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INVITATION TO COMMENT

SPR12-04

Title	Action Requested
Appellate Procedure: Premature or Late Notice of Intent to File Writ Petition in Juvenile Dependency Proceeding	Review and submit comments by Friday, June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.450	January 1, 2013
Proposed by	Contact
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Family and Juvenile Law Advisory Committee Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Dean Stout, Cochair	Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov

Executive Summary and Origin

This is a revised version of a proposal that was circulated for public comment in spring 2011. The proposed amendments to the California Rules of Court would: (1) fill a gap in the rules by specifying what happens if a notice of intent to file a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26 is filed too early or too late; and (2) save trial courts costs associated with unnecessarily sending notices and preparing records when such notices are filed prematurely. This proposal would also remove alleged parents from the list of those to whom the clerk must send copies of a notice of intent. This proposal is based on suggestions received from the California Appellate Clerks Association and a Court of Appeal staff attorney.

Background

Rule 8.454 of the California Rules of Court addresses notices of intent to file writ petitions under Welfare and Institutions Code section 366.28. Rule 8.454 contains a provision, subdivision (f), that addresses what happens if a notice of intent is filed prematurely or filed late. If a notice of intent under rule 8.454 is premature, the rule provides that a reviewing court may treat it as filed immediately after the order being challenged (an order designating specific placement of a dependent child after termination of parental rights) is actually issued. If a notice of intent under

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

rule 8.454 is filed late, the rule requires superior court clerks to mark a late notice of intent “Received [date] but not filed,” notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party’s counsel of record, if applicable

Rule 8.450 addresses notices of intent to file writ petitions to review another type of order in juvenile proceedings—orders setting a hearing to consider possible termination of parental rights under Welfare and Institutions Code section 366.26. Unlike rule 8.454, however, rule 8.450 does not address what happens if a notice of intent is filed prematurely or late.

Prior Circulation

In spring 2011, the committee circulated for public comment a proposal that would have amended rule 8.450 to include provisions regarding premature and late notices of intent modeled on the provisions in rule 8.454. The comments received on the earlier proposal raised several concerns about permitting courts to treat premature notices of intent under rule 8.450 as filed when the order setting the termination hearing under Welfare and Institutions Code section 366.26 is made, including:

- A party may mistakenly believe that he or she must file a notice of intent under rule 8.450 following the issuance of orders other than the order setting a hearing under Welfare and Institutions Code section 366.26, such as orders denying or terminating reunification services;
- There may be a long period between when a party mistakenly files a premature notice of intent under rule 8.450 and the issuance of an actual order setting a hearing under Welfare and Institutions Code section 366.26. Thus, if as under rule 8.454, the reviewing court were to treat the premature notice of intent as if filed when an order setting a hearing under Welfare and Institutions Code section 366.26 is actually issued, there might be a long period between when the court originally received the notice of intent and when the court deems it filed. During this period, it might be unclear to parties whether or not the court is considering the issues raised in the premature notice of intent; and
- Filing a notice of intent triggers several duties for the trial court clerk, including sending notice of the filing of the notice of intent to a long list of individuals, notifying court reporters to begin preparing the reporter’s transcript, and preparing the clerk’s transcript. All of these activities consume trial court resources, particularly the preparation of the record, which is done at public expense in these cases. If no hearing under Welfare and Institutions Code section 366.26 is subsequently set, or a hearing is set but no party wants to challenge the order, any resources expended on sending these notices or preparing the record will have been wasted.

Based on these public comments, the committees have modified their proposal and are seeking comments on this revised proposal.

The Proposal

This proposal is intended to: (1) fill the gap in rule 8.450 by amending it to add provisions addressing premature and late notices of intent; and (2) provide significant cost savings and efficiencies for trial courts by eliminating unnecessary notices and record preparation when such notices are filed prematurely.

As in the proposal circulated in spring 2011, the language of the proposed new 8.450(f)(2) regarding late notices of intent is modeled on rule 8.454(f)(2). It would require superior court clerks to mark a late notice of intent “Received [date] but not filed,” notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party’s counsel of record, if applicable.

However, unlike the proposal circulated for public comment in spring 2011, the language of the proposed new 8.450(f)(1) regarding premature notices of intent is not modeled on rule 8.454(f)(1). Instead, under this proposal, premature notices of intent under rule 8.450 would be treated similar to late notices of intent—the superior court clerk would be required to mark the premature notice as “received but not filed” and return it to the filer with a notice that it was not filed because it was premature. By making it clearer that notices of intent under rule 8.450 should not be filed until after an order setting a section 366.26 hearing has been made, this proposal is intended to save trial court costs associated with premature and potentially unnecessary issuance of notices and preparation of records in these proceedings. It is also intended to prevent confusion among litigants about whether or not a court is considering the issues raised in a premature notice of intent.

This proposal would also remove alleged parents from the list of those to whom the clerk must send copies of any filed notice of intent. An alleged parent has no standing in dependency proceedings until he or she appears, establishes an interest, and becomes a party of record. Once an alleged parent becomes a party of record, he or she would receive a copy of any notice of intent filed under rule 8.450(g)(1)(B), so it is not necessary to separately require that notices be sent to alleged parents.

Alternatives considered

As indicated above, the committee previously considered and circulated for public comment a proposal that would have permitted courts to treat premature notices of intent to file a writ petition under rule 8.450 as filed upon issuance of the order setting the hearing to consider possible termination of parental rights under Welfare and Institutions Code section 366.26. Based on the public comments received, the committee decided to modify its proposal as described above.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation burdens on the superior courts or Courts of Appeal and should provide significant cost savings for the superior courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the same concerns about premature notices of intent present with respect to notices under rule 8.454?
- Should the procedure proposed for premature notices under rule 8.450—that they not be filed and be returned to the party—also be applied to notices under rule 8.454?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rule 8.450 of the California Rules of Court would be amended, effective January 1, 2013, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 5. Juvenile Appeals and Writs

Article 3. Writs

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(e) * * *

(f) Premature or late notice of intent to file writ petition

(1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is premature if filed before an order setting a hearing under Welfare and Institutions Code section 366.26 has been made. If a notice of intent is premature, the superior court clerk must:

(A) Mark the notice of intent “Received [date] but not filed;”

(B) Return the marked notice of intent to the party with a notice stating that the notice of intent was not filed because it is premature, as no order setting a hearing under Welfare and Institutions Code section 366.26 has been made: and

(C) Send a copy of the marked notice of intent and clerk’s notice to the party’s counsel of record, if applicable.

(2) The superior court clerk must mark a late notice of intent to file a writ petition under section 366.26 “Received [date] but not filed,” notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party’s counsel of record, if applicable.

1 ~~(f)~~(g) Sending the notice of intent

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- 3 (1) When the notice of intent is filed, the superior court clerk must immediately mail a
- 4 copy of the notice to:
- 5
- 6 (A) The attorney of record for each party;
- 7
- 8 (B) Each party, including the child if the child is 10 years of age or older;
- 9
- 10 (C) Any known sibling of the child who is the subject of the hearing if that sibling
- 11 either is the subject of a dependency proceeding or has been adjudged to be a
- 12 dependent child of the juvenile court as follows:
- 13
- 14 (i) If the sibling is under 10 years of age, on the sibling's attorney; or
- 15
- 16 (ii) If the sibling is 10 years of age or over, on the sibling and the sibling's
- 17 attorney.
- 18
- 19 (D) The mother, the father, and any presumed ~~and alleged~~ parents;
- 20
- 21 (E) The child's legal guardian, if any;
- 22
- 23 (F) Any person currently awarded by the juvenile court the status of the child's de
- 24 facto parent;
- 25
- 26 (G) The probation officer or social worker;
- 27
- 28 (H) Any Court Appointed Special Advocate (CASA) volunteer;
- 29
- 30 (I) The grandparents of the child, if their address is known and if the parents'
- 31 whereabouts are unknown; and
- 32
- 33 (J) If the court knows or has reason to know that an Indian child is involved, the
- 34 Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs,
- 35 as required under Welfare and Institutions Code section 224.2.

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37 (2) * * *

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39 (3) * * *

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41 ~~(g)~~(h) * * *

1 ~~(h)~~(i) * * *

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3 ~~(h)~~(i) * * *

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Advisory Committee Comment

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7 **Subdivision (d).** * * *

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9 **Subdivision (e)(4).** * * *

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11 **Subdivision (f)(1).** A party who prematurely attempts to file of intent to file a writ petition under
12 Welfare and Institutions Code section 366.26 is not precluded from later filing such a notice after an order
13 setting a hearing under Welfare and Institutions Code section 366.26 is made.

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