Judicial Council of California Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title
Family Law: New, Restructured, and Amended Family Law Rules of Court

Rules, Forms, Standards, or Statutes Affected
Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5,106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Kimberly Nystrom-Geist, Cochair
Hon. Dean Stout, Cochair

Elkins Family Law Implementation Task Force
Hon. Laurie D. Zelon, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2013

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Executive Summary

The Elkins Family Law Implementation Task Force and the Family and Juvenile Law Advisory Committee recommend restructuring title V of the California Rules of Court to improve the cost effectiveness and accessibility of practices and procedures in family law.

This proposal was developed in response to the Judicial Council's charge to the Elkins Family Law Implementation Task Force in April 2010, when the council accepted the *Elkins Family Law Task Force: Final Report and Recommendations*.

Recommendation

To restructure and reorganize title V of the California Rules of Court, the Elkins Family Law Implementation Task Force (task force) and the Family and Juvenile Law Advisory Committee (committee) recommend that the Judicial Council, effective January 1, 2013:

1. Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440;

2. Amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and

3. Repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5,106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180.

The rules are attached at pages 38–105.

Previous Council Action

The Judicial Council has previously taken action to adopt and amend family law rules of court. Effective January 1, 1970, the Judicial Council approved Family Law Rules and Forms for mandatory use following the enactment of the Family Law Act in 1969.[1] Individual rules have been added, repealed, and amended periodically as necessary. The family rules as a whole were substantively changed effective January 1, 1994, and again effective January 1, 2003. Effective January 1, 2007, the Judicial Council reorganized and renumbered the California Rules of Court without substantive changes to the rules. The purpose was to make the rules clearer, better organized, and easier to read.

The Judicial Council has also previously taken actions that demonstrate a commitment to modernization of court management and assistance to self-represented litigants, which are key goals of the restructured rules. The actions, effective January 1, 2012, included adopting family centered case resolution rules, which allow family law judicial officers the opportunity to effectively manage their cases; adopting summary dissolution procedures to

[1] Judicial Council of Cal., Special Committee on Family Law, Family Law Rules and Forms (May 7, 1971).

allow all documents in this type of family law action to be filed at one time rather than requiring multiple trips to the clerk's office; and adopting a rule that provides guidance on the participation and testimony of children in family court proceedings.

Rationale for Recommendation

Within the existing structure of the California Rules of Court, some of the statewide civil rules apply to family law proceedings and some do not. It is often unclear which of the civil rules apply and which do not. Further, the current family law rules are not comprehensive and do not cover many of the areas of practice to which the civil rules do not apply. This has created a gap in the family law rules of court that has caused confusion and difficulty for courts, attorneys, and self-represented litigants. Courts have been forced to respond to the gap by addressing issues as they arise. As noted by the California Supreme Court in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, some local court rules have had a deleterious effect on self-represented litigants, despite the courts' best intentions.

In response to the decision in the *Elkins* case, the California Supreme Court recommended that the Judicial Council establish the Elkins Family Law Task Force to:

> study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented. Such a task force might wish to consider proposals for adoption of new rules of court establishing statewide rules of practice and procedure for fair and expeditious proceedings in family law, from the initiation of an action to postjudgment motions. Special care might be taken to accommodate self-represented litigants. Proposed rules could be written in a manner easy for laypersons to follow, be economical to comply with, and ensure that a litigant be afforded a satisfactory opportunity to present his or her case to the court.[2]

Consequently, the Elkins Family Law Task Force recommended that the family law rules be revised to be more comprehensive, clarify which of the civil rules apply in family law cases, and integrate and organize all the family law rules into an orderly numerical system.[3] The new organization makes it easier to locate certain categories of rules, and specific rules clarify whether or not civil rules apply in family proceedings. The cost in making these changes is small when compared to the time and legal proficiency required to understand the current family law rules of court.

This report addresses the task force and committee's recommendation and reflects significant legislative and judicial branch policy changes that have emerged over the last

[2] *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1369, fn. 20.

[3] The final report may be found at www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf.

several years as a result of Assembly Bill 939[4] and other recommendations of the Elkins Family Law Task Force and the Family and Juvenile Law Advisory Committee. The task force and the committee intend that the new family law rules address the gap in the existing family law rules as efficiently and effectively as possible. Over one-half (55%) of the rules contained in this report do not include any substantive changes at all. They are simply renumbered or include technical changes to fit the overall organizational structure. Another 17 percent amend existing rules. Fewer than one-third (28%) are proposed new rules of court.[5]

The remaining new rules that are proposed are the product of extensive input from family law judicial officers, practitioners, litigants and other experts regarding current issues facing family courts throughout the state. The new rules also reflect the research conducted before developing the proposal, including reviewing existing family law rules of court, legislative mandates for rules, existing civil rules of court that might be appropriate for family law proceedings, local rules from all family courts in California, and research data obtained from focus groups and surveys that informed the final report of the Elkins Family Law Task Force. The new rules also reflect recent changes made to Judicial Council forms.

In response to this input and research, the task force and the committee have proposed rules that are intended to address the confusion caused by the gap in the existing family law rules while providing the most cost effective practices for both the courts and the public. For example, rules that are understandable and accessible to self-represented litigants are critical in family law. Over 80 percent of family law cases involve self-represented litigants. When these individuals have sets of rules that they can understand and apply, significant time is saved in both the court business office and the courtroom.

Specific new rules would help courts achieve cost savings. For example, under rule 5.440 (Related cases), cost savings can be accomplished by looking for related cases involving the same individuals so that unnecessary case initiations, redundant hearings, and conflicting orders can be avoided. In addition, under rule 5.393 (Trial settings and long-cause hearings), taking steps to conduct family law trials in consecutive court sessions reduces the overall amount of time is takes to conduct a trial when compared with protracting it over extended time periods in fragmented segments. Increasing the percentage of family law cases that reach disposition within one year reduces case inventories and can effect reduction in motions for temporary orders. The reduction of continuances can generate significant savings in the overall number of cases scheduled for hearings in family law matters.

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[4] AB 939 can be found at: http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0901-0950/ab_939_bill_20100927_chaptered.pdf. The bill included many of the task force's recommendations, including those regarding live testimony, attorney's fees and costs, and appointment of counsel for a child.

[5] See Attachment A for a list of the rule numbers in each of the three categories.

When the rules circulated for public comment in Spring 2011, the task force and committee recommended that the restructured rules be adopted effective January 1, 2012. The majority of commentators supported the effort to change the rules as of that date. Since then, the task force and committee revised their recommendation as to the effective date. They believe that courts and court users should be provided additional time to adjust to the changes incorporated into the rules in response to public comment and that courts be provided additional time to modify local rules of court so that they take effect at the same time as the restructured rules. Therefore, the task force and committee recommend that the restructured rules be adopted February 2012, and made effective on January 1, 2013.

The task force and committee also intend to provide other material and technical assistance regarding the restructured rules. Rules conversion tables will be posted on the California Courts website. Further, the task force and committee will work closely with the Center for Families, Children & the Courts as well as the Center for Judicial Education and Research to provide information to the courts about the rules and their rationale. They will also assist any court that requests information about the impact on their local rules and will share information about best practices in implementation between courts.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment was circulated from April 21, 2011, through June 30, 2011. In addition to the standard mailing list for proposals—which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, attorneys, mediators, family law facilitators and self-help center attorneys, and other family law professionals and attorney organizations—the task force and committee sought comment from the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (TCPJAC/CEAC).

Of a total of 42 commentators, the majority (74%) were in favor of the proposal (7 agreed with the proposal without narrative comments and 24 agreed if modifications were made). Two commentators indicated mixed positions (agreeing with the proposal as a whole, agreeing with certain rules if modified, and not agreeing with other specific rules). Further, 3 commentators did not indicate agreement or disagreement, but suggested changes to some rules in the proposal. Finally, 6 commentators did not agree with the proposal; of these, 4 commentators expressed disagreement only with particular rules in the proposal while 2 disagreed with the proposal in its entirety.

The first part of this section of the report will focus primarily on the general comments received about the proposal and comments regarding rules 5.43, 5.54, 5.125, 5.151, 5.165, 5.393, 5.420, and 5.440, which identified potential impacts to courts. This will be followed by a chapter-by-chapter discussion of the comments and responses to other rules and a discussion of alternatives considered.

In addition to the rules of court and a chart of the comments and the task force and committee responses, other attachments to the report include: (1) an outline showing the overall layout of the restructured family law rules of court; (2) a chart that distributes the restructured rules into specific categories; (3) conversion tables; and (4) rules that would be repealed and renumbered.

General comments

Although the majority of commentators addressed rules in each specific chapter, 8 commentators generally addressed the proposal as a whole. One commentator approved most of the new or amended rules without suggesting modifications; 4 generally did not agree; 2 suggested changes; and 1 suggested changes that do not apply to the proposal that was circulated for comment.

While it appears that most family law practitioners and judicial officers with a family law assignment have been anticipating these revised rules due to the *Elkins* opinion, final report and educational events, concerns were understandably raised by presiding judges and court administrators given the tremendous budget cuts to the branch.

The TCPJAC/CEAC stated that it cannot adopt an "Agree with proposed changes" position given the numerous and severe challenges facing California's trial courts. It stated that "the new requirements created by the proposals, while well-intended, will only worsen the financial condition of the courts. At a time when courts are facing severe budget reductions, potential layoffs, possible court closures, and other urgent matters, rules of court should not create new responsibilities unless absolutely necessary and driven by statutory mandates. The trial courts must use this time to focus on ensuring continuation of the most critical services rather than on dedicating new resources to new requirements."

A superior court judge provided a lengthy general opposition to the proposal. The points in the comment are similar to other commentators who generally did not agree with the proposal. The points included: "now is not the time for change"; that the proposed rules "load the court with greater burdens, both big and small"; that the changes "provide nominal benefit relative to the burdens imposed"; and that "access to justice is promoted by fewer rules and procedures and requirements, not more."

In response to this feedback, the task force and committee modified many of the proposed rules to be responsive to the concerns of the commentators, especially those that pointed out potential difficulties for the courts. Where the burdens seemed significant on the courts, or where the costs seemed to outweigh benefits, the task force and committee modified the rules, either eliminating them or making changes to ensure that no proposals would go forward under those circumstances given the current fiscal situation. These modifications include:

- Allowing for the development of local rules for procedures relating to telephone appearances in rule 5.9;
- Removing rule 5.51, which required that a specific Judicial Council information sheet be served with a summons and petition or complaint, to avoid redundancy in the rules (as rule 5.83(g) covers the same matter) and allow additional time for the task force and committee to propose sample forms that provide the parties with information on resolving family law cases;
- Removing rule 5.54 from the proposal to await legislative action under Assembly Bill 1406, which covers the timeframe for serving a preliminary declaration of disclosure;[6]
- Giving courts discretion to specify the timeframes and procedures for preparation and submission of orders after hearing under rule 5.125;
- Including in rule 5.169 that courts may adopt local rules to provide procedures for requests for emergency orders that are considered by the court solely on the pleadings; and
- Deleting the requirement in rule 5.420 that courts implement a specific list of procedures for handling domestic violence in settlement services. Instead, the rule was redrafted to provide guidance to courts regarding developing those procedures and allows courts more flexibility regarding training, as further described in this report.

After a thorough review of all the rules, the task force and committee are convinced that the rules, as revised in response to comments, will increase court efficiency, will provide critical guidance to allow family law attorneys and litigants to present their cases more expeditiously, and will not be difficult to implement.

Information and comments on filing fees and fee waivers (rules 5.40–5.46)

The proposed rules in this chapter are new and relate to filing fees and fee waivers. These rules incorporate civil rules that are applicable to family law proceedings and also, based on requests for clarification made by many clerks, provide a statewide process to address the handling of family cases following the voiding of paperwork in fee waiver denials. While there is a high percentage of fee waivers in family law matters, there is currently no guidance in the family law rules for litigants about how these fee waivers should be filed and special issues regarding family law are not addressed. Seven commentators suggested changes to the proposed rules in this chapter.

Rule 5.43. Fee waiver denials; voided actions; dismissal.

[6] Assembly Bill 1406 was introduced by the Committee on Judiciary (Feuer (Chair), Atkins, Dickinson, Huber, Huffman, Monning, and Wieckowski). The bill would amend Family Code section 2104 and provide time frames for service of a party's preliminary declaration of disclosure. The legislation was converted to a two-year bill in September 2011. The bill can be found at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1401-1450/ab_1406_bill_20110307_introduced.pdf.

Rule 5.43 responds to concerns raised by court clerks in trainings sponsored by the AOC that Government Code section 68634(g) does not provide guidance about what should be done if the court voids a petition for failure to pay court fees when a fee waiver is denied and a response has been filed.[7]

Although clerks reported that this situation does not often occur, they described various procedures that courts have implemented when it does happen. In some courts, if a petition is voided and a response was filed, the filed response is treated like the petition and the court looks at the relief in the response to determine how the case will proceed. In other courts, the court allows the respondents to ask for an order against the petitioner for filing fees paid. Other courts flip the case caption and allow the case to proceed, while others refund fees to the respondent and dismiss the case.

The proposed new rule at 5.43(b)(2)(A)-(B) incorporates best practices and procedures described by the clerks. It requires three actions by the court. First, the court reviews the response, or documents constituting respondent's appearance, to determine whether or how the case will proceed based on the relief requested. This allows the court flexibility to determine the most efficient way to proceed. The court then notifies the parties of the court's determination. If the court dismisses the case, it must return the filing fees paid by the respondent.

The TCPJAC/CEAC raised a concern that rule 5.43(b)(2)(A) would impose a burden on courts because it requires a court to review the response if a petition has been voided to determine whether or how the case will proceed, refund filing fees paid if the court dismisses the case, and provide notice of dismissal to the parties. As above indicated, the rule incorporates the practices that already exist in many courts, including file review, notice to parties, and the refunding of filing fees. While other courts would have to set aside the time for file review, given the relatively few number of cases in which this situation occurs, the rule should not impose an undue burden on courts.

Information and comments on starting and responding to a family law case; service of papers (rules 5.50–5.77)

Rule 5.51. Mandatory information packet. Rule 5.51 would have required the petitioner to serve *Legal Steps for a Divorce (Dissolution)* (form FL-107-INFO) to all parties when starting a family law case. The form included general information about how to resolve a family law case without formal litigation. One commentator suggested that the rule be redrafted so that it does not mention the specific form because it only applies to divorce

[7] Government Code section 68634(g) provides that if an application is denied in whole or in part, the applicant shall pay the court fees and costs that ordinarily would be charged, or make the partial payment as ordered by the court, within 10 days after the clerk gives notice of the denial, unless within that time the applicant submits a new application or requests a hearing under subdivision (e). If the applicant does not pay on time, the clerk shall void the papers that were filed without payment of the court fees and costs.

actions. Instead, the commentator suggested the following language "Petitioner must serve all parties with a copy of an information sheet appropriate to the action which includes general information about how to resolve a family law case without formal litigation. The information sheet must be served with the petition and summons. This rule does not apply to amended petitions."

The task force and committee reconsidered rule 5.51 in light of the adoption of rule 5.83 (Family centered case resolution), effective January 1, 2012.[8] The requirements of (g) reflect the intent of rule 5.51 to impart information about settlement to the parties. Rather than impose an additional duty on a petitioner to serve a specific form with the initial papers under rule 5.51, the task force and committee believe that the court should dispense the information in the course of filing the case. Therefore, they removed rule 5.51 from the proposed new rules. This will also allow additional time for the task force and committee to propose sample forms that provide the parties with information on resolving family law cases.

Rule 5.54. Preliminary declaration of disclosure; time for service.
Rule 5.54 would have established the time frames for service of a party's preliminary declaration of disclosure in a dissolution action. The Legislature (in AB 1406) is considering similar changes proposed in the rule as amendments to Family Code section 2104. If enacted in January 1, 2013, the statute would include the timeframe for service of a party's preliminary declaration of disclosure. Because the legislation would cover the substance of the proposed rule that was circulated for comment, the task force and committee decided to remove rule 5.54 from the larger restructured rules proposed to take effect on January 1, 2013.

Information and comments about preparation, service, submission of orders after hearing (rule 5.125)[9]
Rule 5.125. Preparation, service, and submission of order after hearing. This rule provides the process for the preparation, service, and submission of orders after hearing.

[8] Rule 5.83(g) provides that:(1) Upon the filing of first papers in dissolution, legal separation, nullity, or parentage actions the court must provide the filing party with the following: (A) Written information summarizing the process of a case through disposition; (B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities, and domestic violence services; (C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address; (D) Information for self-represented parties about the opportunity to meet with court self-help center staff or a family law facilitator; and (E) Information for litigants on how to request a status conference, or a family centered case resolution conference earlier than or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

[9] As circulated, rule 5.125 was titled "Preparation and submission of order after hearing."

Although family law forms include a mandatory findings and order after hearing, there are currently no statewide family law rules of court that provide procedures regarding the preparation, service, and submission of the orders. Local courts sometimes provide such procedures. Still, court orders often go unprepared by counsel or litigants after a hearing. This leads to hours of wasted time in court hearings arguing about what an order would have said had it been drafted, or even arguing about child custody exchanges or the division of property because litigants disagree about how to interpret the orders.

Including rule 5.125—which specifies that the court may prepare the order or direct one of the parties to do so—should substantially reduce the number of court appearances relating to disputes about orders after hearing in family law proceedings. Fewer litigants in court equates to additional cost savings in several areas of court operations. For example, there would be less congestion at filing windows and fewer filings for court clerks to sort, pull, and put on the calendar. The cost savings from hearings that no longer need to be held because of the clarity achieved through this rule would be substantial. Cost savings to family court services (FCS) and self-help centers are also implicated by fewer litigants at hearings. If litigants are not in court arguing about the content of court orders, they are not attending multiple mediation sessions or having other contacts with FCS or self-help centers.

Of all rules in the chapter, proposed rule 5.125 generated the most comments and suggestions for improvement. Generally, the task force and committee agreed with commentators that a statewide rule on the preparation of orders after hearing is vital to the efficient use of the court's time. As a commentator noted, "It is not uncommon for orders to be submitted months or even years after a hearing" and "getting a proper findings and order after hearing prepared and signed has been a process constantly misunderstood and/or abused by attorneys that generally results in a significant use of both the judge's and research attorney's time." The changes incorporated into the proposed rule would help curtail the problems that parties, attorneys, and the courts have experienced over the preparation of orders.

To address issues raised by commentators about this rule, the task force and committee recommend that the rule be modified to (1) increase the time for preparing and responding to the proposed order after hearing; (2) permit the court to change the timeframes and procedures in the rule when appropriate to a case; (3) require that any objections to a proposed order be specific, propose alternate language, and be presented in the same sequence as the original proposed order; (4) require the parties or their attorneys to meet and confer to attempt to resolve their differences before involving the court to settle a dispute over competing proposed orders; (5) provide procedures for submitting competing proposed findings and orders after hearing to the court; and (6) avoid redundancy in the rules by deleting references to sanctions in this specific rule.

Information and comments on request for emergency orders (ex parte orders) (rules 5.151–5.169)

At no other time before the proposed new family law rules have any statewide family law rules of court addressed ex parte proceedings. The rules did not provide a definition of the term "ex parte proceeding," explain that the type of hearing is reserved for the court to address urgent matters, or explain if civil ex parte rules apply to family court proceedings. Consequently, there is substantial confusion around when a party should bring a matter before the court with shortened or no notice to the other party and whether the notice should be given following civil rules of court. The importance of clarifying these rules in family court proceedings cannot be understated, as the confusion can lead to wasted effort and bad outcomes for litigants and their children.

The task force and committee proposed new rules in this chapter relating to requests for emergency orders. Thirteen commentators suggested changes to these rules. Most comments concerned aspects of two rules—rule 5.151 (Request for emergency orders; application; required documents) and rule 5.165 (Requirements for notice).

Rule 5.151. Request for emergency orders; application; required documents. The task force and committee drafted the rule using the term "request for emergency orders" instead of "ex parte orders." This change could create significant savings to the court if the term "emergency" is used rather than "ex parte" as the number of applications may decrease if this term is easier to understand. Using "emergency order" will make it clear to self-represented litigants and counsel that these hearings are intended to address very specific types of proceedings.

TCPJAC/CEAC was concerned with the use of the term "emergency order" in the rule because the change in terminology from "ex parte" to "emergency" could be confusing to practitioners and could imply a restriction in the type of relief that can be sought through this process. The commentator also noted that the rule would require courts to redraft their local rules.

The task force and committee recognize that the term "ex parte" has caused confusion for litigants who do not know or understand legal terminology. The proposed use of "request for emergency orders" would help these litigants understand that the procedure is reserved for very specific and urgent purposes. The application section of the rule does indicate that a "request for emergency orders" is synonymous with an application for ex parte orders. Further, proposed rule 5.151(a) provides as follows: "The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule." Because the rule includes both terms, this may mitigate the need for courts to redraft their local rules that use the term "ex parte applications" or "ex parte hearings."

Rule 5.165. Requirements for notice. As circulated, this rule provided that: "The court may adopt a local rule requiring that the party provide additional notice to the court that he or she will be requesting emergency orders the next court day. Courts that adopt this local rule must provide a dedicated telephone number for this purpose."

The TCPJAC/CEAC stated that the rule regarding notice to the court could require courts to incur costs for a new dedicated telephone line if courts choose to require this notice. They recommended less specific language in the rule, such as "the local rule must include a method by which the party may give notice to the court by telephone." The task force and committee agreed with the suggestion and made this change to the rule they are recommending for adoption.

Information and comments on trials and long-cause hearings (rules 5.393 and 5.394)

Rule 5.393 (Setting trials and long-cause hearings) provides that long-cause hearings and trials that cannot be completed in one day must, absent a finding of good cause, be continued to the next day routinely designated by the court for trials. Rule 5.394 (Trial or hearing brief) provides a standard for the contents of briefs for trials and long-cause hearings.

Rule 5.393. Setting trials and long-cause hearings.

Rule 5.393 is intended to increase the efficiency of the court and relieve the burden of extended hearings and trials. The task force and committee are concerned that as resources diminish, courts cannot continue to carry the burden of the unnecessary hearing and trial time that results from the fragmenting of family law trials into segments that are then separated by weeks and sometimes months.

The practice of interrupting long-cause hearings and trials was reported to increase the aggregate amount of time required to complete a trial. For example, a trial that could be completed in three sequential days could actually take 10 half-day sessions to complete because of the amount of time it takes to repeat any testimony from witnesses to refresh the judge's memory, address issues that may have arisen between the hearings, and give the judge an opportunity to review notes and become reacquainted with the case.

Interrupting long-cause hearings and trials was a frequent complaint made to the Elkins Family Law Task Force from litigants and judges and in a survey of over 500 family law attorneys from around the state. Many attorneys complained that they had to litigate the same issue in the same trial more than once because neither the attorneys nor the judge remembered exactly what had occurred in a previous trial session, and the record was unclear. The task force and the committee are concerned that courts can no longer afford to operate in this manner. Judges reported that it was much easier to handle cases with consecutive hearing dates.

Nine commentators responded to one or both rules in this chapter. Seven commentators suggested changes to the rules; one commentator did not agree with the definition of long-cause hearing in rule 5.393; and the TCPJAC/CEAC did not agree with rule 5.393.

The TCPJAC/CEAC identified potential impacts to courts, including (1) the need for additional judicial resources, courtrooms, and court staff; (2) increased workload for presiding judges and supervising judges, as they will spend more time reshuffling and assigning case; (3) impacts on justice partners whose cases may be reassigned to accommodate an ongoing family law case; and (4) impacts on attorneys appearing before the court whose cases may potentially be reassigned due to a new priority for family law cases.

Based on the data provided in the survey discussed above, rule 5.393 does not increase the workload on courts and it does not add to the length of trial or hearing time— if anything, the rule decreases it. Further, the rule does not give family law trials preference over other case types. Instead, the rule allows cases to be set sequentially within the framework of the local court calendaring pattern. Under this rule, if a hearing is longer than two and a half hours, and it cannot be completed in the same court day, then scheduling must be as sequential as possible. However, the rule only provides that this occur as the calendar of the trial judges permits. This would be subject to the scheduling structure established by the local courts for hearings and trials.

The task force and committee drafted rule 5.393 to be consistent with the different scheduling structures of the local courts. For example, one court may hear family trials every afternoon, while another may schedule them only on Wednesday afternoons. The rule should be able to accommodate both and not require the court scheduling trials on Wednesday afternoons to change that structure in order to meet this goal.

While crafting a rule that seeks to minimize the costly interruptions in family law hearings and trials, the task force and the committee wanted to be careful not to define a trial day as longer than a half day of court time. Trial setting varies greatly from court to court. Some courts devote certain full days of the week to trials; others allocate specified half days. The two and a half hours (included in the definition of "trial day" in rule 5.393(a)(1)) is within a half day of court time.

Rule 5.394. Trial and hearing brief.

Six commentators responded to this proposed rule. One agreed with the original proposal. One requested that the Judicial Council adopt a mandatory trial/long-cause hearing brief, and the task force and committee agreed to review the suggestion for consideration in a future cycle.

The other commentators suggested the following changes to rule 5.394, which the task force and committee incorporated into the version of this rule they are recommending for

adoption: (1) clarifying in (a)(1)(D) that the brief need only list the minor children of the parties; (2) deleting the requirement in (a)(5) that the parties list "all witnesses" and, instead, requiring that the brief include a list of witnesses to be called at trial (this change would allow rebuttal and impeachment witnesses to be called as permitted by statute); and (3) making another change to (a)(5) to require "a brief description of the anticipated testimony of each witness," to track the language of Family Code section 217, subdivision (b).

Information and comments on settlement services (rule 5.420)

Rule 5.420. Domestic violence procedures for court-connected settlement services providers.[10] The task force and committee proposed the rule based on the work of the Elkins Family Law Task Force and the recognition that some courts are implementing non–child custody settlement services. Given the significant number of family cases involving domestic violence, and the dangers associated with negotiating between parties where violence is an issue, members agreed it was important that courts providing such services have consistent practices in place in both child custody mediation and non-custody settlement services.

Five commentators responded to rule 5.420; two agreed with the original proposal without narrative comments, one suggested changes without indicating a position, and two commentators did not agree with the proposed rule, citing concerns about the impact on the courts.

The Los Angeles County Bar Association, Family Law Section generally supported the rule's efforts to protect against potential domestic violence. However, it commented that the draft was too broad and imposed stringent requirements for "court-connected settlement service providers" that would significantly deter participation by experienced family law attorneys in voluntary settlement and/or mediation programs. In addition, the TCPJAC/CEAC commented that that the proposal would increase the workload of court-connected settlement service providers by requiring additional duties not currently performed and have a fiscal and workload impact on courts by requiring them to provide such services without providing resources to do so.

In response to the comments, the task force and committee made several changes to rule 5.420. The redrafted rule would require that courts providing settlement services implement procedures for handling domestic violence cases, but unlike the proposed rule circulated, the redrafted rule would allow each court to determine the procedures that are most responsive to the services provided. The rule has also been rewritten to recommend, but not require, training on the issue of domestic violence for those providing settlement services.

[10] As circulated, rule 5.420 was titled "Domestic violence protocol for court-connected settlement services providers."

These post-circulation changes to rule 5.420 were developed with specific input from members of the committee from the Superior Court of Los Angeles County who indicated that the changes addressed their concerns. Training materials and programs have been offered on this topic to courts during 2011. The task force and committee recommend the continuation of such training to help courts develop the procedures described in rule 5.420.

While there may be some additional burden placed on those courts that are providing settlement services and do not have procedures in place for handling domestic violence matters, the task force and the committee recognize the importance of implementing procedures for safely handling these cases. Settlement services are a valuable tool for resolving cases. Given the number of family law cases involving domestic violence and potential lethality, it is important that parties be provided such services as safely and as effectively as possible.

Information and comments on court coordination rules (rules 5.440 and 5.445[11])
Rule 5.440 (Related cases) provides that, where resources permit, courts should identify cases related to a pending family law case to avoid issuing conflicting orders and make effective use of court resources.

The rule seeks to support implementation of approaches locally that could improve the efficient use of resources, including calendar time by avoiding duplication of efforts and issuance of conflicting orders that may increase the need for court resources and hearings. A court that identifies related cases could also avoid conflicting appearances scheduled or multiple hearings on the same issues. In addition, a related case search can identify critical information needed for a judicial officer to make comprehensive, fully informed decisions in a family law proceeding. Further, information gathered about risk through a related case search can result in increased safety for court staff and family members.

Three commentators responded to proposed rule 5.440: two agreed with the proposed rule, if modified; the third believed that the proposed rule would potentially have a significant negative impact on the courts. No comments were received regarding rule 5.445.

The first commentator stated that rule 5.440(b) appropriately requires that information related to juvenile court cases be kept confidential, but suggested that (b) be revised to recognize that exit orders from juvenile court cases are not confidential and are not appropriately subject to subdivision (b) under Welfare and Institutions Code section 362.4. The task force and committee agreed to incorporate the suggestion, with minor alterations, into the rule they are recommending for adoption.

The second commentator believed that identifying related cases should be primarily the responsibility of the parties and suggested that rule 5.440 require parties to file a "Notice of

[11] Recommended rule 5.445 is existing rule 5.450, which is renumbered without change to content.

Related Case" as soon as they become aware of any such case. The task force and committee did not agree to include that language because the rule is intended to address duties of the court, if resources permit. However, the rule does not prevent courts from creating local rules that require parties to file a notice of related cases in an effort to assist with identifying related cases.

The TCPJAC/CEAC raised concerns that rule 5.440 would have potential fiscal impacts on the courts, impact courts' automated systems, and increase staff workload. They stated that many courts currently do identify related cases. However, courts that do not currently identify related cases would experience a staff workload increase as this confers additional duties on staff. Further, not all case management systems collect information on minor children.

While the proposed rule only requires searching for related cases where resources permit, many courts do complete these searches. Data from those courts indicate that it takes court staff an average of 15.57 minutes to open a new marital case and 19.58 minutes to open a domestic violence case.[12] It only takes an average of 2.43 minutes to look for related cases.[13] The range was between 1 and 5 minutes, depending on the ability of the electronic case management system. Given the number of related cases in family law proceedings, this review can save significant resources in the time to open cases, in pulling multiple cases, or consolidating cases in the future.

Further, as previously noted, the rule does not impact court workload because it does not require courts to identify related cases. The rule does not impose additional duties on court staff. Instead, the rule suggests that, where resources permit, courts should identify related cases.

Comments and responses to other rules

Following is a chapter-by-chapter analysis of comments and responses to other rules circulated in "Family Law: New, Restructured, and Amended Family Law Rules of Court."

Chapter 1. General Provisions (rules 5.1–5.14). Thirteen commentators suggested changes to the proposed rules in this chapter. The majority of commentators posed questions and proposed changes to new rules 5.9 (Appearance by telephone) and rule 5.14 (Sanctions for violations of rules of court in family law cases). Comments also related to proposed rule 5.1 (Division title; application of rules and laws); rule 5.4 (Preemption; local rules and forms); and rule 5.12 (Discovery motions).

Rule 5.1. Division title; application of rules and laws (now rule 5.2). Commentators suggested changing subdivision (b) to clarify the definition of the term "proceeding" and

[12] Family Law Resource Guideline *(publication pending*).

[13] *Ibid.*

expand it appropriately to cover other matters mentioned in the Family Code, which were not explicitly included in (b). The task force and committee agreed with the suggestions and clarified the definition of "proceeding." In response to comments received about rules in other chapters, the task force and committee also included and defined other terms in rule 5.2, including "parenting time," "dissolution," and "action."

Rule 5.4. Preemption; local rules and forms. As circulated for comment, the rule provided that local rules and forms must not conflict with Judicial Council rules and forms. The task force and committee decided to redraft the proposed rule to state that each local court may adopt local rules and forms regarding family law actions and proceedings that are not in conflict with or inconsistent with California law or the California Rules of Court.

In addition, the task force and committee decided to add that "Effective January 1, 2013, local court rules and forms must comply with the Family Rules." Including this language would be consistent with the changed recommendation that the rule become effective January 1, 2013.

The task force and committee also inserted an advisory committee comment to the rule to clarify that the Family and Juvenile Law Advisory Committee agrees with the *Elkins Family Law Task Force: Final Report and Recommendations* regarding local rules, which encourage local courts to continue piloting innovative family law programs and practices using local rules that are consistent with California law and California Rules of Court, but which must not create barriers for parties. The advisory committee comment includes a URL for the Elkins recommendations.

Rule 5.9. *Appearance by telephone*. Many self-represented litigants and some attorneys are not aware that an appearance by telephone could be an option to appearing at a simple hearing or continuing a hearing if a litigant is unable to appear in person in court. Rule 5.9 provides that a court may allow telephone appearances for certain matters and develop local rules to address procedures for the appearances. This rule serves to inform court users of the process and directs them to local rules for specific guidance in their county. The procedure can potentially result in saving to courts (saving significant court clerk time and other resources) and to litigants (avoiding time off of work, parking costs, child care, etc.).

Commentators suggested changes to the rule. These included that (1) the term "telephone appearance" be defined to include other forms of telecommunication, such as web-conferencing (e.g. Skype®) to permit individual courts flexibility in choosing a form of communications based on their specific resources and available technology and (2) a provision be added for appearing by phone at mediation or other matters with Family Court Services. Commentators also suggested that the rule either include specific procedures like those in civil rule 3.670 or reference the civil rules as applicable to family law proceedings.

The rule is intended to authorize courts to permit appearances by telephone. It is not intended to provide the exact process by which the appearance should be conducted. To support this point, the task force and committee agreed to expand the rule to provide that the court may develop local rules to specify procedures for appearances by telephone. However, because the second category of suggestions (see (2) in the paragraph above) includes important substantive changes, the task force and committee believe public comment should be sought before they are considered for adoption.

Two comments were received opposing the rule. One commentator stated that the rule is not necessary because it is duplicative of an existing rule or statute. The other stated that the rule conflicts with civil rule 3.670. The proposed rule about appearances by telephone does not conflict with civil rule 3.670 and is not duplicative of any existing statewide rule or statute, as they specifically exempt general family law proceedings. Civil rule 3.670(b) excludes family law proceedings and rule 5.324 (Telephone appearance in Title IV-D hearings and conferences) relates only to governmental child support cases.

Rule 5.14. Sanctions for violations of rules of court in family law cases. As circulated, subdivision (d)(1)(C) provided that a party's request for sanctions must identify the party, attorney, law firm, witness, or other person against whom sanctions are sought. However, the terms "attorney" and "law firm" were not included in the definition of persons subject to sanctions for violating rules of court in (b). Five commentators proposed that the rule specify in the definitions section that attorneys and law firms are subject to the sanctions for violating the California Rules of Court.

The task force and committee agreed with the above suggestions and have included them in this report's recommendations. The suggestion to add attorneys and law firms in subdivision (b) would implement the recommendation of the Elkins Family Law Task Force. The task force recommended at page 25 of the final report (recommendation 13) that:

> Rule 2.30 of the California Rules of Court (Sanctions for rules violations in civil cases) should be amended to include family law matters, or a similar rule should be adopted into the family law rules. Currently, the only option that a judicial officer has for sanctioning inappropriate or delaying behavior is to order the offender to pay a portion of the other party's attorney's fees. This should be expanded to allow imposition of sanctions that the attorney should pay, not the interested party. In addition, where parties are self-represented, the judicial officer should be permitted to order the parties to reimburse the opposing party for costs such as time off work, transportation to court, and similar expenses.

Chapter 2. Parties and Joinder of Parties (rules 5.16–5.29). The rules in this chapter are existing rules relating to the designation and joinder of parties that would be amended and

renumbered under this report. Six commentators generally agreed with the rules in this chapter and suggested changes to improve rule 5.16 (Designation of parties) and rule 5.24 (Joinder of persons claiming interest). No commentators disagreed with the proposed rules in this chapter.

Rule 5.16. Designation of parties. Commentators generally suggested changes to more accurately identify the persons permitted to be parties in proceedings for divorce or nullity, to establish parentage, and under the Domestic Violence Prevention Act. In response, the task force and committee agreed to indicate, where appropriate, that a local child support agency that intervenes in a family law case is a party to the action. In addition, a putative or presumed parent and a minor child can be parties in an action to establish parentage. However, because a guardian ad litem is an officer of the court, the task force and committee did not agree with the suggestion to include a guardian ad litem in the rule as a permissible party in any action.

Rule 5.24. Joinder of persons claiming interest. One commentator noted that subdivision (e) concerning mandatory joinders did not mention "domestic partners" in the proposed language concerning child custody. To address the oversight, the task force and committee agreed to recommend that rule 5.24(e)(1) be amended to state: "The court must order that a person be joined as a party to the proceeding if any person the court discovers has physical custody or claims custody or visitation rights with respect to any minor child of the marriage, domestic partnership, or to any minor child of the relationship."

A commentator also expressed concern that the family law rules of court relating to mandatory joinders do not address the issue of grandparent visitation under Family Code section 3104. Before visitation can be ordered, section 3104 requires that the court (1) determine that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child and (2) balance the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority. The commentator stated that "it seems inappropriate to require joinder to an action of grandparents that fail to meet the standard in Section 3104."

To address the above issue, the task force and committee agreed to recommend reformatting proposed rule 5.24(e) and incorporating the following language in (e)(2): "Before ordering the joinder of a grandparent of a minor child in the proceeding under Family Code section 3104, the court must take the actions described in section 3104(a)."

Chapter 3. Filing Fees and Fee Waivers (rules 5.40–5.46)

Rule 5.41. Waiver of fees and costs. One commentator noted that current law requires the court to set a hearing even if a party is only requesting monthly payments and not a full fee waiver, and proposed that the forms and rules be changed to allow the court to order monthly payments based on the application without a hearing. The task force and

committee cannot recommend the suggested change because it would require a change to Government Code section 68634, which requires the court to grant or deny the application. Only after notice and an opportunity to be heard, may the court order an applicant to pay a portion of court fees or to pay court fees over a period of time or under some other equitable arrangement that meets the criteria of eligibility.

Rule 5.45. Repayment of waived court fees and costs in family law support actions. The rule is intended to simplify procedures for courts to recover fees initially waived for a party in a family law action under Government Code section 68637(d) and (e) after a support order or judgment has been entered.[14] Court clerks have requested direction on this issue in education sessions on the new fee waiver forms and statutes enacted in 2009. The rule also serves as a companion to existing Judicial Council forms FL-336 and FL-337 adopted in July 2009. Based on a comment to the rule, the task force and committee recommended clarifying that rule 5.45 applies to family law actions and does not apply to actions initiated by a local child support agency.

Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (rules 5.50–5.77)

Rule 5.66. Proof of service. The task force and committee agreed with the commentators' recommendations to delete the requirement that the petitioner file a completed proof of service of summons with the court within 60 days after the filing of the summons and petition, unless the court allows additional time for service. Commentators provided anecdotal evidence that the majority of parties require more than 60 days to complete service of process. Therefore, the task force and committee recommend striking the part of rule 5.66 requiring a specific deadline for filing a completed proof of service of summons and petition.

Chapter 5. Family Centered Case Resolution Plans (rule 5.83). The restructured rules proposal would provide a separate chapter for rule 5.83 (Family centered case resolution) which was adopted by the Judicial Council without change to rule number or content.

Chapter 6. Request for Order (rules 5.94–5.125). Thirteen commentators suggested changes to the rules proposed in this chapter. These resulted in significant changes rule 5.94 (Order shortening time; other filing requirements).[15, 16]

[14] Government Code section 68637(d) and (e) (enacted July 1, 2009) permit the trial court, after entry of a judgment or an order to pay support, to recover previously waived court fees from either the party ordered to pay support in the matter (the non–fee waiver recipient) or the initial fee waiver recipient.

[15] As circulated, rule 5.94 was titled "Time for filing; service of request for order."

[16] Comments received relating to proposed rule 5.92 as part of this proposal's invitation to comment were included in a separate report to the Judicial Council titled "Family Law: Request for Order in Lieu of Existing

Rule 5.94. Order shortening time; other filing requirements. The proposed rule was based on existing civil rule 3.1300, which requires that proof of service of motion papers be filed no later than five court days before the time appointed for the hearing. Some commentators objected and stated that the court's interest in timely and effective court procedures must be balanced against the legitimate concerns of litigants who are not able to afford making multiple trips to the court to file the request, return to file the proof of service five days before the hearing, and then return to the court for the hearing.

In light of the comments, the task force and committee reworded the rule so that it does not require a party to file the proof of service five court days before the hearing. Instead, the rule provides that the party *should* file it five court days before the hearing. In addition, the committee deleted proposed subdivision (a), which described the procedure for filing and serving *Request for Order* (form FL-300). This change avoids redundancy in the rules because the information is specifically provided in proposed rule 5.92. Rule 5.94(a) now addresses an order shortening time.

Chapter 7. Request for Emergency Orders (Ex parte Orders) (rules 5.151–5.170)
Rule 5.151. Request for emergency orders; application; required documents. Ten commentators responded to the proposed rule; three agreed, if modified. All others suggested changes to the rule as described below.

Some comments related to (c), which lists required documents. Two commentators recommended that the rule require service and filing of an *Income and Expense Declaration* (form FL-150) because "the law requires that a FL-150 be filed as part of an application for an injunctive or other order when relevant to the relief requested." Two commentators also noted that the rule referred to a form (FL-310) that would be revoked if the *Request for Order* (form FL-300) is adopted, effective July 1, 2012.[17] The task force and committee agreed with the suggestions and have incorporated form FL-150 into, and deleted form FL-310 from, the version of rule 5.151 they are recommending for adoption.

Some comments related to the requirements in (d)(5) to file for emergency orders granting or modifying child custody or visitation (parenting time). They generally stated that requiring a litigant to file copies of current custody orders, reveal all prior applications on the same issue, and include a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (form FL-105) would be unduly burdensome to litigants and would duplicate paperwork that would already be in the court case file.

Notice of Motion or Order to Shown Cause, and Witness List for Use in Family Law Proceedings." The report was on the council's agenda on January 24, 2012.

[17] On January 24, 2012, the Judicial Council adopted *Request for Order* (form FL-300), effective July 1, 2012.

Proposed rule 5.151(d)(5) was drafted in response to those courts that are not always able to provide the judicial officer with the court's case file in time for the emergency hearing and must rely solely on the information provided by the litigant. To provide a more balanced rule, the task force and committee agreed to change the rule so that the litigant (1) must provide the current custody orders if they are available to the litigant; (2) should, by declaration, disclose a prior application; and (3) must file form FL-105 if the form was not already filed by a party or if the information has changed since it was filed.

Commentators suggested other changes to subdivision (d)(5). One suggested that this subdivision require the litigant to provide a full, detailed description of the most recent incidents of physical or emotional harm, threats of harm, or threats to remove the children from the state. Another proposed deleting the words "parenting time" from (d)(5) because the commentator believed including that term appears to prohibit ex parte applications concerning parenting time.

The proposed rule is intended to specify the information that should be contained in the declaration supporting the request for emergency orders granting or modifying child custody and visitation (parenting time) orders. It is not intended to change existing law regarding ex parte applications to grant or modify child custody as one commentator suggested. To clarify this point, the task force and committee agreed to redraft (d)(5) to include a reference to Family Code section 3064, which governs these matters. Further, the task force and committee believe that the proposed rules in this chapter should be reworded to include both terms "visitation" and "parenting time" to denote that the filing requirements apply to applications for emergency orders to grant or modify both child custody and visitation (parenting time).

Rule 5.165. Requirements for notice. Eight commentators provided input on this rule. One agreed with the original proposal; three agreed, if modified; and four suggested changes to various parts of the rule.

Most commentators suggested changes to the method of notice requirements of the proposed subdivision (c) (now (a)). The proposed rule provides: "Notice of appearance at a hearing to request emergency orders may be given by telephone, in writing, or by voicemail message." One suggested defining "in writing" because, under Evidence Code section 251, a writing could include a variety of communications, such as e-mails, faxes, Facebook, or a text message. Another believed that the rule eliminated contact by e-mail and the Web and, therefore, was overreaching. A third commentator believed that the rule may be confusing to litigants and should be "expanded to include personal (face-to-face) notice, text message, and e-mail or it should state "these methods of service are not exhaustive, and do not exclude other methods or media that are reasonably likely to impart notice to the other party."

The task force and committee believe that commentators raise important substantive issues about how the rules regarding notice can include evolving forms of communication. The task force and committee recommend that additional discussion and public comment be sought before considering a rule that is more detailed than the version that was circulated for comment. Therefore, they will consider these suggestions during a future rules cycle.

A commentator disagreed with the time requirements for providing notice of a request for emergency orders under (a) (now (b)). The commentator stated that "requiring filing by 10 a.m. means that the person who comes to court early that morning has very little time to complete the paperwork for the next day and it would be more efficient to make the filing window a little bigger since a judge may not be available to hear an ex parte on any given date (it could be heard by a judge other than the one regularly assigned to the case)."

Proposed rule 5.165(b) is modeled on existing civil rule 3.1203 regarding the timeframe for giving notice to other parties. Many courts in small and large counties already refer to the civil rule timeframe in their local rules. The proposed rule is intended to incorporate the civil rule and best practice of local courts.

Rule 5.169. Personal appearance at hearing for temporary emergency orders. Commentators noted that the rules in this chapter generally assume that any application for emergency orders will lead to a hearing. However, a number of courts handle ex parte matters solely on the pleadings. Therefore, the rule regarding notice should allow for that procedure as an option. To address this matter, the task force and committee modified proposed rule 5.169 to include language to provide that courts may also make emergency orders based on the documents submitted without requiring the parties to appear at a hearing.

Rule 5.170. Matters not requiring notice to other parties. In response to a comment, the task force and committee decided to insert a third article and a new rule in this chapter for matters that are not necessarily emergencies but which do not require notice to the other party or a court appearance. Rule 5.170 now contains the matters formerly listed in rule 5.165(a)(3)—applications to restore a former name after judgment, stipulations by the parties, and others.

Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260). Rules in this chapter address documentation requirements for child, spousal, and domestic partner support orders and judgments. Eight commentators responded to the rule in this chapter. One agreed with the proposal. All others suggested changes to the rule.

One commentator proposed that the rule provide timelines within which the required income and expense information must be filed and exchanged. The commentator also suggested that a sentence be added to state: "Where a court finds good cause to deviate from indicated guideline support, it must state its findings on the record or in writing." The

task force and committee agreed with the suggestions and have incorporated them, with minor alterations, into the rule they are recommending for adoption.

Another commentator stated that rule 5.260(d) appropriately requires that the California Department of Child Support Services (DCSS) receive notice of motions concerning child support if DCSS is "providing services." The commentator, however, noted that the phrase isn't defined in the rule." The same commentator also stated that "the rule requiring both parties to submit support calculations ignores that stipulated judgments usually include an agreed-upon amount of support, and that only a petitioner submits a true default judgment to the court." In addition, the commentator stated that "it would be helpful if the rule set out the requirements for non-guideline orders, including that if the proposed support amount deviates from the guideline in any way, including "reserving" child support, the rule should remind parties they must include either a *Non-Guideline Child Support Findings Attachment* (Judicial Council form FL-342(A)) or language in the judgment conforming with Family Code sections 4056 and 4065."

To address the first point above, the task force and committee recommend deleting the phrase "providing services." Instead, the rule would specify that the local child support agency must be given notice if it is "providing support enforcement services or has intervened in the case as described in Family Code section 17400." To address the second point, the task force and committee modified rule 5.260 to state that if child support is an issue in a judgment that is based on the default or stipulation of the parties, the moving party (not both parties) should file the child support calculation with other required documents. As to the commentator's third point, the task force and committee believe that additional public comment should be sought before including the reservation of child support in the proposed rule regarding deviations from guideline support. However, they recommend including references to Family Code sections that address the requirements for orders that deviate from guideline support.

Two commentators disagreed with proposed rule 5.260(e)(2)(B). As circulated, the rule provided as follows: "If petitioner seeks a default judgment of dissolution or judgment of legal separation involving a marriage of over 10 years, petitioner must address the issue of spousal or domestic partner support for both parties considering the factors under Family Code section 4320 in the proposed judgment. *Spousal or Partnership Support Declaration Attachment* (form FL-157) may be used to provide this information."

One commentator stated that the proposed rule seemed overly burdensome. The other commentators recommended that it should be deleted entirely because the factors listed in Family Code section 4320 must be addressed in any spousal support judgment, whether the marriage is a short- or long-term marriage.

The task force and committee decided to recommend simplifying rule (e)(2)(B) to cover two points (which are now addressed in (e)(2)(A) and (B)): (1) that use of support

calculation software is not appropriate when requesting a judgment or modification of a judgment for spousal or domestic partner support and (2) that *Spousal or Partnership Support Declaration Attachment* (form FL-157) may be used to address the issue of spousal or domestic partner support under Family Code section 4320 when relevant to the case.

Chapter 11. Domestic Violence Cases

Rules 5.380 and 5.381 were originally proposed for placement in chapter 11 of the comprehensive set of new family law rules of court. Due to the change in the proposed effective date of this proposal, and because rules 5.380 and 5.381 were proposed to take effect on January 1, 2012, rules 5.380 and 5.381 were placed under a new chapter 8 to fit the outline of the current family law rules of court. The Judicial Council adopted these rules, effective January 1, 2012. The task force and committee recommend a technical change by placing those rules under the chapter in which they were originally proposed (Chapter 11, article 1) if the council adopts the new family law rules of court. Rule 5.386, which was adopted by the Judicial Council, effective July 1, 2012, is recommended to be placed in these rules under article 2 of chapter 11.[18]

Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals (rules 5.390 and 5.392). Five commentators responded to the proposed rules in this chapter, which combine and renumber existing rule 5.126 (Alternate date of valuation) and rule 5.175 (Bifurcation of issues). Two commentators agreed with the original proposal and two others suggested that the term "request for order" should be substituted for "notice of motion" where it appears in the chapter. The task force and committee recommend amending the rule to reflect the new form *Request for Order* (form FL-300).

The fifth commentator questioned whether rule 5.390(b) was needed because it seemed to be a restatement of the law. The rule, however, is not a restatement of any statute. Family Code section 2337 provides that "in a proceeding for dissolution of marriage, the court, on noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues." Family Code section 3023 is the authority for separate trials on the issue of child custody. The family rules of court serve as the authority for the courts to bifurcate one or more other issues that are not covered by the two statutes. Those specific issues are currently contained in rule 5.175(c). The recommendation is to renumber the current rule to rule 5.390(b) and include other issues in a family law proceeding that may be bifurcated, such as termination of the status of a marriage or domestic partnership, attorney's fees and costs, and other matters.

[18] The recommendations in the report titled "Protective Orders: Registration and Enforcement of Protective Orders Issued by Tribal Courts" were adopted by the Judicial Council on January 24, 2012.

Finally, to reflect the family centered case resolution statutes and rules, which became effective January 1, 2012 (Fam. Code § 2450 and rule 5.83),[19] the task force and committee deleted the language in the bifurcation rule that set the limit on the hearing date on a motion to request a separate trial. The current rule requires that a motion (to bifurcate) be heard not later than the trial-setting conference. The task force and committee believe that removing the requirement could avoid interfering with a judicial officer's ability to provide assistance and management to the parties who participate in family centered case resolution, especially if it is in the parties' best interest to address an issue by separate trial after a the date of a trial-setting conference. Deleting the language also makes the rule consistent with Family Code section 2451(a)(7), which specifically includes bifurcations as an order that judges can include in a family-centered case resolution plan. However, the statute does not impose a time requirement on the bifurcation hearing.

Chapter 14. Default Proceedings and Judgments (rules 5.401–5.415). The rules in this chapter are the renumbering of current rules with minor amendments made to content or format in response to comments. Six commentators responded to rules 5.401, 5.402, 5.411, 5.413, and 5.415. Suggestions to modify the rules in this chapter included: (1) generally replacing the term "stipulation for judgment" with "stipulated judgment"; (2) providing in rule 5.411 that stipulated judgments must dispose of all matters subject to the court's jurisdiction or request reservation of jurisdiction; (3) changing the format of the signature lines of a stipulated judgment to provide a separate line for the parties' attorneys to note that the settlement's terms conform to the parties' agreement; and (4) providing more specific language in rule 5.415 regarding the requirements for the envelopes that accompany the judgments submitted to the court for processing. The task force and committee agreed with the above suggestions and have incorporated them, with minor alterations, into the rules they are recommending for adoption.

One commentator suggested changing rule 5.411 to require that the signatures of unrepresented parties on a stipulated judgment be notarized. The task force and committee believe that this would be an important substantive change requiring public comment before it can be considered for adoption.

Chapter 16. Limited Scope Representation (rule 5.425). Proposed rule 5.425 (Limited scope representation; application of rules) consolidates existing rules 5.70 and 5.71, which have been in effect since 2003. In addition, the task force and committee decided to make changes to the rule to better inform courts and court users about the nature and the procedures involved in limited scope representation.

[19] Family Code section 2450 can be found at: http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=15091719480+0+0+0&WAISaction=retrieve. Rule 5.83 of the California Rules of Court can be found at: http://www.courtinfo.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_83.

Specifically, the proposed rule is expanded to incorporate language from existing civil rules 3.35 and 3.36 regarding limited scope representation, including the definition of "limited scope representation" and an "application" section. In addition, the proposed rule includes procedures that are presently only found on the companion forms *Notice of Limited Scope Representation* (form FL-950) and *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

Ten commentators responded to the proposal. One commentator generally agreed with the original proposal and eight commentators proposed changes to the rule. Eight commentators suggested changes to the rule and one commentator did not agree with a specific procedural requirement regarding form FL-955. The task force and committee made changes to the rule in response to the comments, as identified below.

Comments about 5.425(d) suggested that the rule be more narrowly tailored to require service on the attorney of papers that fall within the scope of the representation and on the client when the papers fall outside of the scope of representation, instead of requiring that service be made on both the attorney and the client. The task force and committee agreed with the suggestion and have incorporated it, with minor alterations, into the rule they are recommending for adoption.

Commentators suggested three different methods for simplifying the process for an attorney to be relieved as counsel upon completion of the issues specified in the *Notice of Limited Scope Representation.* Commentators proposed that the rule (1) specify that attorneys who contract for a single hearing do not have to file a substitution of attorney form or request an order to be relieved as counsel of record following the appearance, (2) permit counsel to be relieved after filing a certificate of completion, or (3) require that the attorney submit an updated *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) only if there have been objections to form FL-955. Because these would be important substantive changes to the proposal, the task force and committee believe they should be considered in a future rules cycle and that public comment be sought before the task force and committee make a recommendation.

Another commentator suggested that "limited scope representation" must be clearly written on the substitution-of-counsel form, which must be filed with the court and served on all parties. Rule 5.425(e) and item 4 on *Notice of Limited Scope Representation* (form FL-950) provide that a party has to sign *Substitution of Attorney—Civil* (form MC-050) at the completion of the representation. The task force and committee believe that this is sufficient to enable the court to relieve an attorney as counsel of record and they prefer not to impose additional requirements on the party or the attorney.

Finally, a commentator disagreed with the existing rule that allows attorneys to assist in preparing documents without disclosing their participation. The commentator believes the rule "opens the door for an attorney to leave their customers hanging without any

accountability to the attorney" The rule, which has been in place since 2003, was designed to assist parties to obtain legal assistance on specific issues in a family law case. It does not limit any rights a party may have against an undisclosed attorney who fails to comply with the terms of their agreement.

Chapter 17. Family Law Facilitator (rule 5.430). This rule is merely the renumbering and rechaptering of existing rule 5.35 regarding minimum standards for the Office of the Family Law Facilitator, without change to content. Two commentators responded to the rule in this chapter. Both commentators agreed with the proposal without providing specific comments.

Alternatives considered

Option 1: Adopt restructured rules effective July 1, 2012.
The task force and committee considered recommending that the rules be adopted in February 2012, for an effective date of July 1, 2012. However, they were concerned that courts and court users might require more than five months to review and fully implement the changes included in the restructured rules.

Courts, for example, would have to modify their local rules to be consistent with the family law rules of court. Adopting the restructured rules effective July 1, 2012, would not provide sufficient time for the process of modifying the local rules, circulating them for comment, and reviewing and redrafting them based on comments. Attorneys, litigants, and legal publication companies might also be pressed to make changes if the rules were adopted by the Judicial Council in February for an effective date of July 1, 2012.

While the task force and committee believe it is important to implement the restructured family law rules of court in a timely manner, they prefer that all persons and organizations affected by the changes have more time to fully understand and comply with the rules. For this reason, the task force and committee rejected this option and recommended that the rules take effect on January 1, 2013. This provides the public with 11 months' notice before the rules actually take effect.

Option 2: Phase in family law rules of court.
The task force and committee also considered recommending that the rules be phased in over various cycles.

Although the task force and committee originally recommended that all the rules take effect on January 1, 2012, the restructured rules on the whole are necessarily being phased in over several periods starting in January 1, 2012. For example, family rules of court mandated to take effect on January 1, 2012, such as rule 5.250 regarding children's participation and testimony in family law proceedings, have been separated from this original proposal and were adopted by the Judicial Council in 2011. Further, rule 5.92 and the related *Request for*

Order (form FL-300) and rule 5.386 regarding the registration and enforcement of protective orders issued by tribal courts were adopted by the Judicial Council in January 2012.

Because phasing in the remaining rules would require courts to make repeated adjustments to their forms, practices, and local rules, the task force and committee believe that it would be more efficient for the family rules of court to be implemented at one time. Further, having eliminated those rules identified by commentators as negatively impacting court operations, the task force and committee believe that additional phasing in of the rules beyond this report's recommended effective date of January 1, 2013, is not required.

Implementation Requirements, Costs, and Operational Impacts

As above noted, since the family rules were first adopted, the Judicial Council has restructured or renumbered the family rules of court several times. As with past restructuring, the task force and committee recognize that there will be an initial investment of time to train court staff, implement the new rules, and develop new local rules consistent with the new statewide rules. However, the task force and committee believe that once implemented, the new procedures in the family rules will save a significant amount of time for judges, clerks, and self-help staff. Further, they believe that these savings will more than offset the initial investment of time.

The task force and committee will also work with the Center for Families, Children & the Courts and the Center for Judicial Education and Research to provide training to judicial officers and court staff in the form of broadcasts and reference materials as well as technical assistance to the courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

These recommendations serve Goal I: Access, Fairness and Diversity. The rules organize the statewide family law rules of court to enable judicial officers, attorneys, and litigants to quickly find appropriate rules and be aware of the variety of rules that pertain to family law. Court procedures that are more efficient and understandable increase equal access to the courts and litigants' access to justice.

These proposed rules also serve Goal III.B: Modernization of Management and Administration. Statewide rules such as rules 5.125, 5.151, 5.165, and 5.420 help courts implement fair and effective practices in handling family law matters.

These recommendations also serve Goal IV: Quality of Justice and Service to the Public, by implementing court procedures and processes that are fair and understandable.

Attachments

1. Restructured rules outline, at pages 31–37
2. New, amended, and repealed and renumbered Family Law Rules of Court (Cal. Rules of Court, title 5), at pages 38–105
3. Chart of comments, at pages 106–256
4. Attachment A: Chart categorizing rules
5. Attachment B: Conversion tables
6. Attachment C: Rules to be repealed and renumbered