by a parent or guardian.

(2) If the court orders that a parent or guardian retain physical custody of the child subject to court-ordered supervision, the parent or guardian shall be ordered to participate in child welfare services or services provided by an appropriate agency designated by the court.

(3) The court shall consider the educational needs of the child, and if appropriate, proceed under Education Code section 56156 and Government Code section 7579.5. Any limitation on the right of a parent or guardian to make education decisions for the child shall be specified in the court order.

(Subd (c) as relettered effective July 1, 1995; adopted effective January 1, 1991 as subd (b).)

(d) [Removal of custody—required findings (§361)] The court shall not order a dependent removed from the physical custody of a parent or guardian with whom the child resided at the time the petition was filed, unless the court finds by clear and convincing evidence any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child or will be if the child is returned home and there is no reasonable alternative means to protect that child; or

(2) The parent or guardian is unwilling to have physical custody of the child and has been notified that if the child remains out of the parent's or guardian's physical custody for the period specified in section 366.25 or 366.26, the child may be declared permanently free of their custody and control; or

(3) The child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and no reasonable alternative means to protect the child's emotional health exists; or

(4) The child has been sexually abused by a parent or guardian or member of the household or other person known to his or her parent and there is no reasonable alternative means to protect the child or the child does not wish to return to the parent or guardian; or

(5) The child has been left without any provisions for his or her support and there is no parent or guardian available to maintain or provide for the care, custody, and control of the child.

(Subd (d) amended effective July 1, 1997; relettered effective July 1, 1995; adopted effective January 1, 1991 as subd (c).)

(e) [Reasonable efforts finding] The court shall consider whether reasonable efforts to prevent or eliminate the need for removal have been made and make one of the following findings:

(1) Reasonable efforts have been made;

(2) Reasonable efforts have not been made; or

(3) The failure to make efforts was reasonable.

(Subd (e) as relettered effective July 1, 1995; adopted effective January 1, 1991 as subd (d).)

(f) [Provisions of reunification services (§361.5)]

(1) Except as provided in subdivision (4), if a child is removed from a the custody of a parent or guardian, the court shall order the county welfare department to provide child welfare services to the child and the child's mother and statutorily presumed father, or guardian, to facilitate reunification of the family within 12 months if the child was three years or older at the time of the initial removal, or within 6 months if the child was under three at that time.

(2) Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that such services will benefit the child.

(3) If a child is removed from the custody of a parent or guardian, and reunification services are ordered, the court shall order visitation between the child and the parent or guardian for whom services are ordered to be as frequent as possible, consistent with the well-being of the child.

(4) Reunification services need not be provided to a mother, statutorily presumed father, or guardian, if the court finds, by clear and convincing evidence, any of the following:

(A) The whereabouts of the parent or guardian are unknown. This finding shall be supported by a declaration or by proof that a reasonably diligent search has failed to locate the parent. Posting or publishing notice shall not be required.

(B) The parent or guardian is suffering from a mental disability described in chapter 2 (commencing with section 7820) of Part 4 of Division 12 of the Family Code that renders the parent incapable of utilizing those services.

(C) The child had been previously declared a dependent under any subdivision of section 300 as a result of physical or sexual abuse; following that adjudication the child had been removed from the custody of the parent or guardian under section 361; the child has been returned to the custody of the parent or guardian from whom the child had been taken originally; and the child is being removed under section 361 because of additional physical or sexual abuse.

(D) The parent or guardian of the child has caused the death of another child through abuse or neglect.

(E) The child was brought within the jurisdiction of the court under subdivision (e) of section 300 because of the conduct of that parent or guardian.

(F) The child is a dependent as a result of the determination that the child, a sibling, or a half-sibling suffered severe sexual abuse as defined in section 361.5(b)(6), by the parent or guardian, or that the parent or guardian inflicted severe physical harm, as defined in section 361.5(b)(6) on the child, a sibling, or a half-sibling, and the court finds that attempts to reunify would not benefit the child. The court shall specify on the record the basis for the finding that the child suffered severe sexual abuse or the infliction of severe physical harm.

(G) The parent or guardian is not receiving reunification services for a sibling or half-sibling of the child, for reasons under subdivision (C), (E), or (F).

(H) The child was conceived as a result of the parent having committed an offense listed in Penal Code section 288 or 288.5, or by an act described by either section but committed outside California.

(I) The court has found that the child is described by subdivision (g) of section 300, that the child was willfully abandoned by the parent or guardian, and that the abandonment constituted serious danger to the child as defined in section 361.5(b)(9).

(J) A sibling or half-sibling of the child:

(i) has been the subject of a court-ordered permanent plan after having been removed from the custody of the parent or guardian of the child before the court for the disposition hearing, or has been declared free from the care and custody of the parent or guardian under Welfare and Institutions Code section 366.26 or Family Code section 7800 et seq. and ordered placed for adoption; and

(ii) the court finds that the parent or guardian has not made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling from that parent or guardian.

(K) The parent or guardian has been convicted of a violent felony as defined in Penal Code section 667.5(c).

(L) The parent or guardian has a history of extensive, abusive, and chronic use of alcohol or other drugs, and has not sought or participated in treatment during the three years immediately prior to the filing of the petition under section 300, or has failed, on at least two prior occasions, to comply with an available and accessible treatment program described in the case plan required by section 358.1, and the removal of the child is based in whole or in part on the risk to the child presented by the use of alcohol or other drugs.

(5) In deciding whether to order reunification in any case in which petitioner alleges that section 361.5(b) applies, the court shall consider the report prepared by petitioner which shall discuss the factors contained in section 361.5(c).

(6) If the petitioner alleges that section 361.5(c) applies, the report prepared for disposition shall address the issue of reunification services. At the disposition hearing the court shall consider the factors set forth in section 361.5.

(7) If the court finds under subdivision (4)(A) that the whereabouts of the parent or guardian are unknown and that a diligent search has failed to locate the parent or guardian, the court shall not order reunification services and shall set the matter for a six-month review hearing. If the parent or guardian is located prior to the six-month review and requests reunification services, the welfare department shall seek a modification of the disposition orders. The time limits for reunification services shall be calculated from the date of the initial removal, and not from the date the parent is located or services are ordered.

(8) If the court finds that allegations under subdivision (4)(B) are proved, the court shall nevertheless order reunification services unless evidence by mental health professionals establishes

by clear and convincing evidence that the parent is unlikely to be able to care for the child within the next 12 months.

(9) If the court finds that the allegations under subdivision (4)(C), (D), (F), (H), (I), (K), or (L) have been proved, the court shall not order reunification services unless the court finds by clear and convincing evidence that reunification is in the best interest of the child. If subdivision (4)(F) is found to apply, the court shall consider the factors in section 361.5(h) in determining whether the child will benefit from services, and shall specify on the record the factual findings on which it based its determination that the child will not benefit.

(10) If the court finds that the allegations under subdivision (4)(E) have been proved, the court shall not order reunification services unless it finds, based on consideration of factors in section 361.5(b) and (c), that services are likely to prevent reabuse or continued neglect or that failure to attempt reunification will be detrimental to the child.

(11) If the mother, statutorily presumed father, or guardian, is institutionalized or incarcerated, the court shall order reunification services unless it finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in section 361.5(e). The court may order reunification services with an institutionalized or incarcerated biological father if the court determines that such services would benefit the child, with consideration of the factors in section 361.5(e).

(12) If, with the exception of subdivision (4)(A), the court orders no reunification services for every parent otherwise eligible for such services under subdivisions (f)(1) and (2), the court shall conduct a hearing under section 366.26 within 120 days.

(13) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review shall be sought only by filing Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party is required to seek an extraordinary writ under rules 39.1B and 1436.5.

(14) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(A) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(B) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(15) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by

an adequate record, shall preclude subsequent review on appeal of the findings and orders made under this rule.

(16) When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, 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 Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file a writ petition and request for record and a Writ Petition—Juvenile form (JV-825) or other petition for extraordinary writ. Within 24 hours of the hearing, notice by first class mail shall be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26. Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and Judicial Council form Notice of Intent to File Writ Petition and Request for Record (JV-820) shall be available in the courtroom, and shall accompany all mailed notices of the advice.

(Subd (f) amended effective July 1, 1997; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995; relettered effective July 1, 1995; amended effective January 1, 1996; adopted effective January 1, 1991, as subd (e).)

(g) [Information regarding termination of parent-child relationship (§§361, 361.5)] If a child is removed from the physical custody of the parent or guardian under either section 361 or 361.5, the court shall:

(1) State the facts on which the decision is based;

(2) Notify the parents their parental rights may be terminated if they do not regain custody within 12 months.

(Subd (g) as relettered effective July 1, 1995; adopted effective January 1, 1991, as subd (f).)

(h) [Continuance for six-month review (§366)] The status of every dependent child shall be reviewed no more than six months after the date of the original disposition order and shall be scheduled on the appearance calendar. The court shall advise the dependent child under section 353.1.

(Subd (h) as relettered effective July 1, 1995; adopted effective January 1, 1991, as subd (g); previously amended effective January 1, 1995.)

(i) [15-day reviews (§367)] If a child is detained pending the execution of the disposition order, the court shall review the case at least every 15 calendar days to determine whether the delay is reasonable. During each review the court shall inquire about the action taken by the probation or welfare department to carry out the court's order, the reasons for the delay, and the effect of the delay upon the child.

(Subd (i) as relettered effective July 1, 1995; adopted effective January 1, 1991, as subd (h).)

(j) [Setting a hearing under section 366.26] At the disposition hearing, the court shall not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

(Subd (j) adopted effective July 1, 1997.)

Rule 1456 as amended effective July 1, 1997; adopted effective January 1, 1991; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, January 1, 1996, and January 1, 1997.

Former Rules
Former rule 1456, similar to the present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1456, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

January 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts to report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

July 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (5) amended rules 1455, 1456, 1460, 1461, and 1462 to conform to statutory changes on the establishment of a guardianship; . . .

1996—The council amended rule 1456 to provide guidance and to eliminate some of the confusion related to defining the rights of alleged fathers in juvenile dependency proceedings.

Rule 1457. Order determining custody (§§304, 361.2, 362.4)

(a) [Order determining custody—termination of jurisdiction] If the juvenile court orders custody to a parent and terminates jurisdiction, the court may make orders for visitation with the other parent. The court may also issue orders to either parent enjoining any action specified in Family Code section 2035(b), (c), or (d).

(1) *(Modification of existing custody orders—new case filings)* The order of the juvenile court shall be filed in an existing nullity, dissolution, legal guardianship, or paternity proceeding. If no custody proceeding is filed or pending, the order may be used as the sole basis to open a file.

(2) *(Preparation and transmission of order)* The order shall be prepared on Judicial Council form Custody Order—Juvenile (JV-200). The court may direct the parent, parent's attorney, county counsel, or the clerk to:

(A) Prepare the order for the court's signature; and

(B) Transmit the order within 10 calendar days after the order is signed to the superior court of the county where a custody proceeding has already been commenced or, if none, to the superior court of the county in which the parent who has been given custody resides.

(3) *(Procedures for filing order—receiving court)* Upon receipt of the juvenile court custody order, the superior court clerk of the receiving county shall immediately file the juvenile court order in the existing proceeding or shall immediately open a file, without a filing fee, and assign a case number.

(4) *(Endorsed filed copy—clerk's certificate of mailing)* Within 15 court days after receiving the order, the clerk of the receiving court shall send by first-class mail an endorsed filed copy of the order showing the case number of the receiving court to (i) the persons whose names and addresses are listed on the order, and (ii) the originating juvenile court, with a completed clerk's certificate of mailing, for inclusion in the child's file.

(b) [Order determining custody—continuation of jurisdiction] If the court orders custody to a parent subject to the jurisdiction of the court with services to one or both parents, the court may direct the order be prepared and filed in the same manner as described in subdivision (a).

Rule 1457 as amended effective January 1, 1994; adopted effective January 1, 1990.

Drafter's Notes
1989—The council adopted new forms required by Statutes of 1989, chapter 137. The legislation amends sections 304 and 362.4 of the Welfare and Institutions Code and provides that when a juvenile court makes a custody order and terminates its jurisdiction, the juvenile court custody order, on a form adopted by the Judicial Council, shall be filed in any nullity, dissolution, legal separation, or paternity proceeding, or used to open a new court file. The legislation also provides that restraining orders issued by the juvenile court under section 304 or 362.4 shall be on a form adopted by the Judicial Council and shall be enforceable in the same manner as any other order issued under section 4359 of the Civil Code.

To implement these procedures, the council adopted new rules 1457 and 1458 to specify the procedure for using and filing the custody order and restraining order forms.

The council also repealed and adopted juvenile court rules 1400-1456 and 1460-1465 to make technical revisions.

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

Rule 1458. Restraining orders

After a petition has been filed under section 300, and until the petition is dismissed or dependency is terminated, the court may issue restraining orders as provided in section 213.5. The restraining orders shall be prepared on Judicial Council form Restraining Order—Juvenile (JV-250).

Rule 1458 amended effective July 1, 1997; previously amended effective January 1, 1994, and January 1, 1995; adopted effective January 1, 1990.

Drafter's Notes
1989—The council adopted new forms required by Statutes of 1989, chapter 137. The legislation amends sections 304 and 362.4 of the Welfare and Institutions Code and provides that when a juvenile court makes a custody order and terminates its jurisdiction, the juvenile court custody order, on a form adopted by the Judicial Council, shall be filed in any nullity, dissolution, legal

separation, or paternity proceeding, or used to open a new court file. The legislation also provides that restraining orders issued by the juvenile court under section 304 or 362.4 shall be on a form adopted by the Judicial Council and shall be enforceable in the same manner as any other order issued under section 4359 of the Civil Code.

To implement these procedures, the council adopted new rules 1457 and 1458 to specify the procedure for using and filing the custody order and restraining order forms.

The council also repealed and adopted juvenile court rules 1400-1456 and 1460-1465 to make technical revisions.

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

Rule 1459. Setting a hearing under section 366.26

At a disposition hearing, a review hearing, or at any other hearing regarding a dependent child, the court shall not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

Rule 1459 amended effective July 1, 1997; previously amended effective Jan. 1, 1994; adopted effective July 1, 1990

Drafter's Notes
1990—The council adopted rule 1459 and amended rule 1463 to clarify the procedure to be followed in proceedings to terminate parental rights, so that a child may be adopted.

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

PART VI. Reviews, Permanent Planning

Renumbered effective January 1, 1996; adopted as Part IV; previously renumbered to be Part V effective January 1, 1995.

Rule 1460. Six-month review hearing

(a) [Requirement for six-month review (§§364, 366)] The case of a dependent child of the court shall be set for review hearing within six months after the date of the declaration of dependency.

(b) [Notice of hearing; service; contents (§§366.2, 366.21)] Not earlier than 30 nor less than 15 calendar days before the hearing date, petitioner shall serve written notice, on Judicial Council form Notice of Review Hearing—Juvenile (JV-280), on all persons required to receive notice under rule 1407, to the child's present custodian, to any court-appointed child advocate, and to counsel of record. The notice of hearing shall be served by personal service or certified mail addressed to the last known address of the person to be notified.

(1) The notice shall contain the information required by rule 1407, the nature of the hearing, and any recommended change in custody or status, and include a statement that the child and the parent or guardian have a right:

(A) To be present at the hearing;

(B) To be represented by counsel at the hearing and, where applicable, of the right to and the procedure for obtaining appointed counsel; and

(C) To present evidence regarding the proper disposition of the case.

(2) The notice to the present custodian of the child shall indicate that the custodian may:

(A) Be present at the hearing; and

(B) Submit written material the custodian considers relevant.

(Subd (b) as amended effective January 1, 1992; repealed and adopted effective January 1, 1990.)

(c) [Report] Before the hearing, petitioner shall make an investigation and file a report describing the services offered the family and progress made, and if relevant, the prognosis for return of the child to the parent or guardian. The report shall contain recommendations for court orders, and the reasons for those recommendations.

At least 10 calendar days before the hearing the petitioner shall file the report, provide copies to the parent or guardian and their counsel and to counsel for the child, and provide a summary of the recommendations to the present custodians of the child and to any court-appointed child advocate.

(d) [Reports] The court shall consider the report prepared by petitioner and the report of any court-appointed child advocate.

(Subd (d) adopted effective January 1, 1992.)

(e) [Determinations—burden of proof (§§366.2, 366.21, 364)]

(1) If the child has not been removed from the custody of the parents or guardians, the court shall terminate its jurisdiction over the child unless the court finds that petitioner has established by a preponderance of the evidence that conditions exist that would justify initial assumption of jurisdiction under section 300 or are likely to exist if supervision is withdrawn.

(2) If the child has been removed from the custody of the parents or guardians, the court shall order the child returned unless the court finds that petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the child. In addition, the court shall consider whether reasonable services have been provided and shall find that:

(A) Reasonable services have been provided; or

(B) Reasonable services have not been provided.

(3) Failure of the parent or guardian to participate in any court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental.

(Subd (e) as relettered effective January 1, 1992; repealed and adopted effective January 1, 1990, as subd (d).)

(f) [Conduct of hearing (§§366.2, 366.21)]

(1) If the child was declared a dependent before January 1, 1989, and the court does not terminate jurisdiction over the child, the court shall order continued services and set the matter for review not more than six months after the date of the order.

(2) If the child was declared a dependent child after January 1, 1989, and the court does not terminate jurisdiction over the child,

(A) The court may set a hearing under section 366.26 within 120 days if:

(i) the child was removed under section 300(g) and the court finds by clear and convincing evidence that the parent's whereabouts are still unknown; or

(ii) the court finds by clear and convincing evidence that the parent has not had contact with the child for six months; or

(iii) the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness; or

(iv) the parent is deceased; or

(v) the child was under the age of three when initially removed and the court finds by clear and convincing evidence that the parent has failed to participate regularly in any court-ordered treatment plan, unless the court finds a substantial probability that the child may be returned within six months or that reasonable services have not been offered or provided.

(B) If the court orders a hearing under section 366.26, the court shall direct that an assessment under section 366.21(i) be prepared.

(C) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review shall be sought only by filing Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party is required to seek an extraordinary writ under rules 39.1B and 1436.5.

(D) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(i) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(ii) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(E) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, shall preclude subsequent review on appeal of the findings and orders made under this rule.

(F) When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, 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 Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file a writ petition and request for record and a Writ Petition—Juvenile form (JV-825) or other petition for extraordinary writ. Within 24 hours of the hearing, notice by first class mail shall be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26. Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and Judicial Council form Notice of Intent to File Writ Petition and Request for Record (JV-820) shall be available in the courtroom, and shall accompany all mailed notices of the advice.

(G) If the court does not set a hearing under section 366.26, the court shall order continued services and set the matter for review not more than six months after the date of the order.

(Subd amended effective July 1, 1997; previously amended and relettered effective Jan. 1, 1992; previously amended effective January 1, 1993, and January 1, 1995; repealed and adopted as subdivision (e) effective January 1, 1990.)

(g) [Noncustodial parents] If the court has previously placed or at this hearing places the child with a noncustodial parent, the court may:

(1) Continue supervision and reunification services;

(2) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, continue supervision, and order family maintenance services; or

(3) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, terminate jurisdiction, and direct that Judicial Council form Custody Order—Juvenile (JV-200) be prepared and filed under rule 1457.

(Subd (g) as amended effective July 1, 1995; repealed and adopted as effective January 1, 1990 as subd (f); relettered effective January 1, 1992.)

(h) [Setting a hearing under section 366.26] At the six-month review hearing, the court shall not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

(Subd (h) adopted effective July 1, 1997.)

Rule 1460 as amended effective July 1, 1997; adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, and July 1, 1995.

Former Rule

Former rule 1460, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes

January 1995—In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

July 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (5) amended rules 1455, 1456, 1460, 1461, and 1462 to conform to statutory changes on the establishment of a guardianship;

(6) further amended rules 1460, 1461, and 1462 in response to statutory changes requiring the court to make findings on the record stating the basis for custody awards under the statute; . . .

Rule 1461. Twelve-month review hearing

(a) [Requirement for 12-month review] The case of any dependent child shall be set for review hearing within 12 months after the date of the order declaring dependency.

(b) [Children declared dependents before January 1, 1989] The following provisions apply to children declared dependents before January 1, 1989.

(1) *(Setting for hearing; notice (§§366.2, 366.25))* If a child was not returned at the six-month review, a permanency planning hearing shall be held within 12 months after the original disposition order removing custody from the parents or guardians or placement under section 16507.4, but no later than 18 months from the date of the original detention order. Notice of the hearing shall be given as provided in rule 1460.

(2) *(Conduct of hearing)* At the hearing, the court shall state on the record that the court has read and considered the report of petitioner, the report of any court-appointed child advocate, and other evidence, and shall proceed as follows:

(A) If the child has not been removed from the custody of the parent or guardian, the court shall terminate its jurisdiction over the child unless the court finds that petitioner has established, by a preponderance of the evidence, that conditions exist which would justify initial assumption of jurisdiction under section 300, or are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate in a court-ordered treatment program shall be prima facie evidence that continued supervision is necessary or that return would be detrimental.

(B) If the child has been removed from the custody of the parent or guardian, the court shall order the child returned to the parent or guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the child. Failure of the parent or guardian to participate in a court-ordered treatment program shall be prima facie evidence that continued supervision is necessary or that return would be detrimental.

(C) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court may:

(i) Continue supervision and reunification services; or

(ii) Order custody to that parent, continue supervision, and order family maintenance services; or

(iii) Order custody to the noncustodial parent, terminate jurisdiction, and direct that Judicial Council form Custody Order—Juvenile (JV-200) be prepared and filed under rule 1457.

(D) If the court does not order return home, the court shall specify the factual basis for its finding of risk of detriment. The court shall order a permanent plan unless the court determines that there is a substantial probability of return within 18 months of the original detention order.

(E) The court shall consider whether reasonable services have been provided and shall find that:

(i) Reasonable services have been provided; or

(ii) Reasonable services have not been provided.

(3) *(Permanent plan—determinations and orders (§366.25))* If the court determines that there is no substantial probability of return within 18 months of the original detention order or if 18 months have elapsed, the court shall develop a plan to provide the child with a stable, permanent home. In developing the plan, the court shall determine whether it is likely that the child can or will be adopted and, if it so finds, the court shall determine whether one or more of the following conditions exist:

(A) The parent or guardian has maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) The child is 10 years of age or older and objects to termination of parental rights.

(C) The child's foster parent or relatives are unable to adopt the child under circumstances described in section 366.25(d)(1)(C).

If the court finds that none of the conditions exists, the court shall authorize the initiation of proceedings under part 4 (commencing with section 7800) of division 12 of the Family Code.

(4) *(If adoption not appropriate—permanency plan)* If no action under part 4 (commencing with section 7800) of division 12 of the Family Code is authorized:

(A) The court shall determine if one or more adults are available and eligible to become legal guardian of the child, and if so, the court shall authorize the initiation of guardianship proceedings or proceed under rule 1464.

(B) If no adult is available to serve as legal guardian, the court shall order placement in a stable and permanent home environment. The child shall remain with a foster parent with whom the child has substantial psychological ties, if removal would be seriously detrimental to the child.

(C) If no adult is available to serve as legal guardian and there is no suitable foster home, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, which shall proceed pursuant to sections 366.25(d)(3)(B) and (C).

(5) A judgment, order, or decree authorizing the filing of a petition under former Civil Code section 232, part 4 (commencing with section 7800) of division 12 of the Family Code, or the initiation of guardianship proceedings, is not an appealable order. Review shall be sought only by filing Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ.

(Subd (b) amended effective January 1, 1994; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993.)

(c) [Children declared dependents after January 1, 1989] The following provisions apply to children declared dependents after January 1, 1989.

(1) *(Setting for hearing; notice (§366.21))* If a child was not returned at the six-month review, a review shall be held 12 months after the original disposition order removing custody from the parent or guardian or placement under section 16507.4, but no later than 18 months from the date of the original detention order. Notice of the hearing shall be given as provided in rule 1460.

(2) *(Conduct of hearing)* At the hearing, the court shall state on the record that the court has read and considered the report of petitioner, the report of any court-appointed child advocate, and other evidence, and shall proceed as follows:

(A) If the child has been removed from the custody of the parent or guardian, the court shall order the child returned to the parent or guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the

child. Failure of the parent or guardian to participate in a court-ordered treatment program shall be prima facie evidence that continued supervision is necessary or that return would be detrimental.

(B) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court may:

(i) Continue supervision and reunification services; or

(ii) After stating on the record or in writing the factual basis for the order, order custody to that parent, continue supervision, and order family maintenance services; or

(iii) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, terminate jurisdiction, and direct that Judicial Council form Custody Order—Juvenile (JV-200) be prepared and filed under rule 1457.

(C) If the court does not order return home, the court shall specify the factual basis for its finding of risk of detriment. The court shall order a permanent plan unless the court determines that there is a substantial probability of return within 18 months of the original detention order.

(D) The court shall consider whether reasonable services have been provided. Evidence that the child has been placed with a relative or foster family that is eligible to adopt, or has been placed in a preadoptive home, shall not be sufficient to support a finding that reasonable services have not been offered or provided. The court shall find that:

(i) Reasonable services have been provided; or

(ii) Reasonable services have not been provided.

(3) *(Determinations and orders)* The court shall proceed as follows:

(A) Continue the case for review hearing to a date not later than 18 months from the original detention order, if the court finds a substantial probability of return within that time or that reasonable services have not been provided; or

(B) Order that the child remain in long-term foster care, if it finds by clear and convincing evidence already presented that the child is not adoptable and there is no one to serve as guardian; or

(C) Order a hearing under section 366.26 within 120 days, if the court finds there is no substantial probability of return within 18 months of the original detention order, and finds by clear and convincing evidence that reasonable services have been provided to the parent or guardian.

(D) If the court orders a hearing under section 366.26, termination of reunification services shall also be ordered. Visitation shall continue unless the court finds it would be detrimental to the child.

(E) If the court orders a hearing under section 366.26, the court shall direct that an assessment be prepared as stated in section 366.21(i).

(F) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review shall be sought only by filing Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party is required to seek an extraordinary writ under rules 39.1B and 1436.5.

(G) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(i) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(ii) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(H) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, shall preclude subsequent review on appeal of the findings and orders made under this rule.

(I) When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, 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 Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file writ petition and request for record and a Writ Petition—Juvenile form (JV-825) or other petition for extraordinary writ. Within 24 hours of the hearing, notice by first class mail shall be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26. Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and Judicial Council form Notice of Intent to File Writ Petition and Request for Record (JV-820) shall be available in the courtroom, and shall accompany all mailed notices of the advice.

(Subd (c) amended effective July 1, 1997; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, and July 1, 1995; repealed and adopted effective January 1, 1990.)

(d) [Setting a hearing under section 366.26] At the 12-month review hearing, the court shall not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction

of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

(Subd (d) adopted effective July 1, 1997.)

Rule 1461 amended effective July 1, 1997; adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, and July 1, 1995.

Former Rule
Former rule 1461, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Note
1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

January 1995—In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor

implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

July 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (5) amended rules 1455, 1456, 1460, 1461, and 1462 to conform to statutory changes on the establishment of a guardianship;

(6) further amended rules 1460, 1461, and 1462 in response to statutory changes requiring the court to make findings on the record stating the basis for custody awards under the statute; . . .

Rule 1462. Eighteen-month review hearing

(a) [Children declared dependents before January 1, 1989] The following provisions apply to children declared dependents before January 1, 1989.

(1) *(Setting for hearing; notice (§§366.2, 366.25))* If a child was not returned at the 12-month review, a permanency planning hearing shall be held within 12 months after the original disposition order removing custody from the parents or guardians or placement under section 16507.4, but no later than 18 months from the date of the original detention order. Notice of the hearing shall be given as provided in rule 1460.

(2) *(Conduct of hearing)* At the hearing, the court shall state on the record that the court has read and considered the report of petitioner, the report of any court-appointed child advocate, and other evidence, and shall proceed as follows:

(A) If the child has not been removed from the custody of the parent or guardian, the court shall terminate its jurisdiction over the child unless the court finds that petitioner has established, by a preponderance of the evidence, that conditions exist which would justify initial assumption of jurisdiction under section 300, or are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate in a court-ordered treatment program shall be prima facie evidence that continued supervision is necessary or that return would be detrimental.

(B) If the child has been removed from the custody of the parent or guardian, the court shall order the child returned to the parent or guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the child. Failure of the parent or guardian to participate in a court-ordered treatment program shall be prima facie evidence that continued supervision is necessary or that return would be detrimental.

(C) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court may:

(i) Continue supervision and reunification services; or

(ii) Order custody to that parent, continue supervision, and order family maintenance services; or

(iii) Order custody to the noncustodial parent, terminate jurisdiction, and direct that Judicial Council form Custody Order—Juvenile (JV-200) be prepared and filed under rule 1457.

(D) If the court does not order return home, the court shall specify the factual basis for its finding of risk of detriment. The court shall order a permanent plan to provide the child with a stable, permanent home.

(E) The court shall consider whether reasonable services have been provided and shall find that:

(i) Reasonable services have been provided; or

(ii) Reasonable services have not been provided.

(3) *(Permanent plan—determinations and orders (§366.25))* If the court determines that there is no substantial probability of return within 18 months of the original detention order or if 18 months have elapsed, the court shall develop a plan to provide the child with a stable, permanent home. In developing the plan, the court shall determine whether it is likely that the child can or will be adopted and, if it so finds, the court shall determine whether one or more of the following conditions exist:

(A) The parent or guardian has maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) The child is 10 years of age or older and objects to termination of parental rights.

(C) The child's foster parent or relatives are unable to adopt the child under circumstances described in section 366.25(d)(1)(C).

If the court finds that none of the conditions exists, the court shall authorize the initiation of proceedings under part 4 (commencing with section 7800) of division 12 of the Family Code.

(4) *(If adoption not appropriate—permanency plan)* If no action under part 4 (commencing with section 7800) of division 12 of the Family Code is authorized:

(A) The court shall determine if one or more adults are available and eligible to become legal guardian of the child, and if so, the court shall authorize the initiation of guardianship proceedings or proceed under rule 1464.

(B) If no adult is available to serve as legal guardian, the court shall order placement in a stable and permanent home environment. The child shall remain with a foster parent with whom the child has substantial psychological ties, if removal would be seriously detrimental to the child.

(C) If no adult is available to serve as legal guardian and there is no suitable foster home, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, which shall proceed pursuant to sections 366.25(d)(3)(B) and (C).

(5) A judgment, order, or decree authorizing the filing of a petition under former Civil Code section 232, part 4 (commencing with section 7800) of division 12 of the Family Code, or the initiation of guardianship proceedings, is not an appealable order. Review shall be sought only by filing Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ.

(Subd (a) as amended effective January 1, 1994; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993.)

(b) [Children declared dependents after January 1, 1989] The following provisions apply to children declared dependents after January 1, 1989.

(1) *(Setting for hearing; notice (§366.21))* If a child was not returned at the six-month review, a review shall be held 12 months after the original disposition order removing custody from the parent or guardian or placement under section 16507.4, but no later than 18 months from the date of the original detention order. Notice of the hearing shall be given as provided in rule 1460.

(2) *(Conduct of hearing)* At the hearing the court shall state on the record that the court has read and considered the report of petitioner, the report of any court-appointed child advocate, and other evidence, and shall proceed as follows:

(A) If the child has been removed from the custody of the parent or guardian, the court shall order the child returned to the parent or guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the child. Failure of the parent or guardian to participate in a court-ordered treatment program shall be prima facie evidence that continued supervision is necessary or that return would be detrimental.

(B) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court may:

(i) Continue supervision; or

(ii) After stating on the record or in writing the factual basis for the order, order custody to that parent, continue supervision, and order family maintenance services; or

(iii) After stating on the record or in writing the factual basis for the order, order custody to the noncustodial parent, terminate jurisdiction, and direct that Judicial Council form Custody Order—Juvenile (JV-200) be prepared and filed under rule 1457.

(C) If the court does not order return, the court shall specify the factual basis for its finding of risk of detriment, terminate reunification services, and

(i) Order that the child remain in long-term foster care, if it finds by clear and convincing evidence already presented that the child is not adoptable and there is no one to serve as guardian; or

(ii) Order a hearing under section 366.26 within 120 days.

(D) Visitation shall continue unless the court finds it would be detrimental to the child.

(E) If the court orders a hearing under section 366.26, the court shall direct that an assessment be prepared as stated in section 366.22(b).

(F) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review shall be sought only by filing Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party is required to seek an extraordinary writ under rules 39.1B and 1436.5.

(G) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(i) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(ii) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ which were supported by an adequate record.

(H) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, shall preclude subsequent review on appeal of the findings and orders made under this rule.

(I) When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, 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 Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file writ petition and request for record and a Writ Petition—Juvenile form (JV-825) or other petition for extraordinary writ. Within 24 hours of the hearing, notice by first class mail shall be provided by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under section 366.26. Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and Judicial Council form Notice of Intent to File Writ Petition and Request for Record form (JV-820) shall be available in the courtroom, and shall accompany all mailed notices of the advice.

(Subd (b) as amended effective July 1, 1995; repealed and adopted effective January 1, 1990; previously amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1995.)

(c) [Setting a hearing under section 366.26] At the 18-month review hearing, the court shall not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction

of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department.

(Subd (c) adopted effective July 1, 1997.)

Rule 1462 amended effective July 1, 1997; adopted effective January 1, 1990; previously amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, and July 1, 1995.

Former Rule
Former rule 1462, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1992—The council amended rule 1462 to conform to statute to clarify that the court cannot continue reunification services at the 18-month review hearing.

1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

January 1995—In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition—Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, 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 new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the

trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

July 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (5) amended rules 1455, 1456, 1460, 1461, and 1462 to conform to statutory changes on the establishment of a guardianship;

(6) further amended rules 1460, 1461, and 1462 in response to statutory changes requiring the court to make findings on the record stating the basis for custody awards under the statute; . . .

Rule 1463. Selection of permanent plan (§ 366.26)

(a) [Application of rule] This rule applies to children who have been declared dependents after January 1, 1989. For those dependents, only section 366.26 and division 12, part 3, chapter 5 (commencing with section 7660) of the Family Code, or Family Code sections 8604, 8605, 8606, and 8700 shall apply for terminating parental rights. Part 4 (commencing with section 7800) of division 12 of the Family Code or former Civil Code section 232 shall not apply. The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent, or the rights of the other parent have been terminated under former Civil Code section 224, 224m, 232, or 7017, or division 12, part 3, chapter 5 (commencing with section 7660) or part 4 (commencing with section 7800) of division 12 of the Family Code, or Family Code section 8604, 8605, or 8606 or the other parent has relinquished custody of the child to the welfare department. Only section 366.26 shall apply for establishing legal guardianship.

(Subd (a) as amended effective January 1, 1994.)

(b) [Notice of hearing (§366.23)] Notice shall be given to the child if 10 years or older, the mother, presumed and alleged fathers, any court-appointed child advocate, and counsel of record, on Judicial Council form Notice of Hearing on Selection of a Permanent Plan—Juvenile (JV-300).

(1) *(Time for notification)* Notice by publication shall be completed at least 30 days before the date of the hearing. All other notice shall be completed at least 45 days before the date of the hearing.

(2) *(Recommendation for termination of parental rights)* If petitioner recommends termination of parental rights and did not include the recommendation in the notice under subdivision (b)(1), all those entitled to notice shall also be so notified by first-class mail at least 15 days before the hearing.

(A) [Form of notice to parent] If the parent is present at the hearing at which the court schedules the hearing under section 366.26, the court shall advise the parent of the time and place of the

hearing, order the parent to appear, and direct that the parent receive notice by first-class mail at the parent's usual place of residence or business. Otherwise, notice to the parent shall be:

(i) by personal service;

(ii) by delivery to a competent adult at the parent's usual place of residence or business, followed by notice to the parent by first-class mail at that address;

(iii) by certified mail, return receipt requested, if the parent's usual place of residence or business is outside the state;

(iv) by certified mail to the parent's counsel of record, return receipt requested, ordered by the court after a determination by the court, based on an affidavit prepared and filed by petitioner at the hearing at which the court schedules the hearing under 366.26 or thereafter, that there has been due diligence in attempting to locate and serve the parent; or

(v) by publication ordered by the court after a determination by the court, based on an affidavit prepared and filed by the petitioner at the hearing at which the court schedules the hearing under section 366.26, or at least 75 days before the hearing, that there has been due diligence in attempting to locate and serve the parent, and that the parent has no counsel of record.

(B) [Notice to the child] Notice to the child, 10 years or older, shall be by first-class mail.

(C) [Notice to counsel of record] Notice to counsel of record shall be by first-class mail.

(D) [Notice to grandparents] If the court orders notice by certified mail to the parent's counsel of record, or by publication, the court shall order that notice by first-class mail be given to grandparents whose names and addresses are known.

(E) [Notice to tribe] Notice to the tribe of an Indian child shall be by first-class mail.

(3) *(Recommendation for guardianship or long-term care)* If the recommendation is limited to legal guardianship or long-term foster care, notice may be served as described in subdivision (b)(2) of this rule, or by first-class mail to the parent's usual residence or place of business. If the court determines that there has been due diligence in attempting to locate and serve the parent, the court shall order that notice by first-class mail be given to the grandparents whose names and addresses are known, and without further notice to the absent parent.

(4) *(Parent located)* If the residence of a parent becomes known to the court or the petitioner, notice shall be served immediately under subdivision (b)(2) of this rule.

(Subd (b) as amended effective July 1, 1995; adopted effective January 1, 1991; and previously amended effective January 1, 1992, July 1, 1992.)

(c) [Report] Before the hearing, petitioner shall prepare an assessment under section 366.21(i). At least 10 calendar days before the hearing the petitioner shall file the assessment, provide copies to the parent or guardian and all counsel of record, and provide a summary of the

recommendations to the present custodians of the child and to any court-appointed child advocate, and to the tribe of an Indian child.

(Subd (c) as amended effective July 1, 1995; adopted effective January 1, 1992.)

(d) [Conduct of hearing] At the hearing, the court shall state on the record that the court has read and considered the report of petitioner, the report of any court-appointed child advocate, and other evidence, and shall proceed as follows:

(1) Order parental rights terminated and the child placed for adoption if the court determines, by clear and convincing evidence, that it is likely the child will be adopted, unless:

(A) At each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided; or

(B) The court finds by a preponderance of the evidence that termination would be detrimental to the child for one of the following reasons:

(i) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship; or

(ii) A child 12 years of age or older objects to termination of parental rights; or

(iii) The child is placed in a residential treatment facility and adoption is unlikely or undesirable while the child remains in that placement, and continuation of parental rights will not prevent the finding of an adoptive home if the parents cannot resume custody when residential care is no longer needed; or

(iv) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, but who is willing and capable of providing the child with a stable and permanent home, and removal from the home of the relative or foster parent would be detrimental to the well-being of the child; or

(C) Termination of parental rights or adoption of the child is not in the interests of the child.

(2) The party claiming that termination of parental rights would be detrimental to the child shall have the burden of proving the detriment.

(3) If termination of parental rights would not be detrimental to the child, but the child is difficult to place for adoption because the child (i) is a member of a sibling group that should stay together; or (ii) has a diagnosed medical, physical, or mental handicap; or (iii) is seven years of age or older and no prospective adoptive parent is identified or available, the court may, without terminating parental rights, identify adoption as a permanent placement goal and order the public agency responsible for seeking adoptive parents to make efforts to locate an appropriate adoptive family for a period not to exceed 90 days. After that period the court shall hold another hearing and proceed according to paragraph (1), (2), (4), or (5) of this subdivision.

(4) If the court finds that paragraph (1)(A), (1)(B), or (1)(C) of this subdivision applies, the court shall appoint the present custodian or other appropriate person to become the child's legal guardian, or shall order the child to remain in long-term foster care. Legal guardianship shall be given preference over long-term foster care when it is in the interest of the child and a suitable guardian can be found. The child shall not be removed from the home of a foster parent or relative who is not willing to become a legal guardian, but who is willing and capable of providing a stable and permanent home for the child, and with whom the child has substantial psychological ties, if the court finds the removal would be seriously detrimental to the emotional well-being of the child.

The court shall make an order for visitation with the parent or guardian unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the child.

(5) If no adult is available to become legal guardian, and no suitable foster home is available, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, subject to further orders of the court.

(Subd (d) as amended effective July 1, 1994; repealed and adopted effective January 1, 1991, as subd (c); previously amended and relettered effective January 1, 1992.)

(e) [Procedures—termination of parental rights]

(1) The court may not terminate parental rights if a review of the prior findings and orders reveals that at each and every prior hearing at which the court was required to consider reasonable efforts or services the court found that reasonable efforts had not been made or that reasonable services had not been offered or provided. If at any prior hearing the court found that reasonable efforts had been made or that reasonable services had been offered or provided, the court may terminate parental rights.

(2) An order of the court terminating parental rights under section 366.26 shall be conclusive and binding upon the child, the parent, and all other persons who have been served under the provisions of section 366.23. The order may not be set aside or modified by the court, except as provided in rules 1416, 1417, and 1418 with regard to orders by a referee.

(3) If the court declares the child free from custody and control of the parents, the court shall at the same time order the child referred to a licensed county adoption agency for adoptive placement. A petition for adoption of the child may be filed and heard in the juvenile court and shall not be heard until the appellate rights of the natural parents have been exhausted.

(Subd (e) as amended effective January 1, 1995; adopted effective January 1, 1991; relettered effective January 1, 1992; previously amended effective July 1, 1992.)

(f) [Procedures—legal guardianship] The proceedings for appointment of a legal guardian for a dependent child of the juvenile court shall be in the juvenile court as provided in rule 1465.

(Subd (f) amended effective July 1, 1997; relettered effective January 1, 1992; repealed and adopted effective January 1, 1991, as subd (e).)

(g) [Purpose of termination of parental rights] The purpose of termination of parental rights is to free the dependent child for adoption. Therefore, the court shall not terminate the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department. The rights of the mother, any presumed father, any alleged father, and any unknown father or fathers must be terminated in order to free the child for adoption.

(Subd (g) adopted effective July 1, 1997.)

(h) [Advice of appeal rights] The court shall advise all parties of their appeal rights as provided in rule 1435.

(Subd (h) relettered effective July 1, 1997; previously relettered effective January 1, 1992, as subd (g); repealed and adopted effective January 1, 1991, as subd (f).)

Rule 1463 as amended effective July 1, 1997; adopted effective January 1, 1991; previously amended effective January 1, 1992, July 1, 1992, January 1, 1994, July 1, 1994, January 1, 1995, and July 1, 1995.

Former Rules
Former rule 1463, similar to the present rule, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1463, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1990—The council adopted rule 1459 and amended rule 1463 to clarify the procedure to be followed in proceedings to terminate parental rights, so that a child may be adopted.

1992—See notes following rule 1401.

January 1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

July 1994—Following the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) added rules 270 and 1437 on emancipation procedures; (2) added rule 1424 on guidelines for Court Appointed Special Advocate (CASA) programs, and repealed section 24.5 of the Standards of Judicial Administration; (3) amended rule 1463 on selection of a permanent plan to conform to statutory procedures and clarify procedures; and (4) amended rule 1465 on hearings subsequent to a permanent plan to clarify procedures on terminating guardianships established under section 366.25 or 366.26 of the Welfare and Institutions Code.

January 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) amended juvenile court rules 1404, 1407, 1444, 1445, 1456, 1458, and 1463 to conform to recent statutory changes; . . .

July 1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (4) amended rules 1431, 1432, and 1463 to ensure proper notice consistent with the Indian Child Welfare Act and rule 1439; . . .

Rule 1464. Adoption

(a) [Procedures—Adoption] The petition for the adoption of a dependent child who has been freed for adoption may be filed in the juvenile court with jurisdiction over the dependency. If filed in juvenile court, the petition shall be completed on Judicial Council form Petition for Adoption of Dependent Child—Juvenile (JV-360) and shall be verified. A petitioner seeking to adopt an Indian child shall also complete Judicial Council form Attachment to Petition for Adoption of Dependent Child—Adoption of an Indian Child (Juvenile) (JV-363). The clerk shall open a confidential adoption file for each child and this file shall be separate and apart from the dependency file, with an adoption case number different from the dependency case number. The clerk shall provide to petitioner Judicial Council form Consent and Agreement to Adoption—Juvenile (JV-361) and Judicial Council form Order of Adoption—Juvenile (JV-362).

(Subd (a) as amended effective January 1, 1996.)

(b) [Notice] Notice of the adoption hearing should be given to any attorney of record for the child, any court-appointed child advocate, and the tribe of an Indian child. The clerk shall notice the child welfare agency of the adoption hearing.

(c) [Hearing] The proceeding for adoption shall then be heard in juvenile court once appellate rights have been exhausted. Petitioner and the child must be present at the hearing. The hearing may be heard by a referee if the referee is acting as a temporary judge.

(d) [Record] The record shall reflect that the court has read and considered the assessment prepared for the hearing held under section 366.26 and as required by section 366.22(b), the report of any court-appointed child advocate, and any other reports or documents admitted into evidence.

(e) [Assessment] The preparer of the assessment may be called and examined by any party to the adoption proceeding.

(f) [Consent] At the hearing, each adoptive parent and the child, if 12 years of age or older, shall execute Judicial Council form Consent and Agreement to Adoption (JV-361) in the presence of and acknowledged by the court.

(g) [Dismissal of jurisdiction] If the petition for adoption is granted, the court shall dismiss the dependency, terminate jurisdiction over the child, and vacate any previously set review hearing dates. A completed Judicial Council form Termination of Dependency (JV-364) shall be filed in the child's juvenile dependency file.

Rule 1464 as amended effective January 1, 1996; adopted effective July 1, 1995.

Former Rules
Former rule 1464 was adopted effective January 1, 1991, and renumbered to be rule 1465 effective July 1, 1995.

Former rule 1464, similar to present rule 1465, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1464, similar to present rule 1465, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (7) added rule 1464 on adoptions of dependent children and renumbered existing rules 1464 and 1465 accordingly.

1996—The council amended rule 1464 and revised the following forms to include the word "Juvenile" to clarify that the forms are for use in juvenile dependency proceedings: Petition for Adoption of Dependent Child (JV-360); Consent and Agreement to Adoption (JV-361); Order of Adoption (JV-362); Attachment to Petition for Adoption—Adoption of an Indian Child (JV-363); and Termination of Dependency (JV-364). The council also amended rule 1464 to require verification of the adoption petition.

Rule 1465. Legal guardianship

(a) [Proceedings in juvenile court (§§366.25, 366.26)] The proceedings for the appointment of a legal guardian for a dependent child shall be in the juvenile court. The request for appointment of a guardian shall be included in the social study report prepared by the county welfare department or in the assessment prepared for the hearing under section 366.26. Neither a separate petition nor a separate hearing shall be required.

(Subd (a) amended effective July 1, 1997.)

(b) [Notice; hearing]

(1) For children declared dependents before January 1, 1989, notice for the guardianship hearing shall be given under section 366.25, and the hearing shall proceed under that section.

(2) For children declared dependents after January 1, 1989, notice for the guardianship hearing shall be given under section 366.23, and the hearing shall proceed under section 366.26.

(c) [Conduct of hearing]

(1) Before appointing a guardian, the court shall read and consider the social study report specified in section 366.25 or 366.26 and note its consideration in the minutes of the court.

(2) The preparer of the social study report may be called in and examined by any party to the proceedings.

(d) [Findings and orders]

(1) If the court finds that legal guardianship is the appropriate permanent plan, the court shall appoint the guardian and order the clerk to issue letters of guardianship.

(2) The court may issue orders regarding visitation to the child by a parent or other relative.

(3) On appointment of a guardian under section 366.25 or 366.26, the court may terminate dependency.

(e) [Advice of rights] The court shall advise all parties of their appeal rights as provided in rule 1435.

Rule 1465 as renumbered effective July 1, 1995; adopted effective January 1, 1991, as rule 1464.

Former Rules
Former rule 1465 amended effective July 1, 1997; adopted effective January 1, 1991; previously amended effective January 1, 1992; January 1, 1993, January 1, 1994, July 1, 1994; renumbered to be rule 1466 effective July 1, 1995.

Former rule 1465, similar to present rule 1466, was adopted effective January 1, 1990, and repealed effective January 1, 1991.

Former rule 1465, similar to present rule 1466, was adopted effective July 1, 1989, and repealed effective January 1, 1990.

Drafter's Notes
1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (7) added rule 1464 on adoptions of dependent children and renumbered existing rules 1464 and 1465 accordingly.

1996—The council amended rule 1464 and revised the following forms to include the word "Juvenile" to clarify that the forms are for use in juvenile dependency proceedings: Petition for Adoption of Dependent Child (JV-360); Consent and Agreement to Adoption (JV-361); Order of Adoption (JV-362); Attachment to Petition for Adoption—Adoption of an Indian Child (JV-363);

and Termination of Dependency (JV-364). The council also amended rule 1464 to require verification of the adoption petition.

Rule 1466. Hearings subsequent to a permanent plan (§§ 366.25, 366.26, 366.3)

(a) [Review hearings—adoption and guardianship] Following the establishment of a plan for termination of parental rights or legal guardianship under section 366.25, or the order for termination of parental rights under section 366.26, the court shall retain jurisdiction and conduct review hearings every six months to ensure the expeditious completion of the adoption or guardianship. At the review hearing, the court shall consider the report of the petitioner and the report of any court-appointed child advocate. When adoption is granted, the court shall terminate its jurisdiction. When legal guardianship is granted, the court may continue dependency jurisdiction if it is in the best interests of the child, or the court may terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship. Notice of the hearing shall be given as provided in rule 1460 and to the guardian if one has been appointed. Parents are to be given notice of all hearings unless their parental rights have been terminated.

(Subd (a) amended effective January 1, 1993; repealed and adopted effective January 1, 1991; previously amended January 1, 1992.)

(b) [Review hearings—foster care] Following the establishment of a plan for long-term foster care, or when the court has authorized the filing of a petition under former Civil Code section 232, or Part 4 (commencing with section 7800) of Division 12 of the Family Code or freed the child for adoption but the child is not placed in an adoptive home, review hearings shall be conducted every six months by the court or by a local review board. At the review hearing, the court or review board shall consider the report of the petitioner and the report of any court-appointed child advocate. No less frequently than once every 12 months, the court shall conduct a review of the previously ordered permanent plan to consider whether the plan continues to be appropriate for the child. The 12-month review may be combined with the six-month review. If circumstances have changed since the permanent plan was ordered, the court may order a new permanent plan under section 366.25 or 366.26 at any subsequent hearing, or any party may seek a new permanent plan by a motion filed under rule 1432. Notice of the hearing shall be given as provided in rule 1460. Parents are to be given notice of all hearings unless their parental rights have been terminated. The court shall continue the child in foster care unless the parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order reunification services for a period not to exceed six months.

(Subd (b) amended effective January 1, 1998; repealed and adopted effective January 1, 1991; previously amended effective January 1, 1992, and January 1, 1994.)

(c) [Hearing on petition to terminate guardianship or modify guardianship orders] A petition to terminate a guardianship established by the juvenile court, to appoint a successor guardian, or to modify or supplement orders concerning the guardianship shall be filed in juvenile court. The procedures described in rule 1432 shall be followed, and Judicial Council forms

Juvenile Dependency Petition (JV-100) and Modification Petition Attachment (JV-180) shall be utilized.

(1) Proceedings on a petition to terminate a guardianship established under section 366.25 or 366.26 shall be heard in the juvenile court. If dependency was terminated at the time of or subsequent to the appointment of the guardian, and dependency is later declared in another county, proceedings to terminate the guardianship may be held in the juvenile court with current dependency jurisdiction.

(2) Not less than 15 court days before the hearing date, the petitioner shall serve notice of the hearing on the department of social services, the guardian, the child, if 10 years or older, parents whose parental rights have not been terminated, the court that established the guardianship, if in another county, and counsel of record for those entitled to notice.

(3) At the hearing on the petition to terminate the guardianship, the court may do one of the following:

(A) Deny the petition to terminate guardianship; or

(B) Deny the petition and request the county welfare department to provide services to the guardian and the ward for the purpose of maintaining the guardianship, consistent with section 301; or

(C) Grant the petition to terminate guardianship.

(4) If the petition is granted and the court continues or resumes dependency, the court shall order that a new plan be developed to provide stability and permanency to the child. Unless the court has already scheduled a hearing to review the child's status, the court shall conduct a hearing within 60 days. Parents whose parental rights have not been terminated shall be notified of the hearing on the new plan. The court may consider further efforts at reunification only if the parent proves, by a preponderance of the evidence, that the efforts would be the best alternative for the child.

(5) If the court terminates a guardianship established in another county, the clerk of the county of current dependency jurisdiction shall transmit a certified copy of the order terminating guardianship within 15 days to the court that established the original guardianship.

(Subd (c) amended effective July 1, 1994; previously amended effective January 1, 1993.)

Rule 1466 amended effective January 1, 1998; adopted effective January 1, 1991, as rule 1465; renumbered effective July 1, 1995; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, July 1, 1994.

Advisory Committee Comment

1998—These changes conform the rule to recent statutory changes regarding court processes related to foster care review hearings and guardianship hearings.

Drafter's Notes
January 1994—The Family and Juvenile Law Standing Advisory Committee recommended revisions to the juvenile court rules in conjunction with a number of new and revised forms. Most of the revisions are to conform the existing rules with the new Family Code.

July 1994—Following the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council: (1) added rules 270 and 1437 on emancipation procedures; (2) added rule 1424 on guidelines for Court Appointed Special Advocate (CASA) programs, and repealed section 24.5 of the Standards of Judicial Administration; (3) amended rule 1463 on selection of a permanent plan to conform to statutory procedures and clarify procedures; and (4) amended rule 1465 on hearings subsequent to a permanent plan to clarify procedures on terminating guardianships established under section 366.25 or 366.26 of the Welfare and Institutions Code.

1995—On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council:

. . . (7) added rule 1464 on adoptions of dependent children and renumbered existing rules 1464 and 1465 accordingly.

1998—This rule is amended to conform to recent statutory changes regarding court processes related to foster care review hearings and guardianship hearings. The change provides for court review of a previously ordered permanent plan every 12, rather than 18, months, and allows this review to be combined with a six-month review.

CHAPTER 8. Cases Petitioned Under Sections 601 and 602

Adopted effective July 1, 1989, as Chapter 7. Renumbered effective July 1, 1994.

PART I. Initial Appearance

Part I, entitled "Initial Appearance," consisting of rules 1470-1476, was adopted effective January 1, 1998. Former Part I, entitled "Detention," consisting of former rules 1470-1478 was repealed effective January 1, 1998.

Rule 1470. Service and notice

(a) [Child detained (§§ 656, 660)] Immediately upon the filing of a petition, the clerk, the probation officer, or the district attorney shall attempt to provide written or oral notice of the detention hearing at least 24 hours prior to the time set for the hearing to the child and to each parent or guardian whose whereabouts can be ascertained by due diligence. If there is no parent or guardian residing in California, or if the residence is unknown, notice shall be provided to any adult relative residing within the county, or if none, to the adult relative residing nearest to the court.

The petition shall be served at least 24 hours prior to the detention hearing, or at the detention hearing to those present. Service on the child's attorney shall constitute service on the child.

(b) [Child not detained (§§ 656, 660)] If the child is not detained, the clerk of the juvenile court shall cause the notice and copy of the petition to be served personally or by first class mail on the child, each parent or guardian, and the attorney of record at least 10 days prior to the time set for the initial hearing.

(1) Failure to appear or respond to the notice shall not cause the child to be detained or arrested.

(2) If, after notice by first class mail, the child fails to appear at the hearing, the court shall order personal service and notice.

(3) Service may be waived by any person by a voluntary appearance reported in the court minutes or orders, or by a written waiver filed with the court prior to the hearing.

(4) Service on the child's attorney shall constitute service on the child's parent or guardian.

Rule 1470 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1471. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing

(a) [Child not detained; filing petition, setting hearing] If the child is not taken into custody and the authorized petitioner (district attorney or probation officer) determines that a petition concerning the child should be filed, the petition shall be filed with the clerk of the juvenile court as soon as possible. The clerk shall set an initial hearing on the petition within 15 court days.

(b) [Time limit on custody; filing petition (§§ 604, 631, 631.1)] A child shall be released from custody within 48 hours, excluding noncourt days, after first being taken into custody unless a

petition has been filed either within that time or prior to the time the child was first taken into custody.

(c) [Time limit on custody—willful misrepresentation of age (§ 631.1)] If the child willfully misrepresents the child's age to be 18 years or older, and this misrepresentation causes an unavoidable delay in investigation that prevents the filing of a petition or of a criminal complaint within 48 hours, excluding noncourt days, after the child has been taken into custody, the child shall be released unless a petition or complaint has been filed within 48 hours, excluding noncourt days, from the time the true age is determined.

(d) [Time limit on custody—certification of child detained in custody (§ 604)] A child shall be released from custody within 48 hours, excluding noncourt days, after certification to juvenile court under rules 241.2, 529.2, and 1405(d) unless a petition has been filed.

(e) [Time limit for detention hearing—warrant or nonward charged with nonviolent misdemeanor (§ 632)] A detention hearing shall be set and commenced as soon as possible, but no later than 48 hours, excluding noncourt days, after the child has been taken into custody, if:

(1) The child has been taken into custody on a warrant or by the authority of the probation officer; or

(2) The child is not on probation or parole and is alleged to have committed a misdemeanor not involving violence, the threat of violence, or the possession or use of a weapon.

(f) [Time limit for detention hearing—felony, violent misdemeanor, or ward (§ 632)] A detention hearing shall be set and commenced as soon as possible, but no later than the expiration of the next court day after the petition has been filed, if:

(1) The child is alleged to have committed a felony;

(2) The child is alleged to have committed a misdemeanor involving violence, the threat of violence, or the possession or use of a weapon; or

(3) The child is a ward currently on probation or parole.

(g) [Time limit for hearing—arrival at detention facility (§ 632)] A detention hearing shall be set and commenced as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a detention facility within the county if:

(1) The child was taken into custody in another county and transported in custody to the requesting county;

(2) The child was ordered transported in custody when transferred by the juvenile court of another county under rule 1425; or

(3) The child is a ward temporarily placed in a secure facility pending a change of placement.

(h) [Time limit for hearing—violation of home supervision (§§ 628.1, 636)] A child taken into custody for a violation of a written condition of home supervision, which the child has promised in writing to obey under section 628.1 or 636, shall be brought before the court for a detention hearing as soon as possible, but no later than 48 hours, excluding noncourt days, after the child was taken into custody.

(i) [Time limits—remedy for not observing (§§ 632, 641)] If the detention hearing is not commenced within the time limits, the child shall be released immediately, or, if the child is a ward under section 602 awaiting a change of placement, the child shall be placed in a suitable, nonsecure facility.

Rule 1471 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1472. Commencement of initial hearing—explanation, advice, admission

(a) [Explanation of proceedings (§ 633)] At the beginning of the initial hearing, whether the child is detained or not detained, the court shall give the advice required by rule 1412, and shall inform the child and each parent and each guardian present of the following:

(1) The contents of the petition;

(2) The nature and possible consequences of juvenile court proceedings; and

(3) If the child has been taken into custody, the reasons for the initial detention and the purpose and scope of the initial hearing.

(b) [Admission of allegations; no contest plea] If the child wishes to admit the allegations of the petition or enter a no contest plea at the initial hearing, the court may accept the admission or plea of no contest and shall proceed according to rule 1487.

Rule 1472 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1473. Conduct of detention hearing

(a) [Right to inspect (§ 827)] The child, the parent, the guardian, and counsel shall be permitted to inspect and receive copies of police reports, probation reports, and any other documents filed with the court or made available to the probation officer in preparing the probation recommendations.

(b) [Examination by court (§ 635)] Subject to the child's privilege against self-incrimination, the court may examine the child, the parent, the guardian, and any other person present who has knowledge or information relevant to the issue of detention and shall consider any relevant evidence that the child, the parent, the guardian, or counsel presents.

(c) [Evidence required] The court may base its findings and orders solely on written police reports, probation reports, or other documents.

Rule 1473 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1474. Requirements for detention; prima facie case

(a) [Requirements for detention (§§ 635, 636)] The court shall release the child unless the court finds that:

(1) A prima facie showing has been made that the child is described by section 601 or 602; and

(2) One or more of the grounds for detention set forth in rule 1476 exist. However, except as provided in sections 636.2 and 207, no child taken into custody solely on the basis of being a person described in section 601 may be detained in juvenile hall or any other secure facility.

(b) [Detention in adult facility] No child shall be detained in a jail or lockup used for the confinement of adults, except as provided in section 207.1.

Rule 1474 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1475. Factors to consider for detention

(a) [Grounds for detention (§§ 635, 636)] The child shall be released unless the court finds that one or more of the following grounds for detention exist:

(1) The child has violated an order of the court;

(2) The child has escaped from a commitment of the court;

(3) The child is likely to flee the jurisdiction of the court;

(4) It is a matter of immediate and urgent necessity for the protection of the child; or

(5) It is reasonably necessary for the protection of the person or property of another.

The court may order the child detained in juvenile hall, or in a suitable place designated by the court, or on home supervision under the conditions set forth in sections 628.1 and 636.

(b) [Required findings to support detention (42 U.S.C. § 600 et seq.)] If the court orders the child detained under subdivision (a), the court shall make the following findings as applicable, on the record and in the written orders:

(1) Continued residence in the home of the parent or guardian is contrary to the child's welfare;

(2) Temporary placement and care is vested with the probation officer pending disposition or further order of the court; and

(3) Reasonable efforts have been made to prevent removal, or the lack of effort was reasonable because of the emergency nature of the removal.

(c) [Factors—violation of court order] Regarding ground for detention (a)(1), the court shall consider:

(1) The specificity of the court order alleged to have been violated;

(2) The nature and circumstances of the alleged violation;

(3) The severity and gravity of the alleged violation;

(4) Whether the alleged violation endangered the child or others;

(5) The prior history of the child as it relates to any failure to obey orders or directives of the court or probation officer;

(6) Whether there are means to assure the child's presence at any scheduled court hearing without detaining the child;

(7) The underlying conduct or offense that brought the child before the juvenile court;

(8) The likelihood that if the petition is sustained, the child will be ordered removed from the custody of the parent or guardian at disposition.

(d) [Factors—escape from commitment] Regarding ground for detention (a)(2), the court shall consider whether or not the child:

(1) Was committed to the California Youth Authority, a county juvenile home, ranch, camp, forestry camp, or juvenile hall; and

(2) Escaped from the facility or the lawful custody of any officer or person in which the child was placed during commitment.

(e) [Factors—likely to flee] Regarding ground for detention (a)(3), the court shall consider whether or not:

(1) The child has previously fled the jurisdiction of the court or failed to appear in court as ordered;

(2) There are means to assure the child's presence at any scheduled court hearing without detaining the child;

(3) The child promises to appear at any scheduled court hearing;

(4) The child has a prior history of failure to obey orders or directions of the court or the probation officer;

(5) The child is a resident of the county;

(6) The nature and circumstances of the alleged conduct or offense make it appear likely that the child would flee to avoid the jurisdiction of the court;

(7) The child's home situation is so unstable as to make it appear likely that the child would flee to avoid the jurisdiction of the court;

(8) Absent a danger to the child, the child would be released on modest bail or own recognizance were the child appearing as an adult in adult court.

(f) [Factors—protection of child] Regarding ground for detention (a)(4), the court shall consider whether or not:

(1) There are means to assure the care and protection of the child until the next scheduled court appearance;

(2) The child is addicted to or is in imminent danger from the use of a controlled substance or alcohol;

(3) There exist other compelling circumstances that make detention reasonably necessary.

(g) [Factors—protection of person or property of another] Regarding ground for detention (a)(5), the court shall consider whether or not:

(1) The alleged offense involved physical harm to the person or property of another;

(2) The prior history of the child reveals that the child has caused physical harm to the person or property of another or has posed a substantial threat to the person or property of another;

(3) There exist other compelling circumstances that make detention reasonably necessary.

(h) [Order of detention (§ 636)] If the court orders the child detained, the court shall state on the record the grounds for detention.

(i) [Restraining orders] As a condition of release or detention on home supervision, the court may issue orders restraining the child from any or all of the following:

(1) Molesting, attacking, striking, sexually assaulting, or battering, or from any contact whatsoever with an alleged victim or victim's family;

(2) Presence near or in a particular area or building;

(3) Associating with or contacting in writing, by phone, or in person any adult or minor alleged to have been a companion in the alleged offense.

Rule 1475 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1476. Detention rehearings; prima facie hearings

(a) [No parent or guardian present and not noticed] If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk shall set the rehearing within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing, the court shall proceed under rules 1470-1475.

(b) [Parent or guardian noticed; parent or guardian not present (§ 637)] If the court determines that the parent or guardian has received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, a request from the parent or guardian for a detention rehearing shall be denied, absent a finding that the failure was due to good cause.

(c) [Parent or guardian noticed; preparers available (§ 637)] If a parent or guardian received notice of the detention hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present at court or otherwise available for cross-examination, there shall be no right to a detention rehearing.

(d) [Hearing for further evidence; prima facie case (§ 637)] If the court orders the child detained, and the child or the child's attorney requests that evidence of the prima facie case be presented, the court shall set a prima facie hearing for a time within three court days to consider evidence of the prima facie case. If the court determines that a prima facie hearing cannot be held within three court days because of the unavailability of a witness, a reasonable continuance not to exceed five court days may be granted. If at the hearing petitioner fails to establish the prima facie case, the child shall be released from custody.

Rule 1476 repealed and adopted effective January 1, 1998.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1477. [Repealed 1998.]

Rule 1477 repealed effective January 1, 1998; adopted effective January 1, 1991; previously amended effective January 1, 1996.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

Rule 1478. [Repealed 1998.]

Rule 1478 repealed effective January 1, 1998; adopted effective January 1, 1991.

Advisory Committee Comment
1998—The repeal of rules 1470–1478 and the adoption of new rules 1470–1476 clarifies the juvenile court processes applicable to the initial stages of delinquency cases after the filing of a petition. "Initial Appearances" includes detention hearings, as currently defined, for children removed from parental custody at the beginning of a case.

PART II. Fitness Hearings

Rule 1480. General provisions

(a) [Fitness hearing (§ 707)] If a child who is the subject of a petition under section 602 was 16 years of age or older at the time of the alleged offense or had reached the age of 14 but not yet reached the age of 16 and is alleged to have committed an offense described in section 707(d)(2), the prosecuting attorney may request a hearing to determine whether the child is a fit and proper subject to be dealt with under the juvenile court law.

(Subd (a) as amended effective January 1, 1996.)

(b) [Notice (§ 707)] Notice of the fitness hearing shall be given at least five judicial days before the fitness hearing.

(c) [Time of fitness hearing—rules 1485, 1486] The fitness hearing shall be held and the court shall rule on the issue of fitness before the jurisdiction hearing begins. Absent a continuance, the jurisdiction hearing shall begin within the time limits under rule 1485.

Rule 1480 as amended effective January 1, 1996; adopted effective January 1, 1991.

Former Rule
Former rule 1480, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Drafter's Notes
1996—The council amended rules 1480, 1482, and 1483 to specify procedures on fitness hearing orders for 14- to 16-year-old minors. The amendments are in response to legislation (Stats. 1994, ch. 453 (Assem. Bill No. 560)) amending section 707 of the Welfare and Institutions Code regarding the treatment of certain 14- to 16-year-old children in the adult criminal justice system. The amendments mirror the statute and provide the procedures and determinations for the hearings.

In relation to the above rule changes the council (1) revised the mandatory Juvenile Court Fitness Hearing Order form (JV-710) to include provisions on fitness hearing orders for 14- to 16-year-old minors; and (2) revised the optional Juvenile Wardship Petition form (JV-600) to include references to new sections 707(d) and 707(e).

Rule 1481. Report of probation officer

(a) [Contents of report (§ 707)] The probation officer shall investigate the issue of fitness, and submit to the court a report on the behavioral patterns and social history of the child being considered. The report shall include information relevant to the determination of whether or not the child would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, including information regarding all of the criteria listed in rules 1482 and 1483. The report may also include information concerning:

(1) The social, family, and legal history of the child;

(2) Any statement the child chooses to make regarding the alleged offense;

(3) Any statement by a parent or guardian;

(4) If the child is or has been under the jurisdiction of the court, a statement by the social worker, probation officer, or Youth Authority parole agent who has supervised the child regarding the relative success or failure of any program of rehabilitation; and

(5) Any other information relevant to the determination of fitness.

(b) [Recommendation of probation officer (§§ 281, 707)] The probation officer shall make a recommendation to the court as to whether the child is a fit and proper subject to be dealt with under the juvenile court law.

(c) [Copies furnished] The probation officer's report on the behavioral patterns and social history of the child shall be furnished to the child, the parent or guardian, and all counsel at least 24 hours prior to commencement of the fitness hearing. A continuance of 24 hours shall be granted upon request of any party who has not been furnished the probation officer's report in accordance with this rule.

Rule 1481 adopted effective January 1, 1991.

Former Rule
Former rule 1481, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1482. Conduct of fitness hearing under sections 707(a) and 707(d)

(a) [Burden of proof (§§ 707(a), 707(d))] In a fitness hearing under section 707(a) or 707(d), the burden of proving that the child is unfit shall be on the petitioner, by a preponderance of the evidence.

(Subd (a) as amended effective January 1, 1996.)

(b) [Prima facie showing (§ 707(d))] On the child's motion, the court shall determine whether a prima facie showing has been made that the offense alleged to have been violated by a child who had reached 14 years, but was under 16, is specified in section 707(d)(2).

(Subd (b) adopted effective January 1, 1996.)

(c) [Criteria to consider (§§ 707(a), 707(d))] Following receipt of the probation officer's report and any other relevant evidence, the court may find that the child is not a fit and proper subject to be dealt with under juvenile court law if the court finds:

(1) The child was 16 years of age or older at the time of the alleged offense, or the child had reached the age of 14 years, but was under the age of 16 years at the time of the alleged offense and the offense is listed in section 707(d)(2); and

(2) The child would not be amenable to the care, treatment, and training program available through facilities of the juvenile court, based on an evaluation of all of the following criteria:

(A) The degree of criminal sophistication exhibited by the child;

(B) Whether the child can be rehabilitated prior to the expiration of jurisdiction;

(C) The child's previous delinquent history;

(D) The results of previous attempts by the court to rehabilitate the child; and

(E) The circumstances and gravity of the alleged offense.

(Subd (c) as amended and relettered effective January 1, 1996; adopted as subd (b) effective January 1, 1991.)

(d) [Findings under sections 707(a) and 707(d)] The findings shall be stated in the order.

(1) *(Finding of fitness)* The court may find the child to be fit, and state that finding.

(2) *(Finding of unfitness)* If the court determines that the child is unfit, the court shall find that:

(A) The child was 16 years of age or older at the time of the alleged offense, or the child had reached the age of 14 years, but was under the age of 16 years at the time of the alleged offense as listed in section 707(d)(2); and

(B) The child would not be amenable to the care, treatment, and training program available through the juvenile court because of one or a combination of more than one of the criteria listed in subdivision (c)(2).

(Subd (d) as amended and relettered effective January 1, 1996; adopted as subd (c) effective January 1, 1991.)

(e) [Maintenance of juvenile court jurisdiction] If the court determines that one or more of the criteria listed in subdivision (c)(2) apply to the child, the court may nevertheless find that the child is amenable to the care, treatment, and training program available through the juvenile court, and may find the child to be a fit and proper subject to be dealt with under juvenile court law.

(Subd (e) adopted effective January 1, 1996.)

(f) [Extenuating circumstances] The court may consider extenuating or mitigating circumstances in the evaluation of each relevant criterion.

(Subd (f) adopted effective January 1, 1996.)

(g) [Procedure following findings]

(1) If the child is found to be fit, the court shall proceed to jurisdiction hearing under rule 1485.

(2) If the child is found to be unfit, the court shall make orders under section 707.1 relating to bail, and to the appropriate facility for the custody of the child, or release on own recognizance pending prosecution. The court shall dismiss the petition without prejudice.

(Subd (g) as relettered effective January 1, 1996; adopted as subd (d) effective January 1, 1991.)

(h) [Continuance to seek review] If the prosecuting attorney indicates an intention to seek review of a finding of fitness, the court on request of the petitioner shall grant a continuance of the jurisdiction hearing for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

(Subd (h) as relettered effective January 1, 1996; adopted as subd (e) effective January 1, 1991.)

(i) [Subsequent role of judge or referee] Unless the child objects, a judge or referee who has conducted a fitness hearing may participate in any subsequent contested jurisdiction hearing relating to the same offense.

(Subd (i) as relettered effective January 1, 1996; adopted as subd (f) effective January 1, 1991.)

(j) [Review of fitness determination] An order that a child is or is not a fit and proper subject to be dealt with under the juvenile court law is not an appealable order. Appellate review of the order is by extraordinary writ. Any petition for review of a judge's order determining the child unfit, or denying an application for rehearing of the referee's determination of unfitness, shall be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the unfitness determination.

(Subd (j) as relettered effective January 1, 1996; adopted as subd (g) effective January 1, 1991.)

Rule 1482 as amended effective January 1, 1996; adopted effective January 1, 1991.

Former Rule
Former rule 1482, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Drafter's Notes
1996—The council amended rules 1480, 1482, and 1483 to specify procedures on fitness hearing orders for 14- to 16-year-old minors. The amendments are in response to legislation (Stats. 1994, ch. 453 (Assem. Bill No. 560)) amending section 707 of the Welfare and Institutions Code regarding the treatment of certain 14- to 16-year-old children in the adult criminal justice system. The amendments mirror the statute and provide the procedures and determinations for the hearings.

In relation to the above rule changes the council (1) revised the mandatory Juvenile Court Fitness Hearing Order form (JV-710) to include provisions on fitness hearing orders for 14- to 16-year-old minors; and (2) revised the optional Juvenile Wardship Petition form (JV-600) to include references to new sections 707(d) and 707(e).

Rule 1483. Conduct of fitness hearing under sections 707(c) and 707(e)

(a) [Presumption (§§ 707(b), 707(c), 707(e))] In a fitness hearing under section 707(c) or 707(e), the child is presumed to be unfit, and the burden of rebutting the presumption shall be on the child, by a preponderance of the evidence.

(Subd (a) as amended effective January 1, 1996.)

(b) [Prima facie showing] On the child's motion, the court shall determine whether a prima facie showing has been made that the offense alleged is specified in section 707(b) or 707(e).

(Subd (b) as amended effective January 1, 1996.)

(c) [Criteria to consider (§§ 707(c), 707(e))] Following receipt of the probation officer's report and any other relevant evidence, the court shall find that the child is not a fit and proper subject to be dealt with under the juvenile court law, unless the court finds:

(1) The child was not 16 years of age or older at the time of the alleged offense; or

(2) The child had not reached the age of 14 years and was less than 16 years at the time of the alleged offense as described in section 707(e); or

(3) The offense alleged is not listed in section 707(b) or section 707(e), whichever would apply; or

(4) The child would be amenable to the care, treatment, and training program available through the juvenile court, based on evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the child;

(B) Whether the child can be rehabilitated prior to the expiration of jurisdiction;

(C) The child's previous delinquent history;

(D) The results of previous attempts by the court to rehabilitate the child; and

(E) The circumstances and gravity of the alleged offense.

(Subd (c) as amended effective January 1, 1996.)

(d) [Extenuating circumstances (§§ 707(c), 707(d), 707(e))] The court may consider extenuating or mitigating circumstances in the evaluation of each relevant criterion.

(Subd (d) adopted effective January 1, 1996.)

(e) [Findings (§§ 707(c), 707(e))] The findings shall be stated in the order.

(1) *(Finding of unfitness (§§ 707(c), 707(e)))* If the child has failed to rebut the presumption of unfitness, the court shall find that:

(A) The child was 16 years of age or older at the time of the alleged offense and the alleged offense is listed in section 707(b); or

(B) The child had reached the age of 14 years and was less than 16 years at the time of the alleged offense, and the offense is described in section 707(e); and

(C) The child would not be amenable to the care, treatment, and training program available through the juvenile court because of one or a combination of more than one of the criteria in subdivision (c)(3).

(2) *(Finding of fitness (§§ 707(c), 707(e)))* In order to find the child fit, the court must find that the child would be amenable to the care, treatment, and training program through the juvenile court on each and every criterion in subdivision (c)(3), and the court shall state that finding of amenability under each and every criterion.

(Subd (e) as amended and relettered effective January 1, 1996; adopted as subd (d) effective January 1, 1991.)

(f) [Procedure following findings]

(1) If the child is found to be unfit, the court shall make orders under section 707.1 relating to bail, and to the appropriate facility for the custody of the child, or release on own recognizance pending prosecution. The court shall dismiss the petition without prejudice.

(2) If the child is found to be fit, the court shall proceed to jurisdiction hearing under rule 1485.

(Subd (f) as relettered effective January 1, 1996; adopted as subd (e) effective January 1, 1991.)

(g) [Continuance to seek review] If the prosecuting attorney indicates an intention to seek review of a finding of fitness, the court on request of the petitioner shall grant a continuance of the jurisdiction hearing for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

(Subd (g) as relettered effective January 1, 1996; adopted as subd (f) effective January 1, 1991.)

(h) [Subsequent role of judge or referee] Unless the child objects, a judge or referee who has conducted a fitness hearing may participate in any subsequent contested jurisdiction hearing relating to the same offense.

(Subd (h) as relettered effective January 1, 1996; adopted as subd (g) effective January 1, 1991.)

(i) [Review of fitness determination] An order that a child is or is not a fit and proper subject to be dealt with under the juvenile court law is not an appealable order. Appellate review of the order is by extraordinary writ. Any petition for review of a judge's order determining the child unfit, or denying an application for rehearing of the referee's determination of unfitness, shall be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the unfitness determination.

(Subd (i) as relettered effective January 1, 1996; adopted as subd (h) effective January 1, 1991.)

Rule 1483 as amended effective January 1, 1996; adopted effective January 1, 1991.

Drafter's Notes
1996—The council amended rules 1480, 1482, and 1483 to specify procedures on fitness hearing orders for 14- to 16-year-old minors. The amendments are in response to legislation (Stats. 1994, ch. 453 (Assem. Bill No. 560)) amending section 707 of the Welfare and Institutions Code regarding the treatment of certain 14- to 16-year-old children in the adult criminal justice system. The amendments mirror the statute and provide the procedures and determinations for the hearings.

In relation to the above rule changes the council (1) revised the mandatory Juvenile Court Fitness Hearing Order form (JV-710) to include provisions on fitness hearing orders for 14- to 16-year-old minors; and (2) revised the optional Juvenile Wardship Petition form (JV-600) to include references to new sections 707(d) and 707(e).

PART III. Jurisdiction

Rule 1485. Setting petition for hearing—detained and nondetained cases; waiver of hearing
Rule 1486. Grounds for continuance of jurisdiction hearing
Rule 1487. Commencement of hearing on section 601 or section 602 petition; right to counsel; advice of trial rights; admission, no contest
Rule 1488. Contested hearing on section 601 or section 602 petition

Rule 1489. Continuance pending disposition hearing
Rule 1490. [Repealed 1991.]

Rule 1485. Setting petition for hearing—detained and nondetained cases; waiver of hearing

(a) [Nondetention cases (§ 657)] If the child is not detained, the jurisdiction hearing on the petition shall begin within 30 calendar days from the date the petition is filed.

(b) [Detention cases (§ 657)] If the child is detained, the jurisdiction hearing on the petition shall begin within 15 judicial days from the date of the order of the court directing detention. If the child is released from detention before the jurisdiction hearing, the court may reset the jurisdiction hearing within the time limit in subdivision (a).

(c) [Tolling of time period] Any period of delay caused by the child's unavailability or failure to appear shall not be included in computing the time limits of subdivisions (a) and (b).

(d) [Dismissal] Absent a continuance under rule 1486, when a jurisdiction hearing is not begun within the time limits of subdivisions (a) and (b), the court shall order the petition dismissed. This shall not bar the filing of another petition based on the same allegations as in the original petition, but the child shall not be detained.

(e) [Waiver of hearing (§ 657)] At the detention hearing, or at any time thereafter, a child may admit the allegations of the petition or plead no contest and waive further jurisdiction hearing. The court may accept the admission or no contest plea and proceed according to rules 1487 and 1489.

Rule 1485 adopted effective January 1, 1991.

Former Rule
Former rule 1485, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1486. Grounds for continuance of jurisdiction hearing

(a) [Request for continuance; consent (§ 682)] A continuance shall be granted only on a showing of good cause and only for the time shown to be necessary. Stipulation between counsel or parties and convenience of parties are not in and of themselves good cause.

(1) In order to obtain a continuance, written notice with supporting documents shall be filed and served on all parties at least two court days prior to the date set for the hearing, unless the court finds good cause for failure to comply with these requirements. Absent a waiver of time, a child may not be detained beyond the statutory time limits.

(2) The court shall state in its order the facts requiring any continuance that is granted.

(3) If the child is represented by counsel and no objection is made to an order setting or continuing the jurisdiction hearing beyond the time limits of rule 1485, consent shall be implied.

(b) [Grounds for continuance—mandatory (§ 700)] The court shall continue the jurisdiction hearing for:

(1) A reasonable period to permit the child and the parent, guardian, or adult relative to prepare for the hearing; and

(2) No more than seven calendar days

(A) For appointment of counsel;

(B) To enable counsel to become acquainted with the case; or

(C) To determine whether the parent, guardian, or adult relative can afford counsel.

(c) [Grounds for continuance—discretionary (§§ 700.5, 701)] The court may continue the jurisdiction hearing for no more than seven calendar days to enable the petitioner to subpoena witnesses if the child has made an extrajudicial admission and denies it, or has previously indicated to the court or petitioner an intention to admit the allegations of the petition, and at the time set for jurisdiction hearing denies the allegations.

(d) [Grounds for continuance—§654.2 (§§ 654.2, 654.3, 654.4)] In a case petitioned under section 602, the court may, with the consent of the child and the parent or guardian, continue the jurisdiction hearing for six months. If the court grants the continuance, the court shall order the child and the parent or guardian to participate in a program of supervision under section 654, and shall order the parent or guardian to participate with the child in a program of counseling or education under section 654.

Rule 1486 adopted effective January 1, 1991.

Former Rule
Former rule 1486, similar to the present rule, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1487. Commencement of hearing on section 601 or section 602 petition; right to counsel; advice of trial rights; admission, no contest

(a) [Petition read and explained (§ 700)] At the beginning of the jurisdiction hearing, the petition shall be read to those present. On request of the child, or the parent, guardian, or adult relative, the court shall explain the meaning and contents of the petition and the nature of the hearing, its procedures and possible consequences.

(b) [Rights explained (§ 702.5)] After giving the advice required by rule 1412, the court shall advise those present of each of the following rights of the child:

(1) The right to a hearing by the court on the issues raised by the petition;

(2) The right to assert the privilege against self-incrimination;

(3) The right to confront and to cross-examine any witness called to testify against the child; and

(4) The right to use the process of the court to compel the attendance of witnesses on the child's behalf.

(c) [Admission of allegations; prerequisites to acceptance] The court shall then inquire whether the child intends to admit or deny the allegations of the petition. If the child neither admits nor denies the allegations, the court shall state on the record that the child does not admit the allegations. If the child wishes to admit the allegations, the court shall first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in subdivision (b).

(d) [Consent of counsel—child must admit] Counsel for the child must consent to the admission, which shall be made by the child personally.

(e) [No contest] The child may enter a plea of no contest to the allegations, subject to the approval of the court.

(f) [Findings of the court (§ 702)] On an admission or plea of no contest, the court shall make the following findings noted in the minutes of the court:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The child has knowingly and intelligently waived the right to a hearing on the issues by the court, the right to confront and cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the child's behalf, and the right to assert the privilege against self-incrimination;

(4) The child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest;

(5) The admission or plea of no contest is freely and voluntarily made;

(6) There is a factual basis for the admission or plea of no contest;

(7) Those allegations of the petition as admitted are true as alleged;

(8) The child is described by section 601 or 602; and

(9) In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court shall consider which description shall apply and shall expressly declare on the record that it has made such consideration and shall state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.

(Subd (f) amended effective January 1, 1998.)

(g) [Disposition] After accepting an admission or plea of no contest, the court shall proceed to disposition hearing under rules 1489 and 1492.

Rule 1487 amended effective January 1, 1998; adopted effective January 1, 1991.

Advisory Committee Comment
1998—This change conforms delinquency procedures to recent statutory changes pertaining to procedures to be followed when an offense may be found to be either a felony or a misdemeanor.

Drafter's Notes
1991—Former rule 1487was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1488. Contested hearing on section 601 or section 602 petition

(a) [Contested jurisdiction hearing (§701)] If the child denies the allegations of the petition, the court shall hold a contested hearing to determine whether the allegations in the petition are true.

(b) [Admissibility of evidence—general (§701)] In a section 601 matter, the admission and exclusion of evidence shall be in accordance with the Evidence Code as it applies in civil cases. In a section 602 matter, the admission and exclusion of evidence shall be in accordance with the Evidence Code as it applies in criminal cases.

(c) [Probation reports] Except as otherwise provided by law, the court shall not read or consider any portion of a probation report relating to the contested petition prior to or during a contested jurisdiction hearing.

(d) [Unrepresented children (§701)] If the child is not represented by counsel, objections that could have been made to the evidence shall be deemed made.

(e) [Findings of court—allegations true (§ 702)] If the court determines by a preponderance of the evidence in a section 601 matter, or by proof beyond a reasonable doubt in a section 602 matter, that the allegations of the petition are true, the court shall make findings on each of the following, noted in the order:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child;

(3) The allegations of the petition are true;

(4) The child is described by section 601 or 602; and

(5) In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or a felony had the offense been committed by an adult. If any offense may be found to be either a felony or a misdemeanor, the court shall consider which description shall apply and shall expressly declare on the record that it has made such consideration, and shall state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.

(Subd (e) amended effective January 1, 1998.)

(f) [Disposition] After making the findings in subdivision (e), the court shall then proceed to disposition hearing under rules 1489 and 1492.

(g) [Findings of court—allegations not proved (§702)] If the court determines that the allegations of the petition have not been proved by a preponderance of the evidence in a 601 matter, or beyond a reasonable doubt in a 602 matter, the court shall make findings on each of the following, noted in the order:

(1) Notice has been given as required by law;

(2) The birthdate and county of residence of the child; and

(3) The allegations of the petition have not been proved.

The court shall dismiss the petition and terminate detention orders related to this petition.

Rule 1488 amended effective January 1, 1998; adopted effective January 1, 1991.

Advisory Committee Comment
1998—This change conforms delinquency procedures to recent statutory changes pertaining to procedures to be followed when an offense may be found to be either a felony or a misdemeanor.

Drafter's Notes
1991—Former rule 1488, similar to present rule 1489, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1489. Continuance pending disposition hearing

(a) [Continuance pending disposition hearing (§ 702)] If the court finds that the child is described by section 601 or 602, it shall proceed to a disposition hearing. The court may continue the disposition hearing up to 10 judicial days if the child is detained. If the child is not detained,

the court may continue the disposition hearing up to 30 calendar days from the date of the filing of the petition and up to an additional 15 calendar days for good cause shown.

(b) [Detention pending hearing (§ 702)] The court may release or detain the child during the period of the continuance.

(c) [Observation and diagnosis (§ 704)] If the child is eligible for commitment to the Youth Authority, the court may continue the disposition hearing up to 90 calendar days and order the child to be placed temporarily at a Youth Authority diagnostic and treatment center for observation and diagnosis. The court shall order the Youth Authority to submit a diagnosis and recommendation within 90 days, and the probation officer or any other peace officer designated by the court shall place the child in the diagnostic and treatment center and return the child to the court. Upon return the child shall be brought to court within two judicial days. A disposition hearing shall be held within 10 judicial days thereafter.

Rule 1489 adopted effective January 1, 1991.

Former Rule
Former rule 1489, relating to contested hearing on petition, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1490. [Repealed 1991.]

Repealed effective January 1, 1991; adopted effective July 1, 1989. The repealed rule related to continuance pending disposition hearing.

PART IV. Disposition

Rule 1492. General conduct of hearing

(a) [Social study (§§ 280, 702, 706.5)] The probation officer shall prepare a social study of the child, which shall contain all matters relevant to disposition, including any parole status information, and a recommendation for disposition.

The probation officer shall submit the social study and copies of it to the clerk at least 48 hours before the disposition hearing is set to begin, and the clerk shall make the copies available to the parties and attorneys. A continuance of up to 48 hours shall be granted on the request of a party who has not been furnished a copy of the social study in accordance with this rule.

(b) [Evidence considered (§ 706)] The court shall receive in evidence and consider the social study and any relevant evidence offered by the petitioner, the child, or the parent or guardian. The court may require production of other relevant evidence on its own motion. In the order of disposition the court shall state that the social study has been read and considered by the court.

Rule 1492 adopted effective January 1, 1991.

Rule 1493. Orders of the court

(a) [Findings and orders of the court (§§ 654, 654.1, 654.2, 654.3, 654.4, 725, 725.5, 782)] At the disposition hearing:

(1) If the court has not previously considered whether any offense shall be a misdemeanor or felony, the court shall do so at this time and state its finding on the record. If the offense may be found to be either a felony or a misdemeanor, the court shall consider which description shall apply and shall expressly declare on the record that it has made such consideration and shall state its finding as to whether the offense is a misdemeanor or a felony.

(2) The court may then:

(A) Dismiss the petition in the interests of justice and the welfare of the child, or if the child does not need treatment or rehabilitation, with the specific reasons stated in the minutes; or

(B) Place the child on probation for no more than six months, without declaring the child a ward; or

(C) Declare the child a ward of the court.

(Subd (a) amended effective January 1, 1998.)

(b) [Conditions of probation (§§ 725, 726, 727, 729.2, 729.9, 729.10)] If the child is placed on probation, with or without wardship, the court shall set reasonable terms and conditions of probation. Unless the court finds and states its reasons on the record that any of the following conditions is inappropriate, the court shall:

(1) Require the child to attend school;

(2) Require the parent to participate with the child in a counseling or education program; and

(3) Require the child to be at the child's residence between 10:00 p.m. and 6:00 a.m. unless accompanied by a parent or guardian or adult custodian.

If the child is declared a ward, the court may limit the control over the child by a parent or guardian. Orders shall clearly specify the limitations.

(c) [Removal of custody—required findings (§ 726)] The court shall not order a ward removed from the physical custody of a parent or guardian unless the court finds:

(1) The parent or guardian has failed or neglected to provide, or is incapable of providing proper maintenance, training, and education for the child; or

(2) The child has been on probation in the custody of the parent or guardian and during that time has failed to reform; or

(3) The welfare of the child requires that physical custody be removed from the parent or guardian.

(d) [Wardship orders (§§ 726, 727, 730, 731)] The court may make any reasonable order for the care, supervision, custody, conduct, maintenance, support, and medical treatment of a child declared a ward.

(1) Subject to the provisions of section 727, the court may order the ward to be on probation without the supervision of the probation officer, and may impose on the ward reasonable conditions of behavior.

(2) The court may order the care, custody, control, and conduct of the ward to be under the supervision of the probation officer in the home of a parent or guardian.

(3) If the court orders removal of custody under subsection (c) of this rule, it shall authorize the probation officer to place the ward with a person or organization described in section 727.

(4) If the child was declared a ward under section 602, the court may order treatment or commitment of the child under section 730 or 731.

(5) The court shall consider the educational needs of the child, and if appropriate, proceed under Education Code section 56156 and Government Code section 7579.5. Any limitation on the right of a parent or guardian to make education decisions for the child shall be specified in the court order.

(e) [Youth Authority] If at the time of the disposition hearing the child is a ward of the Youth Authority under a prior commitment, the court may either recommit or return the child to the Youth Authority. If the child is returned to the Youth Authority, the court may:

(1) Recommend that the ward's parole status be revoked;

(2) Recommend that the ward's parole status not be revoked; or

(3) Make no recommendation regarding revocation of parole.

(f) [15-day reviews (§ 737)] If the child is detained pending the execution of a disposition order, the court shall review the case at least every 15 days as long as the child is detained. The court

shall inquire about the action taken by the probation officer to carry out the court's order, the reasons for the delay, and the effects of the delay upon the child.

Rule 1493 amended effective January 1, 1998; adopted effective January 1, 1991.

Advisory Committee Comment
1998—This change conforms delinquency procedures to recent statutory changes pertaining to procedures to be followed when an offense may be found to be either a felony or a misdemeanor.

Rule 1494. Required determinations

(a) [Felony-misdemeanor (§ 702)] Unless determined previously, the court shall find, and note in the minutes, the degree of the offense committed by the child, and whether it would be a felony or a misdemeanor had it been committed by an adult.

(b) [Physical confinement (§ 726)] If the child is declared a ward under section 602, and ordered removed from the physical custody of a parent or guardian, the court shall specify and note in the minutes, the maximum period of confinement under section 726.

(c) [Youth Authority commitments] Order of commitment to the Youth Authority shall specify if the offense is one listed in section 707(b).

(d) [Reasonable efforts finding (§ 11401)] The court shall consider whether reasonable efforts to prevent or eliminate the need for removal have been made and make one of the following findings:

(1) Reasonable efforts have been made;

(2) Reasonable efforts have not been made; or

(3) The failure to make effort was reasonable.

Rule 1494 adopted effective January 1, 1991.

Rule 1495. [Repealed 1991.]

Repealed effective January 1, 1991; adopted effective July 1, 1989. The repealed rule related to general conduct of hearing.

PART V. Reviews and Sealing

Rule 1496. Six-month review hearing
Rule 1497. [Repealed 1991.]

Rule 1499. Sealing records

Rule 1496. Six-month review hearing

(a) [Requirement of six-month review (§ 11404.1)] The case of a ward removed from the custody of a parent or guardian under section 726 and placed under section 727 shall be set for review hearing within six months after the date of the order removing custody, and within six months after each review so long as the child remains out of the custody of the parent or guardian. There shall be a permanency planning hearing within 18 months of the order removing custody and periodically, but no less frequently than every 12 months during the period of placement. The hearings may be non-appearance.

(Subd (a) amended effective January 1, 1998.)

(b) [Report] Before the hearing, the probation officer shall make an investigation and file a report describing the child's progress in placement, the prognosis for return of the child to the parent or guardian, and the efforts made to reunify the child with the parent or guardian. The report shall contain recommendations for court orders and the reasons for those recommendations. A notice and a copy of the report shall be provided to the child, the child's attorney, and to the parent or guardian.

(Subd (b) amended effective January 1, 1998.)

Rule 1496 amended effective January 1, 1998; adopted effective January 1, 1991.

Advisory Committee Comment
1998—These changes conform the court rule to recent changes by the Legislature to the related statute, Welfare and Institutions Code section 11404.1.

Drafter's Notes
1991—Former rule 1496, relating to judgment and orders of court, was adopted effective July 1, 1989, and repealed effective January 1, 1991.

Rule 1497. [Repealed 1991.]

Repealed effective January 1, 1991; adopted effective July 1, 1989. The repealed section related to required determination.

Rule 1499. Sealing records

(a) [Sealing records—former wards (§781)] A former ward of the court may apply to petition the court to order juvenile records sealed. Determinations under section 781 shall be made by the court in the county in which wardship was last terminated.

(1) *(Application—submission)* The application for a petition to seal records shall be submitted to the probation department in the county in which wardship was last terminated.

(2) *(Investigation)* If the probation officer determines that under section 781 the former ward is eligible to petition for sealing, the probation officer shall do all of the following:

(A) Prepare the petition;

(B) Conduct an investigation under section 781;

(C) Prepare a report to the court with a recommendation supporting or opposing the requested sealing; and

(D) Within 90 days from receipt of the application if only the records of the investigating county are to be reviewed, or within 180 days from receipt of the application if records of other counties are to be reviewed:

(i) File the petition;

(ii) Set the matter for a hearing which may be nonappearance; and

(iii) Notify the prosecuting attorney of the hearing.

(3) The court shall review the petition and the report of the probation officer, and the court shall grant or deny the petition.

(4) If the petition is granted, the court shall order the sealing of all records described in section 781. The order shall apply in the county of the court hearing the petition, and in all other counties in which there are juvenile records concerning the petitioner.

(b) For all other persons described in section 781, application may be submitted to the probation department in any county in which there is a juvenile record concerning the petitioner, and the procedures of subsection (a) shall be followed.

(c) All records sealed shall be destroyed according to section 781(d).

(d) The clerk of the issuing court shall:

(1) Send a copy of the order to each agency and official listed in the order; and

(2) Send a certified copy of the order to the clerk in each county in which a record is ordered sealed.

(e) Each agency and official notified shall immediately seal all records as ordered.

Rule 1499 adopted effective January 1, 1991.

DIVISION II. Rules for Coordination of Civil Actions Commenced in Different Trial Courts

Title 4, Special Rules for Trial Courts—Division II, Rules for Coordination of Civil Actions Commenced in Different Trial Courts; adopted effective January 1, 1974. Adopted pursuant to the authority contained in Section 6, Article VI, California Constitution, and Code of Civil Procedure Secs. 404-404.8.

CHAPTER 1. General Provisions

Title 4, Special Rules for Trial Courts—Division II, Rules for Coordination of Civil Actions Commenced in Different Trial Courts—Chapter 1, General Provisions; adopted effective January 1, 1974.

Rule 1500. Transfer and consolidation of noncomplex common-issue actions filed in different courts

This rule applies when a motion under Code of Civil Procedure section 403 is filed requesting transfer and consolidation of cases involving a common issue of fact or law filed in different courts.

(a) [Preliminary step] A party who intends to file a motion under Code of Civil Procedure section 403 must first make a good-faith effort to obtain agreement of all parties to each case to the proposed transfer and consolidation.

(b) [Motion and hearing] A motion to transfer an action pursuant to Code of Civil Procedure section 403 shall conform to the requirements generally applicable to motions, and shall be supported by a declaration stating facts showing that the actions are not complex, and the moving party has made a good-faith effort to obtain agreement to the transfer from all parties to the actions, and has notified all parties of their obligation to disclose to the court any information they

may have concerning any other motions requesting transfer of any case that would be affected by the granting of the motion before the court.

(c) [Findings and order] If the court orders that the case or cases be transferred from another court, the order shall specify the reasons supporting a finding that the transfer will promote the ends of justice, with reference to the following standards:

(1) the actions are not complex;

(2) whether the common question of fact or law is predominating and significant to the litigation;

(3) the convenience of the parties, witnesses, and counsel;

(4) the relative development of the actions and the work product of counsel;

(5) the efficient utilization of judicial facilities and staff resources;

(6) the calendar of the courts;

(7) the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and

(8) the likelihood of settlement of the actions without further litigation should coordination be denied.

(d) [Moving party to provide copies of order] If the court orders that the case or cases be transferred from another court, the moving party shall forthwith provide copies of the order to all parties to each case and shall send copies to the Judicial Council and to the presiding judge of a court from which each case is to be transferred.

(e) [Moving party to take necessary action to effectuate transfer and consolidation] If the court orders a case or cases transferred, the moving party shall forthwith take all appropriate action to assure that the transfer takes place and that proceedings are initiated in the other court or courts to effectuate consolidation with the case pending in that court.

(f) [Conflicting orders] The coordination staff in the Administrative Office of the Courts shall review all transfer orders submitted pursuant to subdivision (e) and shall promptly confer with the presiding judges of any courts that have issued conflicting orders under Code of Civil Procedure section 403. The presiding judges of any such courts shall confer with each other and with the judges who have issued the orders to the extent necessary to resolve the conflict. If it is determined that any party to a case has failed to disclose information concerning pending motions, the court may, after a duly noticed hearing, find that such party's failure to disclose is an unlawful interference with the processes of the court.

(g) [Alternative disposition of motion] If after considering the motion the judge determines that the action or actions pending in another court should not be transferred to the judge's court but instead all the actions that are subject to the motion to transfer should be consolidated in another

court, the judge may order the parties to initiate a motion to have the actions transferred to the appropriate court.

Rule 1500 adopted effective September 21, 1996.

Rule 1501. Definitions

As used in these rules, unless the context or subject matter otherwise requires:

(a) "Action" means any civil action or proceeding subject to coordination or affecting an action that is subject to coordination.

(Subd (a) adopted effective January 1, 1974.)

(b) "Add-on case" means an action that is proposed for coordination, pursuant to section 404.4 of the Code of Civil Procedure, with actions previously ordered coordinated.

(Subd (b) adopted effective January 1, 1974.)

(c) "Assigned judge" means any judge assigned by the Chairman of the Judicial Council pursuant to section 404 or 404.3 of the Code of Civil Procedure, including a "coordination motion judge" and a "coordination trial judge."

(Subd (c) adopted effective January 1, 1974.)

(d) "Clerk," unless otherwise indicated, means any person designated by an assigned judge to perform any clerical duties in accordance with these rules.

(Subd (d) adopted effective January 1, 1974.)

(e) "Coordinated action" means any action that has been ordered coordinated with one or more other actions pursuant to chapter 2 (commencing with Section 404) of title 4 of part 2 of the Code of Civil Procedure and pursuant to these rules.

(Subd (e) adopted effective January 1, 1974.)

(f) "Coordination attorney" means an attorney in the Administrative Office of the Courts appointed by the Chairman of the Judicial Council to perform such administrative functions as may be appropriate under these rules, including but not limited to the functions described in rules 1524 and 1550.

(Subd (f) adopted effective January 1, 1974.)

(g) "Coordination motion judge" means an assigned judge designated pursuant to section 404 of the Code of Civil Procedure to determine whether coordination is appropriate.

(Subd (g) adopted effective January 1, 1974.)

(h) “Coordination proceeding” means any procedure authorized by chapter 2 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure and by these rules.

(Subd (h) adopted effective January 1, 1974.)

(i) “Coordination trial judge” means an assigned judge designated pursuant to section 404.3 of the Code of Civil Procedure to hear and determine coordinated actions.

(Subd (i) adopted effective January 1, 1974.)

(j) “Expenses” means all necessary costs that are reimbursable under section 404.8 of the Code of Civil Procedure, including the compensation of the assigned judge and other necessary judicial officers and employees, the costs of any necessary travel and subsistence determined pursuant to rules of the State Board of Control, and all necessarily incurred costs of facilities, supplies, materials, and telephone and mailing expenses.

(Subd (j) adopted effective January 1, 1974.)

(k) “Included action” means any action or proceeding included in a petition for coordination.

(Subd (k) adopted effective January 1, 1974.)

(*l*) “Liaison counsel” means an attorney of record for a party to an included action or a coordinated action who has been appointed by an assigned judge to serve as representative of all parties on a side with the following powers and duties, as appropriate:

(1) to receive on behalf of and promptly distribute to the parties for whom he acts notices and other documents from the court;

(2) to act as spokesman for the side which he represents at all proceedings set on notice before trial subject to the right of each party to present individual or divergent positions;

(3) to call meetings of counsel for the purpose of proposing joint action.

(Subd (*l*) as amended effective July 1, 1974; adopted effective January 1, 1974.)

(m) “Party” includes all parties to all included actions or coordinated actions, and the word “party,” “petitioner” or any other designation of a party includes such party’s attorney of record. When a notice or other paper is required to be given or served on a party, such notice or paper shall be given to or served on his attorney of record if any.

(Subd (m) adopted effective January 1, 1974.)

(n) “Petition for coordination” means any petition, motion, application, or request for coordination of actions submitted to the Chairman of the Judicial Council or to a coordination trial judge pursuant to rule 1544.

(Subd (n) adopted effective January 1, 1974.)

(o) “Remand” means to remove a coordinated action or a severable claim or issue in that action from a coordination proceeding and to return that action or claim or issue to the court in which the action was pending at the time the coordination of that action was ordered. If a remanded action or claim had been transferred by the coordination trial judge under rule 1543 from the court in which such action was pending, the remand shall include the retransfer of the action to that court.

(Subd (o) adopted effective January 1, 1974.)

(p) “Serve and file” means that a paper filed in a court is to be accompanied by proof of prior service in a manner permitted by law of a copy of the paper on each party required to be served under these rules.

(Subd (p) adopted effective January 1, 1974.)

(q) “Serve and submit” means that a paper to be submitted to an assigned judge pursuant to these rules is to be transmitted to that judge at a designated court address. Every paper so submitted must be accompanied by proof of prior service on each party required to be served under these rules. If there is no assigned judge, such paper shall be transmitted to the Chairman of the Judicial Council.

(Subd (q) adopted effective January 1, 1974.)

(r) “Side” means all parties to an included or coordinated action who have a common or substantially similar interest in the issues, as determined by the assigned judge for the purpose of appointing any liaison counsel, of allotting peremptory challenges in jury selection, or for any other appropriate purpose.

(Subd (r) adopted effective January 1, 1974.)

(s) “Transfer” means to remove a coordinated action or severable claim in that action from the court in which it is pending to any other court pursuant to rule 1543, without removing such action or claim from the coordination proceeding. The term “transfer” includes “retransfer.”

(Subd (s) adopted effective January 1, 1974.)

Rule 1501 as amended effective July 1, 1974; adopted effective January 1, 1974.

Rule 1501.1. Complex case—definition

In determining whether a case is or is not complex within the meaning of Code of Civil Procedure sections 403 and 404, the court shall consider the guidelines contained in section 19(c) of the Standards of Judicial Administration Recommended by the Judicial Council.

Rule 1501.1 adopted effective September 21, 1996.

Rule 1502. Construction of terms

(a) "Shall" is mandatory, and "may" is permissive.

(b) The past, present and future tenses shall each include the others.

(c) The singular and plural shall each include the other.

(d) Rule headings do not in any manner affect the scope, meaning, or intent of the provisions of these rules.

(e) All section references in these rules are to the Code of Civil Procedure unless otherwise specified.

Rule 1502 adopted effective January 1, 1974.

Rule 1503. Requests for extensions of time or to shorten time

The time within which any act is permitted or required to be done by a party may be shortened or extended by the assigned judge upon such terms as may be just. Unless otherwise ordered, any motion or application for an extension of time to perform an act required by these rules shall be served and submitted in accordance with rule 1501(q). No stipulation for an extension of time for the filing and service of documents required by these rules shall be allowed unless consented to by the assigned judge. If there is no assigned judge, an application for an extension of time shall be submitted to the Chairman of the Judicial Council in accordance with rule 1511.

Rule 1503 adopted effective January 1, 1974.

Rule 1504. General law applicable

(a) Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply regardless of nomenclature to an action included in a coordination proceeding if they would otherwise apply to such action without reference to this rule. To the extent that these rules conflict with such provisions, these rules shall prevail as provided by section 404.7 of the Code of Civil Procedure.

(b) If the manner of proceeding is not prescribed by chapter 2 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure or by these rules, or if the prescribed manner of proceeding cannot, with reasonable diligence, be followed in a particular coordination proceeding, the assigned judge may prescribe any suitable manner of proceeding that appears most conformable to such statutes and rules.

(c) At the beginning of a coordination proceeding, the assigned judge shall specify any local court rules to be followed in that proceeding, and thereafter all parties shall comply with such rules. Except as otherwise provided in these rules or directed by the assigned judge, the local rules of

the court designated in the order appointing the assigned judge shall apply in all respects if they would otherwise apply without reference to these rules.

Rule 1504 adopted effective January 1, 1974.

Rule 1505. Appellate review

If the actions to be coordinated are within the jurisdiction of more than one reviewing court, an order granting a petition for coordination shall specify, in accordance with section 404.2 of the Code of Civil Procedure, the court in which any petition for a writ relating to any subsequent order in that coordination proceeding shall be filed. A petition for a writ relating to an order granting or denying coordination may be filed, subject to the provisions of rule 20, in any reviewing court having jurisdiction under the rules applicable to civil actions generally.

Rule 1505 adopted effective January 1, 1974.

Rule 1506. Liaison counsel

(a) An assigned judge may at any time request the parties on each side of the included or coordinated actions to select one or more of the attorneys of record on that side to be appointed as liaison counsel and may appoint such liaison counsel if the parties are unable to agree. Unless otherwise stipulated to or directed by an assigned judge, the appointment of a liaison counsel by a coordination motion judge shall terminate upon the final determination of the issue whether coordination is appropriate. For good cause shown, the coordination motion judge, on his own motion or on the motion of any party, may remove such counsel as liaison counsel.

(b) Except as otherwise directed by the assigned judge, any party who has made a written request for special notice shall be served with a copy of any document thereafter served on the party's liaison counsel.

Rule 1506 adopted effective January 1, 1974.

CHAPTER 2. Procedural Rules Applicable to All Coordination Proceedings

Title 4, Special Rules for Trial Courts—Division II, Rules for Coordination of Civil Actions Commenced in Different Trial Courts—Chapter 2, Procedural Rules Applicable to All Coordination Proceedings; adopted effective January 1, 1974.

Rule 1515. Motions pursuant to Code of Civil Procedure section 170.6

Rule 1510. Service of papers

Except as otherwise provided in these rules, all papers filed or submitted under these rules shall be accompanied by proof of prior service on all other parties to the coordination proceeding, including all parties appearing in all included actions and coordinated actions. Service and proof of such service shall be made as provided for civil actions generally. Except as provided in rule 1506(b), any party for whom liaison counsel has been designated may be served by serving the liaison counsel. Failure to serve any defendant with a copy of the summons and of the complaint, or failure to serve any party with any other paper or order as required by these rules, shall not preclude the coordination of the actions, but such defendant or party may assert such failure to serve him as a basis for appropriate relief.

Rule 1510 adopted effective January 1, 1974.

Rule 1511. Papers to be submitted to Chairman of the Judicial Council

A copy of every petition, notice of submission of petition for coordination, notice of opposition, application for stay order, stay order, notice of hearing on a petition, order granting or denying coordination, order of remand, order of transfer, and of every order terminating a coordination proceeding in whole or in part shall be transmitted to the Chairman of the Judicial Council. Any document required to be submitted to the Chairman of the Judicial Council shall be submitted in duplicate unless such document is accompanied by proof of submission of the original or a copy thereof to the assigned judge. All papers submitted to the Chairman of the Judicial Council under these rules shall be transmitted to the San Francisco office of the Judicial Council.

Rule 1511 adopted effective January 1, 1974.

Rule 1512. Points and authorities and affidavits

Unless otherwise provided in these rules or directed by the assigned judge, all memoranda of points and authorities and affidavits in support of or opposition to any petition, motion or application shall be served and submitted not later than five days prior to any hearing upon the matter at issue.

Rule 1512 adopted effective January 1, 1974.

Rule 1513. Evidence presented at court hearings

All factual matters to be heard on any petition for coordination, or on any other petition, motion or application under these rules, shall be initially presented and heard upon affidavits, answers to interrogatories or requests for admissions, depositions, or matters judicially noticed. Oral

testimony shall not be permitted at a hearing except as the assigned judge may permit to resolve factual issues shown by the affidavits to be in dispute. Except as otherwise permitted by the assigned judge for good cause shown, only the parties who have submitted a petition, motion or application, or a written response or opposition to such petition, motion or application, shall be permitted to appear at the hearing thereon.

Rule 1513 adopted effective January 1, 1974.

Rule 1514. Stay orders

(a) An application to an assigned judge for an order pursuant to section 404.5 of the Code of Civil Procedure staying the proceedings in any action may be included with a petition for coordination or may be served and submitted by any party at any time prior to the determination of such petition. An application for a stay order or opposition to such application shall list all known related cases pending in any California court and shall state whether the stay order should extend to any such related case. An application for a stay order shall be supported by a memorandum of points and authorities and by affidavits establishing the fact relied upon to show that a stay order is necessary and appropriate to effectuate the purposes of coordination. If the action to be stayed is not included in the petition for coordination, copies of the application and of all supporting documents shall be served upon each party to the action to be stayed and any such party may serve and submit opposition to the application for a stay order. Any points and authorities and affidavits in opposition to an application for a stay order shall be served and submitted within 10 days after the service of such application and the assigned judge may schedule a hearing to determine whether the stay order shall issue.

(Subd (a) adopted effective January 1, 1974.)

(b) Any stay order issued without a hearing over the prior written objection of a party to the action stayed by such order shall terminate on the 30th day following filing of the stay order. A stay order issued in the absence of any timely written objection and without a hearing shall terminate on the 30th day following the submission by any party to the action stayed by such order of a written request for a hearing to determine whether the stay order shall remain in effect. Notice of a hearing to determine whether a stay order should be granted or terminated shall be prepared and served at the direction of the coordination motion judge. For good cause shown at such hearing, the judge may order the stay granted or extended pending determination of the petition for coordination.

(Subd (b) adopted effective January 1, 1974.)

(c) Unless otherwise specified in the stay order, a stay order suspends all proceedings in the action to which it applies. A stay order may be limited by its terms to specified proceedings, orders, motions or other phases of the action to which the stay order applies.

(Subd (c) adopted effective January 1, 1974.)

(d) In the absence of a stay order, a court receiving an order assigning a coordination motion judge may continue to exercise jurisdiction over the included action for purposes of all pretrial and discovery proceedings, but no trial shall be commenced and no judgment shall be entered in that action unless trial of the action had commenced prior to the assignment of the coordination motion judge.

(Subd (d) as amended effective July 1, 1974; adopted effective January 1, 1974.)

(e) In ruling upon an application for a stay order the assigned judge shall determine whether the stay will promote the ends of justice, considering the imminence of any trial or other proceeding that might materially affect the status of the action to be stayed, and whether a final judgment in that action would have a res judicata or collateral estoppel effect with regard to any common issue of the included actions.

(Subd (e) adopted effective January 1, 1974.)

(f) The time during which any stay of proceedings is in effect pursuant to these rules shall not be included in determining whether the action stayed should be dismissed for lack of prosecution pursuant to chapter 1.5 (§583.110 et seq.) of title 8 of part 2 of the Code of Civil Procedure.

(Subd (f) as amended effective January 1, 1986; adopted effective January 1, 1974.)

Rule 1514 as amended effective January 1, 1986; previously amended effective July 1, 1974; adopted effective January 1, 1974.

Drafter's Notes
1985—See note following rule 373.

Rule 1515. Motions pursuant to Code of Civil Procedure section 170.6

Any motion or affidavit of prejudice regarding an assigned judge shall be submitted in writing to the assigned judge within 20 days after service of the order assigning the judge to the coordination proceeding. All plaintiffs or similar parties in the included or coordinated actions shall constitute a side and all defendants or similar parties in such actions shall constitute a side for purposes of applying Code of Civil Procedure section 170.6.

Rule 1515 as amended effective June 19, 1982; adopted effective January 1, 1974.

Drafter's Notes
1982—The Judicial Council amended rule 1515 to require direct submission to the assigned coordination judge of any motion or affidavit of prejudice under Code of Civil Procedure section 170.6 regarding that judge. The amendment also ensures that the law governing judicial disqualification in civil actions will apply equally to coordination proceedings.

CHAPTER 3. Petition and Proceedings for Coordination of Actions

Title 4, Special Rules for Trial Courts—Division II, Rules for Coordination of Civil Actions Commenced in Different Trial Courts—Chapter 3, Petition and Proceedings for Coordination of Actions; adopted effective January 1, 1974.

Rule 1520. Motions filed in the trial court

(a) [General requirements] A motion filed in the trial court under this rule shall set forth the matters required by rule 1521(a) and shall be made in the manner provided by law for motions in civil actions generally.

(Subd (a) as amended effective January 1, 1983; adopted effective January 1, 1974.)

(b) [Permission to submit a petition for coordination] If a direct petition is not authorized by Code of Civil Procedure section 404, a party may request permission to submit a petition for coordination to the Chairperson of the Judicial Council. The request shall be made by motion to the presiding judge of a court in which one of the included actions is pending. If permission to submit a petition is granted, the moving party shall prepare an order which shall be served and filed in the action and submitted to the Chairperson of the Judicial Council. The order shall grant the moving party permission to submit a petition for coordination to the Chairperson of the Judicial Council in compliance with rules 1521, 1522, and 1523. To provide sufficient time for a party to submit a petition, the judge may, under rule 1514(e), stay all related actions pending in that court for a reasonable time not to exceed 30 days.

(Subd (b) as amended effective January 1, 1983; adopted effective January 1, 1974.)

(c) [Transfer and consolidation] A motion to transfer and consolidate actions pending in the superior court and in a municipal or justice court of the same county under Code of Civil Procedure section 404 shall be submitted to a superior court in which one of the included actions is pending. The original moving papers shall be filed in the superior court action and copies shall be filed in each included action. The prevailing party shall prepare an order setting forth the disposition of the motion and shall serve and file the order in each included action. If transfer and consoldiation are granted, the moving party shall take all necessary steps to effect the transfer of the action. The moving party shall complete the transfer no later than 90 days after the date the

order of transfer is filed in the included action. If an included action is not transferred within the 90-day period, the order of transfer shall expire with respect to that action without prejudice to renewal of the motion to transfer and consolidate for good cause shown.

(Subd (c) adopted effective January 1, 1983.)

Rule 1520 as amended effective January 1, 1983; adopted effective January 1, 1974.

Drafter's Notes
1983—The Judicial Council amended rule 1520 to implement a recent amendment to the coordination statute (Code Civ. Proc., §404; Stats. 1982, ch. 250). The amendment to the statute will permit a motion in the superior court for transfer and consolidation of actions pending in different courts of the same county and sharing common questions of fact or law. The amended rule will (a) require that a motion to transfer and consolidate under the coordination statute as amended be filed in the superior court in the manner provided by law for motions in civil actions generally; (b) require the moving party to set forth the facts relied upon to show that consolidation is appropriate and to complete the transfer within a reasonable time; and (c) clarify the rule to distinguish the new procedure from existing methods of initiating coordination proceedings.

Rule 1521. Petition for coordination

(a) A request submitted to the Chairman of the Judicial Council for the assignment of a judge to determine whether the coordination of certain actions is appropriate, or a request that a coordination trial judge make such a determination concerning an add-on case, shall be designated a "Petition for Coordination" and may be made at any time after filing of the complaint. The petition shall state whether a hearing is requested and shall be supported by points and authorities and affidavits showing:

(1) the name of each petitioner, or, when the petition is submitted by a presiding or sole judge, the name of each real party in interest, and the name and address of his attorney of record, if any;

(2) the names of the parties to all included actions, and the name and address of each party's attorney of record, if any;

(3) the complete title of each included action, together with the title of the court in which such action is pending and the number of such action;

(4) the complete title of any other action known to the petitioner to be pending in a court of this state that shares a common question of fact or law with the included actions, and a statement of the reasons for not including such other action in the petition for coordination;

(5) the status of each included action, including the status of any pretrial or discovery motions or orders in that action, if known to petitioner;

(6) the facts relied upon to show that each included action meets the coordination standards specified in section 404.1 of the Code of Civil Procedure;

(7) any facts relied upon in support of a request that a particular site or sites be selected for a hearing upon the petition for coordination.

(b) A petition for coordination shall be accompanied by proof of filing of a copy of such petition and of the notice required by rule 1522 and by proof of prior service of copies of the notice and petition as required by rule 1523.

(c) In lieu of proof by affidavit of any fact required by subdivision (a)(2), (3), (6) and (7), a certified or endorsed copy of the respective pleadings may be attached to the petition for coordination, provided that the petitioner shall specify with particularity the portions of the pleadings that are relied upon to show such fact.

(d) The imminence of a trial in any action otherwise appropriate for coordination may be a ground for summary denial of a petition in whole or in part.

Rule 1521 adopted effective January 1, 1974.

Rule 1522. Notice of submission of petition for coordination

Each petition for coordination shall be accompanied by proof of filing in each included action of a "Notice of Submission of Petition for Coordination" and of a copy of the petition for coordination. Each such notice shall bear the title of the court in which the notice is to be filed and the title and number of the included action that is pending in that court, and shall set forth:

(1) the date that the petition for coordination was submitted;

(2) the name and address of the petitioner's attorney of record;

(3) the title and number of the included action to which the petitioner is a party;

(4) the title of the court in which that action is pending; and

(5) the notice required by rule 1523(b).

A copy of each such notice shall be attached to the original petition for coordination.

Rule 1522 adopted effective January 1, 1974.

Rule 1523. Service of notice of submission on party

(a) The petitioner shall serve a copy of the notice of submission of petition for coordination that was filed in each included action, together with a copy of the petition for coordination and of the supporting documents, upon each party appearing in such included action.

(b) The notice shall advise each party that if he intends to oppose the petition for coordination, he must serve and submit written opposition thereto not later than 45 days after such notice is served on him. In lieu of serving copies of the petition for coordination and supporting documents on any party, the petitioner may advise such party in the notice of submission of petition for coordination served on such party that, within five days after such notice is served on him, he may request, in writing, the petitioner to furnish him with copies of such petition and of the supporting documents. The petitioner shall immediately furnish copies of the petition for coordination and supporting documents to each party who makes a timely request, in writing, for such papers.

Rule 1523 adopted effective January 1, 1974.

Rule 1524. Order assigning coordination motion judge

An order by the Chairman of the Judicial Council assigning a coordination motion judge to determine whether coordination is appropriate shall bear the special title and number assigned to the coordination proceeding. A copy of such order shall be served upon each party appearing in an included action and sent to each court in which an included action is pending with directions to the clerk to file the order in the included action. The order shall specify a court address to which all subsequent documents to be submitted to the coordination motion judge shall thereafter be transmitted.

Rule 1524 adopted effective January 1, 1974.

Rule 1525. Opposition to petition

Within 45 days after being served with a copy of a notice of submission of petition for coordination, any party may serve and submit points and authorities and affidavits in opposition to the petition.

Rule 1525 adopted effective January 1, 1974.

Rule 1526. Response in support of petition for coordination

Any party to an included action, within 30 days after he is served with a copy of the notice of submission as required by rule 1523, may serve and submit a written statement in support of the petition.

Rule 1526 adopted effective January 1, 1974.

Rule 1527. Notice of hearing on petition for coordination

(a) No action shall be ordered coordinated over the objection of any party, and no petition for coordination shall be denied, unless a hearing has been held on the petition as provided in these rules.

(b) When the coordination motion judge determines that a hearing is required on a petition for coordination, he shall determine the time, place and matters or issues to be heard and a notice thereof shall be served upon each party appearing in an included action. The coordination motion judge shall determine whether the petitioner has served appropriate notice on all parties who should receive notice of the coordination proceeding, and if he finds that any such party has not been so served, he shall order the petitioner to effect prompt service upon such party.

(c) If the issue whether coordination is appropriate has not been determined within 90 days after his assignment, the coordination motion judge shall promptly submit to the Chairman of the Judicial Council a written report describing: (1) the present status of the coordination proceeding, (2) any factors or circumstances that may have caused undue or unanticipated delay in the determination of the issue whether coordination is appropriate, and (3) any stay orders that are in effect.

Rule 1527 adopted effective January 1, 1974.

Rule 1528. Separate hearing on certain coordination issues

When it appears that a petition for coordination may be disposed of upon the determination of a specified issue or issues, without the necessity of conducting a hearing upon all issues raised by such petition and by any opposition thereto, the assigned judge may order that the specified issue or issues be heard and determined prior to any hearing on the remaining issues.

Rule 1528 adopted effective January 1, 1974.

Rule 1529. Order granting or denying coordination

(a) [Filing and service] When a petition for coordination is granted or denied, a copy of the order shall be filed forthwith in each included action. A copy shall also be served on each party appearing in an included action.

(Subd (a) as amended effective June 19, 1982; adopted effective January 1, 1974.)

(b) [Stay of further proceedings] When an order granting coordination is filed in an included action, all further proceedings in that action are automatically stayed, except as directed by the coordination trial judge or by the coordination motion judge pursuant to subdivision (c). The stay of further proceedings shall not preclude the court in which the included action is pending from

accepting and filing papers with proof of submission of a copy to the assigned judge or from exercising jurisdiction over any severable claim that has not been ordered coordinated.

(Subd (b) as amended effective June 19, 1982; adopted effective January 1, 1974.)

(c) [Coordination motion judge's authority pending assignment of trial judge] After a petition is granted and before a coordination trial judge is assigned, the coordination motion judge may for good cause make any appropriate order as the ends of justice may require, but shall not commence a trial or enter judgment in any included action. Good cause shall include a showing of an urgent need for judicial action to preserve the rights of a party pending assignment of a coordination trial judge.

(Subd (c) as amended effective June 19, 1982; adopted effective January 1, 1974.)

(d) [Order denying coordination] When an order denying a petition for coordination is filed in an included action and served on the parties to the action, the authority of the coordination motion judge over the included action shall terminate. Any stay that has been ordered by the coordination motion judge shall terminate 10 days after the filing of the order denying coordination.

(Subd (d) as amended effective June 19, 1982; adopted effective January 1, 1974.)

Rule 1529 as amended effective June 19, 1982; adopted effective January 1, 1974.

Drafter's Notes
1982—The Judicial Council amended rule 1529 to authorize the coordination motion judge to consider matters requiring immediate judicial action pending the assignment of the coordination trial judge. The required showing of urgency precludes requests for consideration of routine matters. The rule does not authorize the coordination motion judge to try the cause or to grant judgment.

CHAPTER 4. Pretrial and Trial Rules for Coordinated Actions

Title 4, Special Rules for Trial Courts—Division II, Rules for Coordination of Civil Actions Commenced in Different Trial Courts—Chapter 4, Pretrial and Trial Rules for Coordinated Actions; adopted effective January 1, 1974.

Rule 1540. Order assigning coordination trial judge

Upon the granting of a petition for coordination, the Chairman of the Judicial Council shall assign a coordination trial judge to hear and determine the coordinated actions as provided by section 404.3 of the Code of Civil Procedure. Immediately upon his assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending. A copy of the assignment order shall be filed in each coordinated action and another copy thereof shall be transmitted to each party appearing in such action. The order assigning a coordination trial judge shall designate a single address to which all papers to be submitted to that judge shall be transmitted. Every paper filed in a coordinated action shall be accompanied by proof of submission of a copy thereof to the coordination trial judge at the designated address.

Rule 1540 adopted effective January 1, 1974.

Rule 1541. Duties of the coordination trial judge

(a) The coordination trial judge shall hold a preliminary trial conference preferably within 30 days after issuance of the assignment order by the Chairman of the Judicial Council. Counsel and all persons appearing in propria persona shall come to the conference prepared to discuss all matters specified in the order setting the conference. At any time following the assignment of the coordination trial judge, counsel may serve and submit a proposed agenda for the conference and a proposed form of order covering such matters of procedure and discovery as may be appropriate. At such conference, the judge may:

(1) appoint liaison counsel in accordance with rule 1506;

(2) establish a timetable for filing motions other than discovery motions;

(3) establish a schedule for discovery;

(4) provide a method and schedule for the submission of preliminary legal questions that might serve to expedite the disposition of the coordinated actions;

(5) in class actions, establish a schedule, if practicable, for the prompt determination of matters pertinent to the class action issue;

(6) establish a central depository or depositories to receive and maintain for inspection by the parties evidentiary material and specified documents that are not required by these rules to be served upon all parties; and

(7) schedule further pretrial conferences if appropriate.

(b) The coordination trial judge shall assume an active role in managing all steps of the pretrial, discovery, and trial proceedings to expedite the just determination of the coordinated actions without delay. He may, for the purpose of coordination and to serve the ends of justice:

(1) order any coordinated action transferred to another court pursuant to Rule 1543;

(2) schedule and conduct hearings, conferences, and a trial or trials at any site within this state he deems appropriate with due consideration to the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; and the calendar of the courts; and

(3) order any issue or defense to be tried separately and prior to the trial of the remaining issues when it appears the disposition of any of the coordinated actions might thereby be expedited.

Rule 1541 adopted effective January 1, 1974.

Rule 1542. Remand of action or claim

The coordination trial judge, upon the stipulation of all parties to a coordination proceeding or upon the basis of evidence received at a hearing ordered on his own motion or on the motion of any party to any coordinated action, may at any time remand a coordinated action or any severable claim or issue in that action to the court in which the action was pending at the time the coordination of that action was ordered, provided that no action or severable claim or issue in that action shall be remanded over the objection of any party unless the evidence demonstrates a material change in the circumstances that are relevant to the criteria for coordination as stated in Code of Civil Procedure section 404.1. If the order of remand requires that the action be transferred, the provisions of rule 1543(b) shall be applicable to the transfer.

Rule 1542 adopted effective January 1, 1974.

Rule 1543. Transfer of action or claim

(a) The coordination trial judge, on his motion or on the motion of any party to any coordinated action, may order any coordinated action or severable claim in that action transferred from the court in which it is pending to another court for a specified purpose or for all purposes. No action or claim shall be transferred over the objection of any party unless a hearing has been held upon 10 days' written notice served upon all parties to that action. At any hearing to determine whether an action or claim should be transferred, the court shall consider the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; and any other relevant matter.

(b) The order transferring the action or claim shall designate the court to which the action is transferred and shall direct that a copy of the order of transfer shall be filed in each coordinated action. The clerk of the court in which the action was pending shall immediately prepare and

transmit to the court to which the action is transferred a certified copy of the order of transfer and of the pleadings and proceedings in that action and shall serve a copy of the order of transfer upon each party appearing in that action. The court to which the action is transferred shall file the action as if the action had been commenced in that court. No fees shall be required for such transfer by either court. If it is necessary to have any of the original pleadings or other papers before the coordination trial judge, the clerk of the court from which the action was transferred shall, upon written request of a party to that action or of the coordination trial judge, transmit such papers or pleadings to the court to which the action is transferred, a certified copy thereof being retained. Upon receipt of an order of transfer, the court to which the action is transferred may exercise jurisdiction over the action in accordance with the orders and directions of the coordination trial judge, and no other court shall exercise jurisdiction over that action except as provided in this rule.

Rule 1543 adopted effective January 1, 1974.

Rule 1544. Add-on cases

(a) A request to coordinate an add-on case shall conform to the requirements of rules 1520 through 1523, except that such request shall be submitted to the coordination trial judge pursuant to section 404.4 of the Code of Civil Procedure, with proof of mailing of one copy thereof to the Chairman of the Judicial Council and with proof of service as required by rule 1510. Within 10 days after such service any party may serve and submit a notice of opposition to such request. Thereafter, within 15 days after submitting his notice of opposition, the party shall serve and submit his points and authorities and affidavits in opposition to the request. Failure to serve and submit such points and authorities and affidavits may be a ground for granting the request to coordinate an add-on case.

(b) The coordination trial judge may order a hearing to be held on the request to coordinate an add-on case as provided by rules 1527 and 1528 and may allow the parties to serve and submit additional written materials in support of, or in opposition to, the request. At any such hearing, the court shall consider the relative development of the actions and the work product of counsel, in addition to any other relevant matter. Any application for an order staying the add-on case shall be made to the coordination trial judge in the manner provided by rule 1514.

(c) An order granting or denying a request to coordinate an add-on case shall be prepared and served as provided by rule 1529 and an order granting such request shall, upon filing, automatically stay all further proceedings in the add-on case as provided in rule 1529.

Rule 1544 adopted effective January 1, 1974.

Rule 1545. Termination of action

The coordination trial judge may terminate any coordinated action by settlement or final dismissal, summary judgment, or judgment, or may transfer such action so that it may be dismissed or otherwise terminated in the court where the action was pending when coordination was ordered.

A certified copy of any order dismissing or terminating the action and of any judgment shall be transmitted to:

(1) the clerk of the court in which the action was pending when coordination was ordered, who shall promptly enter any judgment and serve notice of entry of the judgment upon all parties to the action, and

(2) the appropriate clerks for filing in each pending coordinated action.

The judgment entered in each coordinated action shall bear the title and number that would be applicable to that action without regard to the coordination proceeding. Until the judgment in a coordinated action becomes final, all further proceedings in that action to be determined by the trial court shall be determined by the coordination trial judge; thereafter, unless otherwise ordered by the coordination trial judge, all such proceedings shall be conducted in the court where the action was pending when coordination was ordered. The coordination trial judge shall also specify the court in which any ancillary proceedings shall be heard and determined. For purposes of this rule, a judgment is final when it is no longer subject to appeal.

Rule 1545 adopted effective January 1, 1974.

CHAPTER 5. Administration

Title 4, Special Rules for Trial Courts—Division II, Rules for Coordination of Civil Actions Commenced in Different Trial Courts—Chapter 5, Administration; adopted effective January 1, 1974

Rule 1550. General administration by Administrative Office of the Courts

Rule 1550. General administration by Administrative Office of the Courts

(a) Except as otherwise provided in these rules, all necessary administrative functions under this division shall be performed at the direction of the Chairman of the Judicial Council by a coordination attorney in the Administrative Office of the Courts. The coordination attorney shall at all times maintain for the Chairman of the Judicial Council a list of active and retired judges who are qualified and currently available to conduct coordination proceedings. The coordination attorney shall maintain at the San Francisco office of the Judicial Council a register of all coordination proceedings and a file for each such proceeding for public inspection during regular business hours.

(b) Each coordination proceeding shall be given a special title and number assigned by the coordination attorney, and thereafter all papers in that proceeding shall bear such title and coordination proceeding number.

Rule 1550 adopted effective January 1, 1974.

DIVISION III. Judicial Arbitration Rules for Civil Cases

Title 4, Special Rules for Trial Courts—Division III, Judicial Arbitration Rules for Civil Cases; adopted effective July 1, 1976. Adopted pursuant to the authority contained in Section 6, Article VI, California Constitution and Code of Civil Procedure section 1141.10.

Rule 1600. Actions subject to arbitration

Except as provided in rule 1600.5 the following actions shall be arbitrated:

(a) Upon stipulation, any action in any court, regardless of the amount in controversy.

(Subd (a) adopted effective July 1, 1979.)

(b) Upon filing of an election by a plaintiff, any action in any court in which the plaintiff agrees that the arbitration award shall not exceed $50,000.

(Subd (b) as amended effective January 1, 1988; previously amended effective January 1, 1982, and January 1, 1986; adopted effective July 1, 1979.)

(c) In each superior court with 10 or more judges, all civil actions where the amount in controversy does not exceed $50,000 as to any plaintiff.

(Subd (c) as amended effective January 1, 1988; previously amended effective January 1, 1982, and January 1, 1986; adopted effective July 1, 1979.)

(d) In each superior court with fewer than 10 judges that so provides by local rule, all actions where the amount in controversy does not exceed $50,000 as to any plaintiff.

(Subd (d) as amended effective January 1, 1988; previously amended effective January 1, 1982, and January 1, 1986; adopted effective July 1, 1979.)

(e) All actions in a municipal court that so provides by local rule.

(Subd (e) adopted effective July 1, 1979.)

Rule 1600 as amended effective January 1, 1988; previously amended effective January 1, 1982, and January 1, 1986; adopted effective July 1, 1979.

Drafter's Notes

1982—Stats. 1981, ch. 1110: (a) increases to $25,000 the "amount in controversy" ceiling for judicial arbitration in Los Angeles and San Bernardino Counties only; and (b) changes the arbitration procedures to provide that the conference at which the amount in controversy is determined is to be held not later than three months after the at-issue memorandum is filed, and to require appointment of an arbitrator in certain cases within 30 days after the case is submitted to arbitration. The Council amended rules 1600, 1600.5, 1601 and 1605 to conform to these statutory changes.

1985—The Legislature and Governor have approved two legislative changes in the judicial arbitration program:

(a) Stats. 1985, ch. 1452 repealed the provision (Code Civ. Proc., §1141.32) that would have terminated the judicial arbitration program, and thereby extended the life of the program indefinitely.

(b) Stats. 1985, ch. 1383 applies a $25,000 amount in controversy to all superior courts that are required or elect to have an arbitration program. The legislation is effective January 1, 1986.

Until that date, the statute specifies four counties where the $25,000 limit applies, but applies a $15,000 limit for all other counties unless the board of supervisors has adopted the $25,000 limit.

Rules 1600, 1600.5 and 1601 were amended to conform to statute by deleting reference to the $15,000 limit for judicial arbitration.

1988—Recent legislation increases the eligibility of cases for judicial arbitration from those with $25,000 in controversy to those with up to $50,000 in controversy. The council amended the rules to conform to the legislation.

Rule 1600.1. Applicability of rules

The rules in this division III (commencing with rule 1600) apply if Code of Civil Procedure, part III, title 3, chapter 2.5 (commencing with section 1141.10) is in effect either throughout the state or as a result of a resolution of a county board of supervisors pursuant to section 1141.105, to the extent of that resolution.

Rule 1600.1 adopted effective January 1, 1988.

Drafter's Notes
1987—The council added rule 1600.1 to clarify that the arbitration rules do not constitute a mandate unless statewide legislation or a resolution of the board of supervisors is in effect mandating the arbitration program. This change was made to assure consistency with recent legislation that will suspend the state-mandated arbitration program during the period January 1 through June 30, 1988, but will authorize locally mandated programs pursuant to resolutions of the board of supervisors during that period.

Rule 1600.5. Actions exempt from arbitration

The following actions are exempt from arbitration:

(a) Actions that include a prayer for equitable relief that is not frivolous or insubstantial;

(Subd (a) adopted effective July 1, 1979.)

(b) Class actions;

(Subd (b) adopted effective July 1, 1979.)

(c) Small claims actions or trials de novo on appeal from the small claims court;

(Subd (c) adopted effective July 1, 1979.)

(d) Unlawful detainer proceedings;

(Subd (d) adopted effective July 1, 1979.)

(e) Family Law Act proceedings;

(Subd (e) adopted effective July 1, 1979.)

(f) Any action otherwise subject to arbitration that is found by the court to be not amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation;

(Subd (f) adopted effective July 1, 1979.)

(g) Any category of actions otherwise subject to arbitration but excluded by local rule as not amenable to arbitration on the ground that under the circumstances relating to the particular court arbitration of such cases would not reduce the probable time and expense necessary to resolve the litigation;

(Subd (g) adopted effective July 1, 1979.)

(h) Actions involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds $50,000.

(Subd (h) as amended effective January 1, 1988; previously amended effective January 1, 1982, and January 1, 1986; adopted effective July 1, 1979.)

(i) (*Deleted 1988.)*

(Subd (i) deleted effective July 1, 1988; adopted effective July 1, 1979.)

Rule 1600.5 as amended effective July 1, 1988; previously amended effective January 1, 1982, January 1, 1986, and January 1, 1988; adopted effective July 1, 1979.

Drafter's Notes
1985—See note following rule 1600.

Rule 1601. Arbitration hearing list

(a) When the parties stipulate to arbitration, the action shall be placed on the arbitration hearing list forthwith. The stipulation shall be filed no later than the first status or case management conference or similar event, or 195 days after the complaint is filed, whichever is earlier, unless the court orders otherwise.

(Subd (a) as amended effective January 1, 1991; previously amended effective July 1, 1979.)

(b) Upon written request of a plaintiff to submit an action to arbitration, the action shall be placed on the arbitration hearing list subject to a motion by defendant for good cause to delay the arbitration hearing. The request shall be filed at the time the at-issue memorandum is filed, or at such later date as is permitted by the court.

An action involving a cross-complaint where a plaintiff has elected to arbitrate shall be removed from the arbitration hearing list if upon motion of the cross-complaint made within 15 days after notice of the election to arbitrate the court determines that the amount in controversy relating to the cross-complaint exceeds $50,000.

(Subd (b) as amended effective January 1, 1988; adopted effective July 1, 1979; and previously amended effective January 1, 1982, and January 1, 1986.)

(c) Absent a stipulation or a request by plaintiff to submit to arbitration: (1) in superior courts, actions shall be placed on the arbitration hearing list at the conference when the court determines the amount in controversy, which conference shall be held no later than three months after the at-issue memorandum is filed and no later than 90 days before the date set for trial, whichever occurs first; (2) in municipal courts, actions shall be placed on the hearing list at such time as is designated by local rule.

(Subd (c) as amended effective January 1, 1982; previously amended July 1, 1979; adopted effective July 1, 1976.)

(d) [Repealed 1985.]

(Subd (d) repealed effective January 1, 1985; previously amended effective July 1, 1979; adopted effective July 1, 1976.)

Rule 1601 as amended effective January 1, 1991; previously amended effective July 1, 1979, January 1, 1982, January 1, 1985, January 1, 1986, and January 1, 1988; adopted effective July 1, 1976.

Drafter's Notes
1982—See note following rule 1600.

1984—Rule 1601 was amended to delete subdivision (d), respecting the effects of the dismissal provisions of Code of Civil Procedure section 583.

1985—See note following rule 1600.

Rule 1602. Designation of arbitrator by stipulation

The parties may by stipulation designate any person to serve as arbitrator. The designation shall be effective if the designated person files a written consent and the oath required of panel arbitrators under these rules within 15 days of the date of stipulation. A stipulation may specify the maximum amount of the arbitrator's award.

Rule 1602 as amended effective July 1, 1979; adopted effective July 1, 1976.

Rule 1603. Administration

(a) The presiding judge shall designate the clerk, executive officer or other court employee to serve as arbitration administrator. The arbitration administrator shall supervise the selection of arbitrators for the cases on the arbitration hearing list, generally supervise the operation of the arbitration program and perform any additional duties delegated by the presiding judge.

(Subd (a) adopted effective July 1, 1976.)

(b) In each superior court having 10 or more authorized judges there shall be an administrative committee composed of, insofar as may be practicable:

(1) the presiding judge or a judge designated by the presiding judge;

(2) the arbitration administrator;

(3) two or more active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent plaintiffs in personal injury tort actions before the court;

(4) an equal number of active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent defendants in personal injury tort actions before the court.

(5) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try other civil cases.

It may also include:

(6) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try cases before the court in any specialized area for which the presiding judge establishes a specialized arbitration panel.

The members of the administrative committee shall serve for terms of two years; they may be reappointed, and may be removed by the presiding judge.

(Subd (b) as amended effective July 1, 1979; adopted effective July 1, 1976.)

(c) Any other court may by rule establish an administrative committee as provided in subdivision (b). Otherwise, the presiding judge or a judge designated by the presiding judge shall perform the functions and have the powers of an administrative committee as provided in these rules.

(Subd (c) as amended effective July 1, 1979; adopted effective July 1, 1976.)

(d) The administrative committee shall have power:

(1) to select its chairman and provide for its procedures;

(2) to appoint the panels of arbitrators provided for in rule 1604;

(3) to remove a person from a panel of arbitrators;

(4) to establish procedures for selecting an arbitrator not inconsistent with these rules or local court rules;

(5) to review the administration and operation of the arbitration program periodically and make recommendations to the Judicial Council as it deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

(Subd (d) adopted effective July 1, 1976.)

Rule 1603 as amended effective July 1, 1979; adopted effective July 1, 1976.

Rule 1604. Composition of the panels

(a) In every court there shall be a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(Subd (a) as amended effective July 1, 1979.)

(b) The panels of arbitrators shall be composed of active members of the State Bar, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, and retired judges.

Each person appointed shall serve as a member of a panel of arbitrators at the pleasure of the administrative committee. A person may be on arbitration panels in more than one county.

(Subd (b) as amended effective January 1, 1996; previously amended effective July 1, 1979.)

(c) The administrative committee shall determine the size and composition of the panels of arbitrators. The number of attorneys on a personal injury panel who usually represent plaintiffs shall, to the extent feasible, equal the number of those who usually represent defendants.

(d) An appointment to a panel is effective when the person appointed agrees to serve and files an oath or affirmation to justly try all matters submitted to him or her.

(Subd (d) as amended effective January 1, 1996.)

(e) Lists showing the names of panel arbitrators available to hear cases shall be available for public inspection in the arbitration administrator's office.

(f) A superior court and a municipal court may by local rule of each court agree to jointly use the superior court panel of arbitrators and share the administrative duties subject to such terms and

conditions as are mutually agreeable, including membership of a municipal court representative on the administrative committee.

(Subd (f) as amended effective July 1, 1979)

Rule 1604 as amended effective January 1, 1996; previously amended effective July 1, 1979; adopted effective July 1, 1976.

Drafter's Notes
1996—The council amended this rule to authorize retired court commissioners who were licensed to practice law prior to their appointment as a commissioner to serve as judicial arbitrators. The rule change tracks a recent amendment to Code of Civil Procedure section 1141.18(a). In addition, the council made a technical amendment to make the rule gender neutral.

Rule 1605. Assignment of cases

(a) Unless the arbitrator has been designated by stipulation, within 15 days after a case is placed on the arbitration hearing list the administrator shall select at random at least three names from the appropriate panel in accordance with procedures established by the administrative committee. The procedures shall also provide a method by which each party or side may within 10 days reject in writing an equal number of names so that, if each party or side rejects the maximum number of names permitted, a single name will remain and that arbitrator will be deemed appointed. If at the end of 10 days two or more names have not been rejected, the administrator shall appoint at random one of the remaining arbitrators.

The local procedures shall assure that an arbitrator is appointed within 30 days from the submission of a case to arbitration pursuant to rule 1600(a), (d) or (e).

In the absence of local procedures to the contrary:

(1) The administrator shall determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the administrator may assume there are two sides. A dispute as to the number or identity of sides shall be decided by the presiding judge as are disputes in determining sides entitled to peremptory challenges of jurors.

(2) The administrator shall select at random a number of names equal to the number of sides, plus one.

(3) The list of randomly selected names shall be mailed to counsel for the parties, and each side has 10 days from the date of mailing to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4) Promptly on the expiration of the 10-day period, the administrator shall appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains.

The administrator shall assign the case to the arbitrator appointed and shall give notice of the appointment to the arbitrator and to all parties. Within 15 days after the appointment of the arbitrator, the arbitrator shall notify each party and the administrator in writing of the date, time, and place of the arbitration hearing.

(Subd (a) as amended effective January 1, 1984; previously amended effective July 1, 1979, and January 1, 1982; adopted effective July 1, 1976.)

(b) If the arbitrator declines to serve or does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 1607, the administrator shall vacate the appointment of the arbitrator and shall return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator pursuant to subdivision (a). The 90-day period may be extended only by order of the court upon the motion of a party as provided in rule 1607(b).

(Subd (b) as amended effective January 1, 1994; previously amended effective January 1, 1991.)

(c) When a case is returned under subdivision (b) to the arbitration hearing list after assignment to the first arbitrator, the administrator may certify the case to the court. When the case is returned after assignment to the second arbitrator, however, the administrator shall certify the case to the court. The court shall summon the parties or their counsel. If the inability to hold a hearing is due to the neglect or lack of cooperation of a party who elected or stipulated for arbitration, the case shall be removed from the arbitration hearing list and restored to the civil active list; other cases may be ordered reassigned for arbitration, or the court may make any other appropriate order to expedite disposition of the case.

(Subd (c) as amended effective January 1, 1991.)

Rule 1605 as amended effective January 1, 1994; adopted effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1982; January 1, 1984, and January 1, 1991.

Drafter's Notes
1982—See note following rule 1600.

1983—Responding to the recommendations of the Advisory Committee on Mandatory Arbitration Rules that recently completed a statewide survey on the effectiveness of the judicial arbitration program, the Judicial Council adopted several rule changes involving arbitration procedure.

Rule 1605 was amended to require the arbitrator within 15 days of appointment to notify the parties and the arbitration administrator of the date, time, and place of the hearing.

Rule 1607 was amended to require the arbitrator to hear the matter no later than 90 days after the appointment unless a party obtains an order on a showing of good cause. A case not heard within the permitted time may be restored to the civil active list only with the filing of a new at-issue

memorandum. Rule 1613 permits introduction of all expert reports in the manner now prescribed by the rule for medical experts.

At the recommendation of the advisory committee, the council is also seeking several legislative changes in the arbitration statutes.

1994—Technical amendments were adopted to rules 1605(b) and 1607(c), related to timely completion of an arbitration hearing. A new subdivision (c) was added to rule 1606 for vacating the appointment of an arbitrator who resists disqualification under Code of Civil Procedure section 170.1. This addition implements a recent amendment to Code of Civil Procedure section 1141.18(d).

Rule 1605.5. Local procedures for selecting arbitrator

In lieu of the procedure in rule 1605, a court having an arbitration program may by local rule or by procedures adopted by its administrative committee pursuant to rule 1603(d)(4) establish any fair method of assigning a case to an arbitrator that affords each side an opportunity to challenge at least one listed arbitrator peremptorily. The local rule or procedure may require that all steps leading to the selection of the arbitrator take place during or immediately following the conference at which the court determines the amount in controversy and the suitability of the case for arbitration. The court may require that counsel with appropriate authority attend the conference.

A copy of the local rule or procedure adopted pursuant to this rule shall accompany the notice of the hearing to determine the amount in controversy.

Rule 1605.5 adopted effective July 1, 1987.

Drafter's Notes
1987—The council adopted new rule 1605.5 to encourage local courts to establish local procedures to ensure that all steps in selecting an arbitrator take place at or immediately after the conference at which the court determines the amount in controversy and that the case is suitable for arbitration.

Rule 1606. Disqualification for conflict of interest

(a) It shall be the duty of the arbitrator to determine whether any cause exists for disqualification upon any of the grounds set forth in section 170.1 of the Code of Civil Procedure governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision 4 of section 170.1, the arbitrator is disqualified. Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived by all parties in writing, the arbitrator shall promptly notify the administrator of any known ground for disqualification and another arbitrator shall be selected as provided in rule 1605.

(Subd (a) as amended effective July 1, 1990; previously amended effective July 1, 1979.)

(b) A copy of any request by a party for the disqualification of an arbitrator pursuant to section 170.1 or 170.6 of the Code of Civil Procedure shall be sent to the administrator.

(Subd (b) as amended effective July 1, 1990; previously amended effective July 1, 1979.)

(c) Upon motion of any party, made as promptly as possible under sections 170.l and 1141.18(d) of the Code of Civil Procedure before the conclusion of arbitration proceedings, the appointment of an arbitrator to a case shall be vacated if the court finds that the party has demanded that the arbitrator disqualify himself or herself and the arbitrator has failed to do so and any of the grounds specified in section 170.1 exists. The arbitration administrator shall return the case to the top of the arbitration hearing list and shall appoint a new arbitrator. The disqualified arbitrator's name shall be returned to the list of those available for selection to hear cases, unless the court orders that the circumstances of the disqualification be reviewed, under rules 1603(d)(3) and 1604(b), by the administrative committee, the presiding judge, or a judge designated by the presiding judge, for appropriate action.

(Subd (c) adopted effective January 1, 1994.)

Rule 1606 as amended effective January 1, 1994; adopted effective July 1, 1976; previously amended effective July 1, 1979, and July 1, 1990.

Note
The reference in the rule to CCP §170.1(4) was probably intended to refer to CCP §170.1(a)(2).

Drafter's Notes
1990—The council amended rules 1606 and 1613 to correct cross-references to code sections that have been repealed, and amended rule 1616 to make it clear that a request for trial de novo filed prematurely—after the arbitrator serves a copy of the award on the parties but before the award is filed—is valid.

1994—Technical amendments were adopted to rules 1605(b) and 1607(c), related to timely completion of an arbitration hearing. A new subdivision (c) was added to rule 1606 for vacating the appointment of an arbitrator who resists disqualification under Code of Civil Procedure section 170.1. This addition implements a recent amendment to Code of Civil Procedure section 1141.18(d).

Rule 1607. Continuances

(a) Except as provided in this rule, the parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. An arbitrator shall consent to a request for a continuance if it appears that good cause exists. Notice of the continuance shall be sent to the arbitration administrator.

(Subd (a) as amended effective January 1, 1992; previously amended effective January 1, 1984.)

(b) If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown under the standards recommended in section 9 of the Standards of Judicial Administration, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance shall notify the arbitrator and the arbitrator shall reschedule the hearing, giving notice to all parties to the arbitration proceeding.

(Subd (b) as amended July 1, 1979.)

(c) An arbitration hearing shall not be continued to a date later than 90 days after the assignment of the case to the arbitrator, including any time due to continuances granted under this rule, except by order of the court upon the motion of a party as provided in subdivision (b).

(Subd (c) as amended effective January 1, 1994; previously amended effective January 1, 1991.)

Rule 1607 as amended effective January 1, 1994; adopted effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1984, January 1, 1991, and January 1, 1992.

Drafter's Notes
1983—See note following rule 1605.

1994—Technical amendments were adopted to rules 1605(b) and 1607(c), related to timely completion of an arbitration hearing. A new subdivision (c) was added to rule 1606 for vacating the appointment of an arbitrator who resists disqualification under Code of Civil Procedure section 170.1. This addition implements a recent amendment to Code of Civil Procedure section 1141.18(d).

Rule 1608. Arbitrator's fees

(a) The arbitrator's award, or a notice of settlement signed by the parties or their counsel, must be timely filed with the clerk of the court before a fee may be paid to the arbitrator.

(Subd (a) as amended effective July 1, 1979; adopted effective July 1, 1976.)

(b) On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee

(1) if the arbitrator devoted a substantial amount of time to a case that was settled without a hearing, or

(2) if the award was not timely filed.

(Subd (b) as amended effective January 1, 1987; previously amended effective July 1, 1979; adopted effective July 1, 1976.)

(c) The arbitrator's fee statement shall be submitted to the administrator promptly upon the completion of the arbitrator's duties, and shall set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

(Subd (c) as amended effective July 1, 1979; adopted effective July 1, 1976.)

Rule 1608 as amended effective January 1, 1987; previously amended effective July 1, 1979; adopted effective July 1, 1976.

Drafter's Notes
1987—Rule 1608(b) was amended to authorize payment of fees to arbitrators who by affidavit establish that they devoted substantial time to cases that were settled without an arbitration hearing. The trial court must review each fee claim and exercise discretion in whether to award a fee.

Rule 1609. Communication with the arbitrator

No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the filing of the award.

There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.

Rule 1609 adopted effective July 1, 1976.

Rule 1610. Representation by counsel; proceedings when party absent

(a) A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

(b) The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award shall not be based solely upon the absence of a party. In the event of a default by defendant, the arbitrator shall require the plaintiff to submit such evidence as may be appropriate for the making of an award.

Rule 1610 adopted effective July 1, 1976.

Rule 1611. Hearings; notice; when and where held

The arbitrator shall set the time, date, and place of the hearing, and shall give notice of the hearing date to the parties at least 30 days prior to the date set for the arbitration hearing. No hearings shall be set for Saturdays or legal holidays, except upon the agreement of all parties and the

arbitrator. Hearings shall be scheduled so as to be completed not sooner than 35 days, nor later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances granted under rule 1607. Hearings shall take place in appropriate facilities provided by the court or selected by the arbitrator. As used in this paragraph, a hearing is completed upon filing of the arbitrator's award with the clerk pursuant to rule 1615(b).

Rule 1611 as amended effective January 1, 1992; adopted effective July 1, 1976; previously amended effective July 1, 1979.

Rule 1612. Discovery

The parties to the arbitration shall have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and shall be subject to all of the same duties, liabilities, and obligations as provided in part 4, title 3, chapter 3 of the Code of Civil Procedure, except that all discovery shall be completed not later than 15 days prior to the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed.

Rule 1612 as amended effective July 1, 1979; adopted effective July 1, 1976.

Rule 1613. Rules of evidence at hearing

(a) All evidence shall be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(Subd (a) adopted effective July 1, 1976.)

(b) The rules of evidence governing civil actions apply to the conduct of the arbitration hearing, except:

(1) Any party may offer written reports of any expert witness, medical records and bills (including physiotherapy, nursing, and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, police reports concerning an accident which gave rise to the case, other bills and invoices, purchase orders, checks, written contracts, and similar documents prepared and maintained in the ordinary course of business. The arbitrator shall receive them in evidence if copies have been delivered to all opposing parties at least 20 days prior to the hearing. Any other party may subpena the author or custodian of the document as a witness and examine the witness as if under cross-examination. Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, shall be accompanied (i) by a statement indicating whether or not the property was repaired, and, if it was, whether the estimated repairs were made in full or in part, and (ii) by a copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any opinion as to ultimate fault expressed in a police report.

(2) The written statements of any other witness may be offered and shall be received in evidence if:

(i) they are made by affidavit or by declaration under penalty of perjury,

(ii) copies have been delivered to all opposing parties at least 20 days prior to the hearing, and

(iii) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(3) The deposition of any witness may be offered by any party and shall be received in evidence, subject to objections available under Code of Civil Procedure section 2025(g), notwithstanding that the deponent is not "unavailable as a witness" within the meaning of section 240 of the Evidence Code and no exceptional circumstances exist, if

(i) the deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules, and

(ii) not less than 20 days prior to the hearing the proponent of the deposition delivered to all opposing parties notice of intention to offer the deposition in evidence.

The opposing party, upon receiving the notice, may subpena the deponent and, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the subpenaing party. These limitations are not applicable to a deposition admissible under the terms of section 2025(u) of the Code of Civil Procedure.

(Subd (b) as amended effective July 1, 1990; adopted effective July 1, 1976; and previously amended effective July 1, 1979, January 1, 1984, and January 1, 1988.)

(c) Subpenas shall issue for the attendance of witnesses at arbitration hearings as provided in the Code of Civil Procedure, in section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It shall be the duty of the party requesting the subpena to modify the form of subpena so as to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpenaed witness may be a ground for an adjournment or continuance of the hearing. If any witness properly served with a subpena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpena on penalty of contempt may be had before the superior court as provided in Code of Civil Procedure section 1991 for other instances of refusal to appear and answer before an officer or commissioner out of court.

(Subd (c) adopted effective July 1, 1976; amended effective July 1, 1979.)

(d) For purposes of this rule, "delivery" of a document or notice may be accomplished manually or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by mail, the times prescribed in this rule for delivery of documents, notices, and demands are increased by five days.

(Subd (d) adopted effective January 1, 1988.)

Rule 1613 as amended effective July 1, 1990; previously amended effective July 1, 1979, January 1, 1984, and January 1, 1988; adopted effective July 1, 1976.

Drafter's Notes
1983—See note following rule 1605.

1988—The council amended rule 1613(b) to permit the admission of documents typical of business contract disputes at court-annexed arbitration hearings under the relaxed requirements for admissibility already stated in that rule. This action was taken in order to facilitate the use of court-annexed arbitration in commercial disputes.

1990—The council amended rules 1606 and 1613 to correct cross-references to code sections that have been repealed, and amended rule 1616 to make it clear that a request for trial de novo filed prematurely—after the arbitrator serves a copy of the award on the parties but before the award is filed—is valid.

Rule 1614. Conduct of the hearing

(a) The arbitrator shall have the following powers:

(1) to administer oaths or affirmations to witnesses;

(2) to take adjournments upon the request of a party or upon his own initiative when deemed necessary;

(3) to permit testimony to be offered by deposition;

(4) to permit evidence to be offered and introduced as provided in these rules;

(5) to rule upon the admissibility and relevancy of evidence offered;

(6) to invite the parties, on reasonable notice, to submit trial briefs;

(7) to decide the law and facts of the case and make an award accordingly;

(8) to award costs, not to exceed the statutory costs of the suit; and

(9) to examine any site or object relevant to the case.

All other questions arising out of the case are reserved to the court.

(b) The arbitrator may, but is not required to make a record of the proceedings. Any records of the proceedings made by or at the direction of the arbitrator shall be deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator shall not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpena issued in a criminal investigation or prosecution for perjury. No other record shall be made, and the arbitrator shall not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by this rule.

Rule 1614 adopted effective July 1, 1976.

Rule 1615. The award; entry as judgment; motion to vacate

(a) The award shall be in writing and signed by the arbitrator. It shall determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate. The arbitrator is not required to make findings of fact or conclusions of law.

(b) Within 10 days after the conclusion of the arbitration hearing the arbitrator shall file the award with the clerk, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award. Within the time for filing the award, the arbitrator may file and serve an amended award.

(Subd (b) as amended effective January 1, 1995.)

(c) The clerk shall enter the award as a judgment forthwith upon the expiration of 30 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules. Promptly upon entry of the award as a judgment the clerk shall mail notice of entry of judgment to all parties who have appeared in the case and shall execute a certificate of mailing and place it in the court's file in the case. The judgment so entered shall have the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in subdivision (d). The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(Subd (c) as amended effective January 1, 1985.)

(d) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in section 473 or subdivisions (a), (b), and (c) of section 1286.2 of the Code of Civil Procedure, and upon no other grounds. The motion shall be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

(Subd (d) as amended effective January 1, 1983.)

Rule 1615 as amended effective January 1, 1995; adopted effective July 1, 1976; previously amended effective January 1, 1983, and January 1, 1985.

Drafter's Notes
1983—Rule 1615(d) was amended effective January 1, 1983, to add a reference to section 473 of the Code of Civil Procedure. Recent legislation (Stats. 1982, ch. 621) amends Code of Civil Procedure section 1141.23 to authorize the court to grant relief on the grounds stated in section 473 from a judgment entered pursuant to an arbitration award.

1984—Rule 1615(c) was amended to allow parties 30 days to file a request for a trial de novo after an arbitration award.

1995—On the recommendation of the Civil and Small Claims Standing Advisory Committee, the council amended: . . . (12) rule 1615 concerning arbitration awards, to make the language gender neutral; . . .

Rule 1616. Trial after arbitration

(a) Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. A request for trial filed after the parties have been served with a copy of the award by the arbitrator, but before the award has been filed with the clerk, shall be deemed valid and timely filed. The 30-day period within which to request trial may not be extended.

(Subd (a) as amended effective July 1, 1990; previously amended January 1, 1985; adopted effective July 1, 1976.)

(b) The case shall be restored to the civil active list for prompt disposition, in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(Subd (b) adopted effective July 1, 1976.)

(c) The case shall be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(Subd (c) adopted effective July 1, 1976.)

(d) In assessing costs after the trial, the court shall apply the standards specified in section 1141.21 of the Code of Civil Procedure.

(Subd (d) as amended effective July 1, 1979; adopted effective July 1, 1976.)

Rule 1616 as amended effective July 1, 1990; previously amended effective July 1, 1979; adopted effective July 1, 1976.

Drafter's Notes
1984—Rule 1616(a) was amended to allow parties 30 days to file a request for a trial de novo after an arbitration award.

1990—The council amended rules 1606 and 1613 to correct cross-references to code sections that have been repealed, and amended rule 1616 to make it clear that a request for trial de novo filed prematurely—after the arbitrator serves a copy of the award on the parties but before the award is filed—is valid.

Rule 1617. Arbitration not pursuant to rules

These rules do not prohibit the parties to any civil action or proceeding from entering into arbitration agreements pursuant to Part 3, Title 9 of the Code of Civil Procedure. Neither the administrative committee nor the arbitration administrator shall take any part in the conduct of an arbitration under an agreement not in conformity with these rules except that the administrator may, upon joint request of the parties, furnish the parties to the agreement with a randomly selected list of at least three names of members of the appropriate panel of arbitrators.

Rule 1617 adopted effective July 1, 1976.

Rule 1618. Settlement of case

If a case is settled, the parties shall notify the arbitrator and the court at least two court days before the arbitration hearing date or the parties shall equally compensate the arbitrator in the total sum of $150.

Rule 1618 adopted effective January 1, 1992.

Rule 1630. Applicability

These rules implement the Civil Action Mediation Act, Code of Civil Procedure section 1775 et seq. As provided in section 1775.2, they apply in the courts of Los Angeles County and in other courts that elect to apply the Act.

Rule 1630 adopted effective March 1, 1994.

Rule 1631. Actions subject to mediation

(a) The following actions may be submitted to mediation under these provisions:

(1) Any action in which the amount in controversy, independent of the merits of liability, defenses, or comparative negligence, does not exceed $50,000 for each plaintiff. The court shall determine the amount in controversy pursuant to Code of Civil Procedure section 1775.5. Determinations to send a case to mediation shall be made by the court after consideration of the expressed views of the parties on the amenability of the case to mediation. The court shall not require the parties or their counsel to personally appear in court for a conference held solely to determine whether to send their case to mediation.

(2) Any other action, regardless of the amount in controversy, in which all parties stipulate to such mediation. The stipulation must be filed not later than 90 days before trial unless the court permits a later time.

(b) Amenability of a particular action for mediation shall be determined on a case-by-case basis, rather than categorically.

Rule 1631 adopted effective March 1, 1994.

Rule 1632. Panels of mediators

Each court, in consultation with local bar associations and ADR providers, and associations of providers, shall identify persons who may be appointed to act as mediators. The identification process shall include consideration of the criteria in section 33 of the Standards of Judicial Administration, and Title 16, California Code of Regulations, section 3622, relating to the Dispute Resolution Program Act.

Rule 1632 adopted effective March 1, 1994.

Rule 1633. Selection of mediators

The parties may stipulate to any mediator, whether or not the person selected is among those identified pursuant to rule 1632, within 15 days of the date an action is submitted to mediation. If the parties do not stipulate to a mediator, the court shall promptly assign a mediator to the action from those identified pursuant to rule 1632.

Rule 1633 adopted effective March 1, 1994.

Rule 1634. Appearance at mediation sessions

The parties shall personally appear at the first mediation session, and at any subsequent session unless excused by the mediator. When the party is other than a natural person, it shall appear by a representative with authority to resolve the dispute or, in the case of governmental entity that

requires an agreement to be approved by an elected official or legislative body, by a representative with authority to recommend such agreement. Each party is entitled to have counsel present at all mediation sessions that concern it, and such counsel and an insurance representative of a covered party also shall be present or available at such sessions, unless excused by the mediator.

Rule 1634 adopted effective March 1, 1994.

Rule 1635. Filing of statement by mediator

Within 10 days of the conclusion of the mediation, the mediator shall file a statement on Judicial Council form ADR-100, advising the court whether the mediation ended in full agreement or nonagreement as to the entire case or as to particular parties in the case.

Rule 1635 adopted effective March 1, 1994.

Rule 1636. Return of unresolved case to active status

It is the duty of the clerk to return a case to active status when it is not entirely resolved by mediation. This does not relieve the plaintiff of the obligation to diligently prosecute the case.

Rule 1636 adopted effective March 1, 1994.

Rule 1637. Coordination with Trial Court Delay Reduction Act

(a) Submission of an action to mediation pursuant to these rules shall not affect time periods specified in the Trial Court Delay Reduction Act (Gov. Code, §68600 et seq.), except as provided in this rule.

(b) Upon written stipulation of the parties filed with the court, there shall be an exception of up to 90 days to the delay reduction time standards to permit mediation of an action. The timing of the 90-day period shall be coordinated by the court with its delay reduction calendar. Mediation shall be completed within 60 days of a reference to a mediator, but that period may be extended by the court for up to 30 days on a showing of good cause. The parties are urged to exercise restraint in discovery while a case is in mediation. In appropriate cases, a protective order under Code of Civil Procedure section 2017, subdivision (c), and related provisions, may be issued to accommodate that objective.

Rule 1637 adopted effective March 1, 1994.

Rule 1638. Statistical information

(a) Each court shall submit quarterly to the Judicial Council, on forms adopted by the Judicial Council, pertinent information on cost and time savings afforded by mediation, as well as information related to the effectiveness of mediation in resolving disputes. The information to be

reported shall include the number of cases referred to mediation; their time in mediation; and whether the mediation ended in full agreement or nonagreement as to the entire case or as to particular parties in the case.

(b) The court shall require parties and mediators, as appropriate, to supply pertinent information for these reports.

(c) If the court so requests, it may report cases in mediation pursuant to these rules under the appropriate reporting methods for cases stayed for contractual arbitration.

Rule 1638 adopted effective March 1, 1994.

Rule 1639. Educational material

Each court shall make available educational material, adopted by the Judicial Council, or from other sources, describing available ADR processes in the community.

Rule 1639 adopted effective March 1, 1994.

DIVISION IV. Rules for Small Claims Actions

Title 4, Special Rules for Trial Courts—Division IV, Rules for Small Claims Actions; adopted effective January 1, 1986. Former Division IV, Special Rules for Trial Courts in Pilot Project for Economical Litigation, consisting of Rules 1701-1859, was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Drafter's Notes
1983—The Judicial Council repealed, effective July 1, 1983, rules 1701 through 1751 and 1801 through 1859, which since 1978 have governed the experimental Economic Litigation Project. That project expired on July 1, 1983. See now CCP §90 et seq., Economic Litigation for Municipal and Justice Courts Act.

CHAPTER 1. Trial Rules

Title 4, Special Rules for Trial Courts—Division IV, Rules for Small Claims Actions—Chapter 1, Trial Rules; adopted effective January 1, 1986.

Rule 1705. Form of judgment
Rule 1706. Role of clerk in assisting litigants
Rules 1707-1710. [Repealed 1983.]
Rule 1711. [Repealed 1983.]
Rules 1713, 1715. [Repealed 1983.]
Rule 1717. [Repealed 1983.]
Rule 1718. [Repealed 1983.]
Rule 1719. [Repealed 1983.]
Rule 1721. [Repealed 1983.]
Rule 1722. [Repealed 1983.]
Rule 1723. [Repealed 1980.]

Rule 1701. Compliance with fictitious business name laws

A claimant who is required to file a declaration of compliance with the fictitious business name laws pursuant to Code of Civil Procedure section 116.430 shall file the declaration in each case filed. The clerk shall make the declaration of compliance available to the claimant in any one of the following ways:

(1) the declaration of compliance may be placed on a separate form approved by the Judicial Council;

(2) the approved Judicial Council form may be placed on the reverse of the Plaintiff's Statement to the Clerk or on the back of any Judicial Council small claims form with only one side; or

(3) the precise language of the declaration of compliance which appears on the approved Judicial Council form may be incorporated into the Plaintiff's Statement to the Clerk.

Rule 1701 amended effective July 1, 1991; adopted effective January 1, 1986.

Former Rule
Former rule 1701 was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Drafter's Notes
1985—To comply with recent legislation (Stats. 1985, ch. 1515), the council adopted two new small claims rules:

(a) Rule 1701 was adopted to require a claimant in the small claims court who does business under a fictitious name to file a declaration of compliance with the fictitious business name laws.

(b) Rule 1702 was adopted to require a person who appears in the small claims court on behalf of a corporation or other entity to declare at the small claims hearing that the person is authorized to appear and the basis for that authority.

In addition, the council repealed existing rule 560 and transferred its language to new rule 1725, to improve the clarity and organization of the rules affecting small claims.

Rule 1702. Substituted service

If substituted service is authorized by Code of Civil Procedure section 116.340 or other provisions of law, no due diligence is required in a small claims court action.

Rule 1702 adopted effective July 1, 1991.

Former Rules
Former rule 1702, similar to the present rule, was adopted effective January 1, 1986, and repealed effective July 1, 1991.

Former rule 1702 was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Drafter's Notes
1985—See note following rule 1701.

Rule 1703. Defendant's claim

A defendant may file a claim against the plaintiff even if the claim does not relate to the same subject or event as the plaintiff's claim, so long as the claim is within the jurisdictional limit of the small claims court.

Rule 1703 adopted effective July 1, 1991.

Former Rule
Former rule 1703, relating to pilot project in municipal courts, was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Rule 1704. Venue challenge

A defendant may challenge venue by writing to the court. The defendant is not required to personally appear at the hearing on the venue challenge. If the court denies the challenge and the defendant is not present, the hearing shall be continued to another appropriate date. The parties shall be given notice of the venue determination and hearing date.

Rule 1704 adopted effective July 1, 1991.

Former Rule
Former rule 1704, relating to pilot project in municipal courts, was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Rule 1705. Form of judgment

The court shall give judgment for damages, equitable relief, or both, and may make other orders as the court deems just and equitable for the resolution of the dispute. If specific property is

referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

Rule 1705 adopted effective July 1, 1991.

Former Rule
Former rule 1705, relating to pilot project in municipal courts, was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Rule 1706. Role of clerk in assisting litigants

The clerk shall provide forms and pamphlets from the Judicial Council. The clerk shall provide materials from the Department of Consumer Affairs when available. The clerk shall inform litigants of the small claims advisory service. The clerk may answer questions relative to filing and service of the claim, designation of the parties, scheduling of hearings, and similar matters.

Rule 1706 adopted effective July 1, 1991.

Former Rule
Former rule 1706, relating to pilot project in municipal courts, was adopted effective January 1, 1978, and repealed effective July 1, 1983.

Rules 1707-1710. [Repealed 1983.]

Rules 1707-1710 repealed effective July 1, 1983; adopted effective January 1, 1978. The repealed rules related to pilot project in municipal courts.

Rule 1711. [Repealed 1983.]

Rule 1711 repealed effective July 1, 1983; previously amended effective July 1, 1979, and July 1, 1981; adopted effective January 1, 1978. The repealed rule related to applicability of special rules.

Rules 1713, 1715. [Repealed 1983.]

Rules 1713, 1715 repealed effective July 1, 1983; adopted effective January 1, 1978.

Rule 1717. [Repealed 1983.]

Rule 1717 repealed effective July 1, 1983; previously amended effective July 1, 1979, and February 4, 1978; adopted effective January 1, 1978. The repealed rule related to pretrial motions.

Rule 1718. [Repealed 1983.]

Rule 1718 repealed effective July 1, 1983; adopted effective January 1, 1978. The repealed rule related to notice of order.

Rule 1719. [Repealed 1983.]

Rule 1719 repealed effective July 1, 1983; previously amended effective May 1, 1980, and July 1, 1979; adopted effective January 1, 1978. The repealed rule related to discovery in municipal courts.

Rule 1721. [Repealed 1983.]

Rule 1721 repealed effective July 1, 1983; adopted effective May 1, 1980. The repealed rule related to statement listing witnesses and evidence in municipal courts.

Former Rule
Former rule 1721, similar to the repealed rule, was adopted effective January 1, 1978, and repealed effective May 1, 1980.

Rule 1722. [Repealed 1983.]

Rule 1722 repealed effective July 1, 1983; adopted effective May 1, 1980. The repealed rule related to transitional provisions for municipal courts.

Rule 1723. [Repealed 1980.]

Rule 1723 repealed effective May 1, 1980; adopted effective January 1, 1978. The repealed rule related to distribution of statements.

CHAPTER 2. Small Claims Advisors

Title 4, Special Rules for Trial Courts—Division IV, Rules for Small Claims Actions—Chapter 2, Small Claims Advisors; adopted effective January 1, 1986.

Rule 1725. Advisor assistance

Rule 1725. Advisor assistance

(a) [Notice to parties] The clerk shall inform the parties orally or in writing

(1) that an advisor is available to assist small claims litigants at no additional charge as provided in Code of Civil Procedure sections 116.260 and 116.940, and

(2) of the provisions of Government Code section 818.9.

(Subd (a) amended effective July 1, 1991; adopted effective January 1, 1986.)

(b) [Training] All small claims advisors shall receive training sufficient to ensure competence in the areas of small claims court practice and procedure; alternative dispute resolution programs; consumer sales; vehicular sales, leasing, and repairs; credit and financing transactions; professional and occupational licensing; landlord-tenant law; contract, warranty, tort, and negotiable instruments law. It is the intent of this rule that the county shall provide this training.

(Subd (b) repealed and adopted effective July 1, 1991; previously adopted effective January 1, 1986.)

(c) [Qualifications] In addition to the training required in subdivision (b), each county may establish additional qualifications for small claims advisors.

(Subd (c) adopted effective July 1, 1991.)

(d) [Conflict of interest] A small claims advisor shall disclose any known direct or indirect relationship the advisor may have with any party or witness in the action. An advisor shall not disclose information obtained in the course of the advisor's duties or use the information for financial or other advantage.

(Subd (d) relettered effective July 1, 1991; adopted effective January 1, 1986, as subd (c).)

Rule 1725 amended effective July 1, 1991; adopted effective January 1, 1986.

Former Rules
Former rule 1725, relating to the pilot project, was adopted effective May 1, 1980, and repealed effective July 1, 1983.

Former rule 1725, similar to the repealed rule, was adopted effective January 1, 1978, and repealed effective May 1, 1980.

Drafter's Notes
1985—See note following rule 1701.

CHAPTER 3. Small Claims Temporary Judges

Rule 1726. Temporary judges in small claims cases

Rule 1727. [Repealed 1983.]
Rule 1729. [Repealed 1983.]
Rules 1731-1739. [Repealed 1983.]
Rule 1741. [Repealed 1983.]
Rules 1743-1751. [Repealed 1983.]
Rules 1801-1809. [Repealed 1983.]
Rule 1811. [Repealed 1983.]
Rules 1813-1817. [Repealed 1983.]
Rule 1819. [Repealed 1983.]
Rules 1821-1823. [Repealed 1983.]
Rules 1825, 1826. [Repealed 1983.]
Rule 1827. [Repealed 1980.]
Rule 1829. [Repealed 1983.]
Rule 1829.1. [Repealed 1983.]
Rule 1831. [Repealed 1983.]
Rule 1833. [Repealed 1983.]
Rule 1835. [Repealed 1983.]
Rule 1837. [Repealed 1983.]
Rules 1839-1847. [Repealed 1983.]
Rule 1849. [Repealed 1983.]
Rules 1851-1859. [Repealed 1983.]

Rule 1726. Temporary judges in small claims cases

(a) [Qualifications] To qualify for appointment as a temporary judge hearing matters in the small claims court or on appeal of a small claims judgment, a person shall have

(1) been a member of the State Bar for at least five years immediately preceding appointment,

(2) attended and completed a training program for temporary judges provided by the appointing court, and

(3) become familiar with the publications identified in Code of Civil Procedure section 116.930.

(Subd (a) adopted effective July 1, 1991.)

(b) [Training program] The training program shall cover judicial ethics, substantive law,* small claims procedures (including the wording of judgments), and the conduct of small claims hearings. Judicial ethics and the conduct of small claims hearings should be taught by a judge, if possible; substantive law and procedure shall be taught by any bench officer or other person experienced in small claims law and procedure.

(Subd (b) adopted effective July 1, 1991.)

*Substantive areas of law are intended to include the following: consumer sales; vehicular sales, leasing, and repairs; credit and financing transactions; professional and occupational licensing; landlord-tenant law; contract, warranty, tort, and negotiable instruments law; and other subject areas deemed appropriate by the presiding judge, given local needs and conditions.

Rule 1726 adopted effective July 1, 1991.

Rule 1727. [Repealed 1983.]

Rule 1727 repealed effective July 1, 1983; adopted effective May 1, 1980. The repealed rule related to pretrial conference in municipal court.

Rule 1729. [Repealed 1983.]

Rule 1729 repealed effective July 1, 1983; previously amended effective May 1, 1980; adopted effective January 1, 1978. The repealed rule related to trial setting in municipal court.

Rules 1731-1739. [Repealed 1983.]

Rules 1731-1739 repealed effective July 1, 1983; adopted effective January 1, 1978. The repealed rules related to pilot program in municipal courts.

Rule 1741. [Repealed 1983.]

Rule 1741 repealed effective July 1, 1983; adopted effective May 1, 1980. The repealed rule related to written testimony and documents in municipal court.

Former Rule
Former rule 1741, similar to the repealed rule, was adopted effective January 1, 1978, and repealed effective May 1, 1980.

Rules 1743-1751. [Repealed 1983.]

Rules 1743-1751 repealed effective July 1, 1983; adopted effective January 1, 1978. The repealed rules related to pilot program in municipal courts.

Rules 1801-1809. [Repealed 1983.]

Rules 1801-1809 repealed effective July 1, 1983; adopted effective January 1, 1978.

Rule 1811. [Repealed 1983.]

Rule 1811 repealed effective July 1, 1983; previously amended effective July 1, 1981; adopted effective January 1, 1978.

Rules 1813-1817. [Repealed 1983.]

Rules 1813-1817 repealed effective July 1, 1983; adopted effective January 1, 1978.

Rule 1819. [Repealed 1983.]

Rule 1819 repealed effective July 1, 1983; previously amended effective July 1, 1979; adopted effective January 1, 1978.

Rules 1821-1823. [Repealed 1983.]

Rules 1821-1823. repealed effective July 1, 1983; adopted effective January 1, 1978.

Rules 1825, 1826. [Repealed 1983.]

Rules 1825, 1826 repealed effective July 1, 1983; adopted effective May 1, 1980.

Rule 1827. [Repealed 1980.]

Rule 1827 repealed effective May 1, 1980; adopted effective January 1, 1978.

Rule 1829. [Repealed 1983.]

Rule 1829 repealed effective July 1, 1983; adopted effective May 1, 1980.

Former Rule
Former rule 1829, similar to the repealed rule, was adopted effective January 1, 1978, and repealed effective May 1, 1980.

Rule 1829.1. [Repealed 1983.]

Rule 1829.1 repealed effective July 1, 1983; previously amended effective May 1, 1980; adopted effective February 4, 1978.

Rule 1831. [Repealed 1983.]

Rule 1831 repealed effective July 1, 1983; previously amended effective May 1, 1980; adopted effective January 1, 1978.

Rule 1833. [Repealed 1983.]

Rule 1833 repealed effective July 1, 1983; previously amended effective February 4, 1978; adopted effective January 1, 1978.

Rule 1835. [Repealed 1983.]

Rule 1835 repealed effective July 1, 1983; adopted effective January 1, 1978.

Rule 1837. [Repealed 1983.]

Rule 1837 repealed effective July 1, 1983; previously amended effective May 1, 1980; adopted effective January 1, 1978.

Rules 1839-1847. [Repealed 1983.]

Rules 1839-1847 repealed effective July 1, 1983; adopted effective January 1, 1978.

Rule 1849. [Repealed 1983.]

Rule 1849 repealed effective July 1, 1983; adopted effective May 1, 1980.

Former Rule
Former rule 1849, similar to the repealed rule, was added effective January 1, 1978, and repealed effective May 1, 1980.

Rules 1851-1859. [Repealed 1983.]

Rules 1851-1859 repealed effective July 1, 1983; adopted effective January 1, 1978.

OTHER RULES

Rule 1860. [Expired 1989.]
Rules 1901-1936. [Repealed 1981.]

Rule 1860. [Expired 1989.]

Rule 1860 expired effective July 1, 1989; adopted effective July 1, 1987.

Drafter's Notes
1987—The council adopted rule 1860 to implement an experimental project which will compare the performance of eight-member and twelve-member juries in designated municipal courts in Los Angeles County. The experiment is required by Stats. 1986, ch. 1337, amending §194.5.

Rules 1901-1936. [Repealed 1981.]

Rules 1901-1936 repealed effective July 1, 1981. The repealed rules related to designated recordkeeping and experimental courts for small claims.

DIVISION V. Delay Reduction Rules for Volunteer Trial Courts

Division V, consisting of rules 1901-1915, adopted effective January 1, 1990. Repealed effective January 1, 1994.

CHAPTER 1. General Provisions

Chapter 1, consisting of rules 1901-1908, repealed effective January 1, 1994.

Rule 1901. [Repealed 1994.]
Rule 1902. [Repealed 1994.]
Rule 1903. [Repealed 1994.]
Rule 1904. [Repealed 1994.]
Rule 1905. [Repealed 1994.]
Rule 1906. [Repealed 1994.]
Rule 1907. [Repealed 1994.]
Rule 1908. [Repealed 1994.]

Rule 1901. [Repealed 1994.]

Rule 1901 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to authority for delay reduction rules and priority.

Rule 1902. [Repealed 1994.]

Rule 1902 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to delay reduction goals.

Rule 1903. [Repealed 1994.]

Rule 1903 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed section related to effect of complaint and cross-complaint on deadlines.

Rule 1904. [Repealed 1994.]

Rule 1904 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to extensions for good cause.

Rule 1905. [Repealed 1994.]

Rule 1905 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to challenge to judge assigned to case.

Rule 1906. [Repealed 1994.]

Rule 1906 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to refiled cases—reassigned to program and to same judge.

Rule 1907. [Repealed 1994.]

Rule 1907 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to cases included in delay reduction program and exceptions.

Rule 1908. [Repealed 1994.]

Rule 1908 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to sanctions.

CHAPTER 2. Case-Processing Procedures

Chapter 2, consisting of rules 1909-1915, repealed effective January 1, 1994.

Rule 1909. [Repealed 1994.]
Rule 1910. [Repealed 1994.]
Rule 1911. [Repealed 1994.]
Rule 1912. [Repealed 1994.]
Rule 1913. [Repealed 1994.]
Rule 1914. [Repealed 1994.]
Rule 1915. [Repealed 1994.]

Rule 1909. [Repealed 1994.]

Rule 1909 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to clerk's duties—complaint, cross-complaint, notice of assigned judge, and cases assigned to program.

Rule 1910. [Repealed 1994.]

Rule 1910 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to serving notice of assigned judge on nonappearing or later-appearing parties.

Rule 1911. [Repealed 1994.]

Rule 1911 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to when to file and serve pleadings and extension.

Rule 1912. [Repealed 1994.]

Rule 1912 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to case management conference.

Rule 1913. [Repealed 1994.]

Rule 1913 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to discovery cut-off.

Rule 1914. [Repealed 1994.]

Rule 1914 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to final trial preparation, and final case management conference.

Rule 1915. [Repealed 1994.]

Rule 1915 adopted effective January 1, 1990. Repealed effective January 1, 1994. The repealed rule related to forms—delay reduction program for volunteer courts.

Drafter's Notes
1994—Judicial Council forms DR-100, DR-110, and DR-120, which relate to rule 1915, are revoked.

DIVISION VI. Rules for Fax Filing and Service

Adopted effective March 1, 1992.

Rule 2001. Authority

The rules in this division are adopted pursuant to Code of Civil Procedure section 1012.5 and the authority granted to the Judicial Council by the Constitution, article VI, section 6.

Rule 2001 adopted effective March 1, 1992.

Former Rule
Former rule 2001, similar to the present rule, was adopted effective July 1, 1990, and repealed effective March 1, 1992.

Rule 2002. Applicability

These rules apply to civil, probate, and family law proceedings in all trial courts. Notwithstanding any provision in these rules, no will, codicil, bond, or undertaking shall be filed by fax nor shall a court issue by fax any document intended to carry the original seal of the court.

Rule 2002 adopted effective March 1, 1992.

Former Rule
Former rule 2002, similar to the present rule, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2003. Definitions

As used in this division, unless the context requires otherwise:

(1) “These rules” means the rules in this division.

(2) “Facsimile transmission” is the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

(3) “Facsimile machine” means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union (CCITT),* in regular resolution. Any facsimile machine used to send documents to a court under rule 2006 must send at an initial transmission speed of no less than 4800 baud and be able to generate a transmission record. Facsimile machine includes, but is not limited to, a facsimile modem that is connected to a personal computer.

*Recommendations T.4 and T.30, Volume VII—Facsimile VII.3, CCITT Red Book, Malaga-Torremolinos, 1984, U.N. Bookstore Code ITU 6731.

(4) “Facsimile filing” or “filing by fax” means the facsimile transmission of a document to a court that accepts such documents.

(5) “Service by fax” means the transmission of a document to a party or the attorney for a party pursuant to these rules.

(6) “Transmission record” means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission.

(7) “Fax” is an abbreviation for “facsimile,” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

(8) “Fax filing agency” means an entity that receives documents by fax for processing and filing with the court.

Rule 2003 adopted effective March 1, 1992.

Former Rule
Former rule 2003, similar to the present rule, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2004. Compliance with rules 201 and 501

The document used for transmitting a fax shall comply with rule 201 or 501 and any applicable local rules regarding form or format of papers. Any exhibit that exceeds 8-1/2 by 11 inches shall be reduced in size to not more than 8-1/2 by 11 inches before it is transmitted. The court may require the party to file the original of an exhibit that has been filed by fax.

Rule 2004 adopted effective March 1, 1992.

Former Rule
Former rule 2004, similar to the present rule, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2005. Filing through fax filing agency

(a) [Transmission of document for filing] A party may transmit a document by fax to a fax filing agency for filing with any trial court. The agency acts as the agent of the filing party and not as an agent of the court.

(b) [Duties of fax filing agency] The fax filing agency that receives a document for filing shall:

(1) Prepare the document so that it complies with rule 201 or 501 and any other requirements for filing with the court;

(2) Physically transport the document to the court; and

(3) File the document with the court, paying any applicable filing fee.

(c) [Requirement of advance arrangements] A fax filing agency shall not be required to accept papers for filing from any company unless appropriate arrangements for payment of filing fees and service charges have been made in advance of any transmission to the agency. If an agency receives documents from a person with whom it does not have prior arrangements, the agency may, without notice to the sending party, discard the document.

(d) [Confidentiality] A fax filing agency shall keep all documents transmitted to it confidential except as provided in these rules.

(e) [Certification] A fax filing agency, by filing a document with the court, certifies that it has complied with these rules and that the document filed is the full and unaltered facsimile-produced document received by it. No additional certification shall be required of the agency.

(f) [Notation of fax filing] Each document filed by a fax filing agency shall contain the phrase "By fax" immediately below the title of the document.

Rule 2005 adopted effective March 1, 1992.

Former Rule
Former rule 2005, similar to present rule 2006, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2006. Direct filing

(a) [Courts in which applicable] A party may file by fax directly to any court that, by local rule, has provided for direct filing. The local rule shall state that direct filing may be made pursuant to these rules and shall provide the fax telephone number for filings and specific telephone numbers

for any departments to which fax filings should be made directly. The court shall also accept agency filings under rule 2005.

(b) [Mandatory cover sheet] A facsimile filing shall be accompanied by the Judicial Council Facsimile Transmission Cover Sheet specified by rule 2009. The cover sheet shall be the first page transmitted, to be followed by any special handling instructions needed to ensure that the document will comply with local rules. Neither the cover sheet nor the special handling instructions shall be filed in the case. The court shall ensure that any credit card information on the cover sheet shall not be publicly disclosed. The court shall not be required to keep a copy of the cover sheet.

(c) [Notation of fax filing] Each document transmitted for direct filing with the court shall contain the phrase "By fax" immediately below the title of the document.

(d) [Presumption of filing] A party filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the court because of (1) an error in the transmission of the document to the court which was unknown to the sending party or (2) a failure to process the facsimile filing when received by the court, the sending party may move the court for an order filing the document nunc pro tunc. The motion shall be accompanied by the transmission record and a proof of transmission in the following form:

"At the time of transmission I was at least 18 years of age and not a party to this legal proceeding. On (date) _____ at (time) _____, I transmitted to the (court name) _____ the following documents (name) _____ by facsimile machine, pursuant to California Rules of Court, rule 2006. The court's fax telephone number that I used was (fax telephone number) _____. The facsimile machine I used complied with rule 2003 and no error was reported by the machine. Pursuant to rule 2006 I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(e) [Payment of fees by credit card]

(1) *(Visa or MasterCard account)* A Visa or MasterCard account may be used to pay for filing fees on facsimile filings made directly with the court. The cover sheet for these filings shall include

(1) the Visa or MasterCard account number to which the fees shall be charged,

(2) the signature of the cardholder authorizing the charging of the fees, and

(3) the expiration date of the credit card.

Notwithstanding Government Code section 6159(c), a court does not need the consent of the county board of supervisors to permit the use of credit cards to pay filing fees in filings covered by these rules.

(2) *(Rejection of charge)* If the charge is rejected by the issuing company, the court shall proceed in the same manner as under Code of Civil Procedure section 411.20 relating to returned checks. This provision shall not prevent a court from seeking authorization for the charge before the filing and rejecting the filing if the charge is not approved by the issuing company.

(3) *(Amount of charge)* The amount charged shall be the applicable filing fee plus any fee or discount imposed by the card issuer or draft purchaser.

(f) [Filing fee accounts] If a court so provides in its local rule establishing a direct filing program, an account may be used to pay for documents filed by fax by an attorney or party who has established an account with the court before filing a paper by fax. The court may require the deposit in advance of an amount not to exceed $1,000 or the court may agree to bill the attorney or party not more often than monthly.

(g) [Facsimile filing fee] In addition to any other fee imposed by law, a party filing a document by fax directly with a court shall pay a fee of $1 for each page of the document.

Rule 2006 adopted effective March 1, 1992.

Former Rule
Former rule 2006, similar to present rule 2007, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2007. Signatures

(a) [Possession of original document] A party who files or serves a signed document by fax pursuant to Code of Civil Procedure section 1012.5 and these rules represents that the original signed document is in his or her possession or control.

(b) [Demand for original; waiver] At any time after filing or service of a signed facsimile document, any other party may serve a demand for production of the original physically signed document. The demand shall be served on all other parties but shall not be filed with the court.

(c) [Examination of original] If a demand for production of the original signed document is made, the parties shall arrange a meeting at which the original signed document can be examined.

(d) [Fax signature as original] Notwithstanding any provision of law to the contrary, including sections 255 and 260 of the Evidence Code, a signature produced by facsimile transmission is an original.

Rule 2007 adopted effective March 1, 1992.

Former Rule
Former rule 2007, similar to present rule 2006, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2008. Service of papers by facsimile transmission

(a) [Transmission of papers by court] A court may serve any notice by fax in the same manner that litigants may serve papers by fax.

(b) [Service by fax] Service by facsimile transmission shall be permitted only if the parties agree and a written confirmation of that agreement is made. The notice or other paper must be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making service. The service is complete at the time of transmission, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document served by facsimile transmission shall be extended by two court days, but such extension shall not apply to extend the time for filing notice of intention to move for new trial.

(c) [Availability of fax] A party or attorney agreeing to accept service by fax shall make his or her fax machine generally available for receipt of documents between the hours of 9 a.m. and 5 p.m. on days that are not court holidays under Code of Civil Procedure section 136. This provision does not prevent the attorney from sending documents by means of the fax machine or providing for normal repair and maintenance of the fax machine during these hours.

(d) [When service complete] Except as provided in subdivision (e), service by fax is complete upon receipt of the entire document by the receiving party's facsimile machine. Service that occurs after 5 p.m. shall be deemed to have occurred on the next court day. Time shall be extended as provided by this rule.

(Subd (d) amended effective July 1, 1997.)

(e) [Proof of service by fax] Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013a, except that:

(1) The time, date, and sending facsimile machine telephone number shall be used in lieu of the date and place of deposit in the mail;

(2) The name and facsimile machine telephone number of the person served shall be used in lieu of the name and address of the person served as shown on the envelope;

(3) A statement that the document was transmitted by facsimile transmission and that the transmission was reported as complete and without error shall be used in lieu of the statement that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid;

(4) A copy of the transmission report shall be attached to the proof of service and the proof of service shall declare that the transmission report was properly issued by the transmitting facsimile machine; and

(5) Service of papers by fax is ineffective if the transmission does not fully conform to these provisions.

(Subd (e) amended effective May 1, 1998; previously amended effective July 1, 1997.)

Rule 2008 amended effective July 1, 1997; adopted effective March 1, 1992; previously amended effective July 1, 1997.

Drafter's Notes
1998—This rule was amended to delete the requirement that the fax cover sheet (form 2009) be included with service by fax.

Former Rule
Former rule 2008, similar to present rule 2005, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2009. Facsimile Transmission Cover Sheet

The Facsimile Transmission Cover Sheet shall be in the following form:

Note
This form is not reproduced here. A copy is available from the court clerk.

Rule 2009 adopted effective March 1, 1992.

Former Rule
Former rule 2009, similar to present rule 2008, was adopted effective July 1, 1990, amended effective October 1, 1990, and repealed effective March 1, 1992.

Rule 2010. [Repealed 1992.]

Rule 2010 adopted effective July 1, 1990; amended effective October 1, 1990; repealed effective March 1, 1992. See rule 2006.

Rule 2011. [Repealed 1992.]

Rule 2011 adopted effective July 1, 1990; repealed effective March 1, 1992. See rule 2009.

DIVISION VII. Differential Case Management Rules

Rule 2101. Authority

The rules in this division implement section 68603(c) of the Government Code under the Trial Court Delay Reduction Act of 1990.

Rule 2101 adopted effective July 1, 1991.

Rule 2102. Local court rules

Each court shall adopt local rules on differential case management as provided in this division consistent with rules 224 and 512 of the California Rules of Court and the statement of general principles set forth in section 2 of the Standards of Judicial Administration.

Rule 2102 as amended effective January 1, 1994; adopted effective July 1, 1991.

Drafter's Notes
1994—The Civil and Small Claims Standing Advisory Committee recommended several "clean-up" amendments to address problems under delay reduction programs, particularly to eliminate unnecessary differences between the procedures in superior and municipal courts. The proposals were adopted by the council.

Rule 2103. Dates for application; cases included in delay reduction program; exceptions

(a) [New and existing cases] The rules in this division apply to general civil cases filed in a delay reduction program after June 30, 1991, and all general civil cases filed in the trial court after June 30, 1992. The court may order any other general civil case be included in the differential case management program upon notice to the parties.

(Subd (a) as amended effective January 1, 1994.)

(b) [General civil case] As used in this division, "general civil case" means all civil cases except probate, guardianship, conservatorship, family law (including proceedings under the Family Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act; freedom from parental custody and control proceedings; and adoption proceedings), juvenile court proceedings, small claims appeals, and "other civil petitions" as defined in the Regulations on Superior Court Reports to the Judicial Council including petitions for a writ of mandate or prohibition, temporary

restraining order, harassment restraining order, domestic violence restraining order, writ of possession, appointment of a receiver, release of property from lien, and change of name.

(c) [Uninsured motorist] To allow for arbitration of the plaintiff's claim, the rules in this division shall not apply to a case designated by the court as "uninsured motorist" until 180 days after the designation.

(d) [Coordination] The rules in this division shall not apply to any case included in a petition for coordination. If the petition is granted, the coordination trial judge may establish a case progression plan for the cases which may be within one of the three case-management plans or after appropriate findings, within the exceptional case category.

Rule 2103 as amended effective January 1, 1994; adopted effective July 1, 1991.

Drafter's Notes
1994—The Civil and Small Claims Standing Advisory Committee recommended several "clean-up" amendments to address problems under delay reduction programs, particularly to eliminate unnecessary differences between the procedures in superior and municipal courts. The proposals were adopted by the council.

Rule 2104. Delay reduction goals

(a) [Case management goals] The rules in this division are adopted to advance the goals of section 68607 of the Government Code and section 2 of the Standards of Judicial Administration Recommended by the Judicial Council within the time limits specified in section 68616 of the Government Code.

(b) [Case-disposition time goals] The goal of the court shall be to manage general civil cases from filing to disposition as provided under sections 2.1 and 2.3 of the Standards of Judicial Administration.

(Subd (b) as amended effective January 1, 1994.)

(c) [Judges' responsibility] It shall be the responsibility of judges to achieve a just and effective resolution of each general civil case through active management and supervision of the pace of litigation from the date of filing to disposition.

Rule 2104 as amended effective January 1, 1994; adopted effective July 1, 1991.

Rule 2105. Differentiation of cases to achieve goals

(a) [Evaluation and assignment] The court shall evaluate each case as provided in rule 2106 under procedures adopted by local court rules. After evaluation, the court shall

(1) assign each case to one of the three case-management plans in subdivision (b), or

(2) exempt the case under subdivision (d) from the case-disposition time goals in rule 2104(b), or

(3) assign the case under subdivision (e) to the local case-management plan.

(b) [Case-management plans] Disposition under the following case-management plans shall be from the date of filing:

(1) Plan 1, disposition within 12 months;

(2) Plan 2, disposition within 18 months;

(3) Plan 3, disposition within 24 months.

(c) [Case-management Plan 1] The court may by local rule presume that a case is subject to the disposition goal under case-management Plan 1 when the case is filed or as otherwise provided by the court. The court may modify the assigned case-management plan at any time for good cause shown.

(Subd (c) as amended effective January 1, 1994.)

(d) [Exceptional cases] The court may in the interest of justice exempt a general civil case from the case-disposition time goals if it finds the case involves exceptional circumstances that will prevent the court and the parties from meeting the goals and deadlines imposed by the program. In making the determination, the court shall be guided by rule 2106.

If the court exempts the case from the case-disposition time goals, the court shall establish a case-progression plan and monitor the case to ensure timely disposition consistent with the exceptional circumstances, with a goal for disposition within three years.

(e) [Local case-management plan] The court may by local rule adopt a case-management plan that establishes a goal for disposing of appropriate cases within six to nine months after filing. The plan shall establish a procedure to identify the cases to be assigned to the plan. The plan shall be used for uncomplicated cases most amenable to early disposition that may not need a case management conference or first status conference or similar event to guide the case to early resolution.

(Subd (e) as amended effective January 1, 1994.)

Rule 2105 as amended effective January 1, 1994; adopted effective July 1, 1991.

Drafter's Notes
1994—The Civil and Small Claims Standing Advisory Committee recommended several "clean-up" amendments to address problems under delay reduction programs, particularly to eliminate unnecessary differences between the procedures in superior and municipal courts. The proposals were adopted by the council.

Rule 2106. Case evaluation factors

In applying rule 2105, the court shall estimate the maximum time that will reasonably be required to dispose of each case in a just and effective manner. The court shall consider the following factors and any other information the court deems relevant, understanding that no one factor or set of factors shall be controlling and that cases may have unique characteristics incapable of precise definition:

(1) Type and subject matter of the action;

(2) Number of causes of action or affirmative defenses alleged;

(3) Number of parties with separate interests;

(4) Number of cross-complaints and the subject matter;

(5) Complexity of issues, including issues of first impression;

(6) Difficulty in identifying, locating, and serving parties;

(7) Nature and extent of discovery anticipated;

(8) Number and location of percipient and expert witnesses;

(9) Estimated length of trial;

(10) Whether some or all issues can be arbitrated;

(11) Statutory priority for the issues;

(12) Likelihood of review by writ or appeal;

(13) Amount in controversy and the type of remedy sought, including measures of damages;

(14) Pendency of other actions or proceedings which may affect the case;

(15) Nature and extent of law and motion proceedings anticipated;

(16) Nature and extent of the injuries and damages;

(17) Pendency of underinsured claims; and

(18) Any other factor that would affect the time for disposition of the case.

Rule 2106 adopted effective July 1, 1991.

DIVISION VIII. Court Employee Labor Relations

Adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Rule 2201. Purpose

It is the purpose of the rules in this division to extend to trial court employees the right, and to require trial courts, to meet and confer in good faith over matters the court, as opposed to the county, has authority to determine that are within the scope of representation, consistent with the procedures set forth in this division.

The adoption of the rules of this division is not intended to require changes in existing representation units, memoranda of agreements, statutes, or court rules relating to trial court employees, except as they would otherwise normally occur as provided for in this division.

Rule 2201 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
In April 1997, the Judicial Council adopted the Court Employee Labor Relations Rules (Cal. Rules of Court, rules 2201–2210).

Thereafter, the Legislature passed and the Governor signed Assembly Bill 1438 [Escutia] (Stats. 1997, ch. 857). This statute recognizes these rules of court, affirms that they have the full force and effect of law notwithstanding any other provision of law, and provides that the rules shall be maintained in their present form.

These rules give trial court employees the right to meet and confer in good faith with trial courts over matters the court, as opposed to the county, has the authority to determine relating to employment conditions and employer-employee relations. The rules also identify certain matters about which the court and court employees are not required to meet and confer. In addition, the rules address other issues relating to employee labor relations in the trial courts. These rules are effective on January 1, 1998.

Rule 2202. Definitions

As used in this division:

(1) *(Court)* Court means a superior, municipal, coordinated, or consolidated court.

(2) *(Court employee)* Court employee means any employee of a court, except those employees whose job classification confers safety retirement status.

(3) *(Meet and confer in good faith)* Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.

(4) *(Recognized employee organization)* Recognized employee organization means an employee organization which has been formally acknowledged by the county to represent court employees under the provisions of Government Code sections 3500 to 3510 or by the court under its rules or policies.

Rule 2202 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2203. Right and obligation to meet and confer

(a) [Recognized employee organization] A recognized employee organization shall have the right to represent its court employee members in their employment relations with a court as to matters covered by the rules of this division. Nothing in the rules of this division shall prohibit any court employee from appearing in his or her own behalf regarding employment relations with a court.

(b) [Representatives of a court] Representatives of a court shall meet and confer in good faith regarding matters within the scope of representation, as defined in the rules in this division, with representatives of a recognized employee organization, and shall consider fully such presentations as are made by the recognized employee organization on behalf of its members prior to arriving at a determination of policy or course of action. In meeting this obligation a court shall also comply with the procedures and provisions set forth in Government Code sections 3504.5, 3505.1, 3505.2, and 3505.3 applicable to a public agency.

(c) [Joint negotiations and designations] In fulfilling the provisions of (b), the court and the county shall consult with each other, may negotiate jointly, and each may designate the other in writing as its agent on any matters within the scope of representation.

(d) [Intimidation] A court or a recognized employee organization shall not interfere with, intimidate, restrain, coerce, or discriminate against court employees because of their exercise of any rights they may have under the rules of this division or Government Code sections 3500-3510.

Rule 2203 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2204. Scope of representation

(a) [Matters included in the scope of representation] For purposes of the rules of this division, the scope of representation shall include all matters within the court's authority to determine relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and terms and other conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) [Matters outside of the scope of representation] In view of the unique and special responsibilities of the courts in the administration of justice, decisions regarding the following matters shall not be included within the scope of representation:

(1) the merits and administration of the court system;

(2) coordination, consolidation, and merger of trial courts and support staff;

(3) automation, including but not limited to fax filing, electronic recording, and implementation of information systems;

(4) design, construction, and location of court facilities;

(5) delivery of court services; and

(6) hours of operation of the courts and court system.

(c) [Impact] Impact from such matters in (b) above shall be included within the scope of representation as those matters affect wages, hours, terms, and conditions of employment of court employees, to the extent such matters are within the court's authority to determine.

(d) [Assignments and transfers] Further, the superior or municipal court shall continue to have the right to determine assignments and transfers of court employees; provided that the process,

procedures, and criteria for assignments and transfers shall be included within the scope of representation.

Rule 2204 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2205. Governing court employee labor relations

(a) [County rules and procedures] As they relate to court employees in their relations with the court, matters described in Government Code section 3507(a) through (d) shall be governed by any rules and administrative procedures and provisions adopted by the county pursuant to section 3507 which may apply to county employees generally, with the right of review by the appropriate court of appeal.

(b) [Court rules and policies] A court may adopt reasonable rules and policies after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this rule as to matters described in Government Code section 3507(e) through (i). The court and county jointly shall establish procedures to determine the appropriateness of any bargaining unit of court employees. The court shall consult with the county about any rules and policies that the court may adopt pursuant to this section. If the court does not adopt rules by January 1, 1998, the court shall be bound by existing county rules until the court adopts rules.

Rule 2205 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2206. Transition provisions

(a) [Court employee organization] Upon the effective date of this division, the court shall recognize the employee organization which represented its court employees at the time of adoption. The court and the recognized employee organization shall be bound by the terms of any memorandum of understanding or agreement to which the court is a party that is in effect as of the date of adoption of this division for the duration thereof, or until it expires or, prior thereto, is replaced by a subsequent memorandum of understanding.

(b) [Court personnel rules and policies] A court's local rules governing court employees and a court's personnel rules, policies, and practices in effect at the time of the adoption of this division, to the extent they are not contrary to or inconsistent with the obligations and duties provided for in the rules of this division, shall continue in effect until changed by the court. Prior to changing any rule, policy, or practice that affects any matter within the scope of representation as set forth

in the rules of this division, the court shall meet and confer in good faith with the recognized employee organization as provided for in the rules of this division.

(c) [County employee representation units] Nothing contained in the rules of this division is intended to preclude court employees from continuing to be included in representation units which contain county employees.

Rule 2206 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2207. Construction

The enactment of the rules of this division shall not be construed as making the provisions of section 923 of the Labor Code applicable to court employees.

Rule 2207 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2208. Interpretation

Where the language of the rules of this division is the same or substantially the same as that contained in sections 3500 to 3510 of the Government Code, it shall be interpreted and applied in accordance with judicial interpretations of the same language.

Rule 2208 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2209. Other provisions

(a) [Mediation] If after a reasonable period of time, representatives of the court and the recognized employee organization fail to reach agreement, the court and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation shall be divided one-half to the court and one-half to the recognized employee organization or recognized employee organizations.

(b) [Submission for dispute resolution] In the absence of local procedures and provisions for resolving disputes on the appropriateness of a unit of representation, upon the request of any of

the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

(c) [Dues deduction] Nothing in the rules of this division shall affect the right of a court employee to authorize a dues deduction from his or her salary or wages pursuant to Government Code sections 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

(d) [Applicability of Government Code section 3502.5] The procedures and provisions set forth in Government Code section 3502.5 shall be applicable to court employees.

Rule 2209 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.

Rule 2210. Effective date

The rules in this division shall become operative only if legislation providing that the state will assume sole responsibility for the funding of court operations, as defined in section 77003 of the Government Code and rule 810 of the California Rules of Court as it read on July 1, 1996, is enacted and takes effect on or before January 1, 1998. These rules shall take effect on the day such legislation takes effect.

Rule 2210 adopted effective January 1, 1998, the effective date of Stats. 1997, ch. 850.

Drafter's Notes
See note at rule 2201.