

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR12-02

Title	Action Requested
Appellate Procedure: Appointment of Appellate Counsel in Juvenile Delinquency Appeals	Review and submit comments by Friday, June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.403	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 proposal would amend rule 8.403(a) to more accurately reflect the scope of Welfare and Institutions Code section 634 by deleting the sentence regarding appointment of appellate counsel for juveniles at the parents' or guardians' expense in delinquency appeals. This proposal originated from a suggestion made by the Appellate Court Committee of the San Diego County Bar Association.

The Proposal

Rule 8.403(a) addresses the right to appointment of counsel in appeals in proceedings under Welfare and Institutions Code section 601 or 602 (juvenile delinquency proceedings). This rule currently includes a sentence providing that if the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court must appoint counsel for the child at the expense of the parent or guardian.

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 These proposals are circulated for comment purposes only.

This sentence was originally added to a rule for the trial courts, rule 1435,¹ in 1999. The intent of this change, as described in the report to the Judicial Council, was to “reflect procedures for a child, as stated in Welfare and Institutions Code section 634.”

Welfare and Institutions Code section 634, which is in a portion of the code addressing temporary custody and detention proceedings in juvenile delinquency cases, provides, in relevant part:

In a case in which the minor is alleged to be a person described in Section 601 or 602, the court shall appoint counsel for the minor if he appears at the hearing without counsel, whether he is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor; and, in the absence of such waiver, if the parent or guardian does not furnish counsel and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian.

The location of section 634 in the portion of the Welfare and Institutions Code addressing temporary custody and detention proceedings in juvenile delinquency cases, rather than in either the article containing general provisions or the article addressing appeals in juvenile proceedings, and the fact that there are several other sections in the Juvenile Law chapter of the code addressing appointment and compensation of appointed counsel in other juvenile court proceedings, indicates that this provision is intended to apply only to appointment of counsel in temporary custody and detention proceedings in juvenile delinquency cases. In addition, the Supreme Court has interpreted a similar section addressing appointed counsel in the portion of the code addressing temporary custody and detention proceedings in juvenile dependency cases as not applying to appeals (see *In re Zeth S.* (2003) 31 Cal.4th 396, 414-415). Based on this, the committees concluded that section 634 was not intended to apply to appeals in juvenile delinquency proceedings and therefore that provisions from this code section should not be included in a rule relating to such appeals.

To more accurately reflect the scope of Welfare and Institutions Code section 634 and avoid potential confusion, this proposal would amend rule 8.403(a) to delete the sentence regarding appointment of appellate counsel for juveniles at the parents’ or guardians’ expense.

Alternatives considered

The committees considered not recommending any change to this rule but concluded that it would be best if rule 8.403(a) did not include a requirement that is not applicable in appeals in juvenile delinquency cases.

¹ Effective January 1, 2007, all of the California Rules of Court were renumbered. As part of this, former rule 1435 was renumbered as rule 5.585. Effective July 1, 2010, the rules on juvenile appeals and writs were revised. Several provisions relating to juvenile appeals that were previously located in title 5 of the rules (relating to family and juvenile proceedings) were incorporated into title 8 (relating to appellate proceedings). As part of this revision, former rule 5.585(a) became current rule 8.403(a).

Implementation Requirements, Costs, and Operational Impacts

This proposal should not have any appreciable implementation requirements or costs. It is the committees' understanding that none of the Court of Appeal districts have implemented a procedure for appointing counsel in juvenile delinquency appeals at the parents' or guardians' expense and therefore that the proposed amendment to rule 8.403(a) would make the rule reflective of current practice.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately address the stated purpose.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- 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 8.403 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 2. Appeals

Rule 8.403. Right to appointment of appellate counsel and prerequisites for appeal

(a) Welfare and Institutions Code section 601 or 602 proceedings

In appeals of proceedings under Welfare and Institutions Code section 601 or 602, the child is entitled to court-appointed counsel. ~~If the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court must appoint counsel for the child at the expense of the parent or guardian.~~

(b) * * *