Invitation to Comment

Title	Family Law: Sibling Contact After Adoption (adopt Cal. Rules of Court rule 5.410; and adopt form ADOPT- 330)
Summary	The proposed rule and form are required to implement Assembly Bill 2488 (Leno; Stats. 2006, ch. 386), which provides a mechanism for an individual who has been adopted, either in juvenile or family court, to contact his or her siblings and for any siblings of the adopted child to contact the adopted child.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Kelly Lynn Beck, 415-865-8011, kelly.beck@jud.ca.gov
Discussion	Before the passage of Assembly Bill 2488 (Leno; Stats.2006, ch.#386), Family Code section 9205 allowed only adopted siblings who were at least 21 years old to seek contact with each other, provided each had filed a request (also known as a waiver of confidentiality) with the California Department of Social Services or the agency handling the adoption. Adopted siblings under the age of 18 and siblings wishing to contact each other when there was no waiver on file were unable to contact one another, absent a Post Adoption Contact Agreement. In an effort to assist siblings under these circumstances, AB 2488 expanded Family Code section 9205 in two ways: 1. To allow adopted siblings, of any age, to request sibling contact provided a consent is executed for a child under the age of 18; and 2. To provide a mechanism for siblings to petition the court for contact if the other sibling has not signed a consent for contact or waiver of confidentiality. The proposed rule and form are necessary to implement AB 2488. They will help in circumstances where one of the siblings is under 18 years of age or where one of the siblings has not signed a consent for contact or waiver of confidentiality. Under 18 Years of Age–Consent AB 2488 provides that if a sibling is under 18, he or she "may file a written waiver for release of his or her name, address and phone number" if the adoptive parent, legal parent, or guardian consents to

such disclosure. The bill further provides that if the sibling is under the jurisdiction of the dependency court and no parent is available to consent, the dependency court can sign the consent.

The proposed rule 5.410 would clarify the meanings of some of the language contained in the statute, as well as provide direction for the court to consent.

Absent Waiver
AB 2488 specifies that "an adoptee or sibling who seeks contact with the other for whom no waiver is on file may petition the court to appoint a confidential intermediary" in an effort to obtain the required waiver.

The proposed mandatory form, ADOPT-330, will help siblings ask the court to appoint a confidential intermediary who can then attempt to locate the sibling and obtain the required waiver.

The proposed rule will provide guidance for the court and the parties in seeking the appointment of a confidential intermediary as well as direction when an agency cannot provide services as a confidential intermediary due to economic hardship. The rule also provides a list of proposed alternative confidential intermediaries that the court can consider when the agency cannot fulfill this role.

The proposed text of the rule is attached at pages 3–5.
The text of the proposed form is attached at pages 6–8.
The text of AB 2488 (chaptered into Family Code §9205) is attached for your reference at pages 9–12.

Attachments

Rules 5.410 of the California Rules of Court would be adopted effective January 1, 2008, to read:

1 **Rule 5.410 Request for sibling contact information under Family Code**
2   **Section 9205(f)**
3
4 **(a)**   **Applicability of rule**
5
6   This rule applies to all persons wishing to exchange contact information with
7   their adopted siblings and all adopted persons wishing to have contact with
8   their siblings, regardless of whether the adoption occurred in juvenile,
9   family, or probate court.
10
11 **(b)**   **Definitions**
12
13   As used in this rule:
14
15   (1)   "Adoptee" means any person adopted under the laws of this State.
16
17   (2)   "Department" means the California Department of Social Services.
18
19   (3)   "Licensed adoption agency" means an agency licensed by the
20   department to provide adoption services, and includes a licensed county
21   adoption agency and a licensed private adoption agency under Family
22   Code sections 8530, 8521, and 8533.
23
24   (4)   "Confidential intermediary" means either the department or a licensed
25   adoption agency that provided adoption services.
26
27   (5)   "Alternate confidential intermediary" means a named entity or person
28   designated by the court in place of a licensed adoption agency when the
29   court finds economic hardship.
30
31   (6)   "Sibling" means a person related by blood, adoption, or affinity
32   through a common legal or biological parent.
33
34   (7)   "Waiver" means Department form AD 904(A) (used for siblings over
35   the age of 18 years) or AD 904(B) (used for siblings under the age of
36   18) Waiver of Rights to Confidentiality for Siblings.
37
38   (8)   "Consent" means the approval of an adoptive parent, legal parent,
39   guardian or dependency court, of the filing of a waiver by a person
40   under the age of 18 years. The consent is contained in the department
41   form AD 904(B).

1   (9)   "Petition" means the Judicial Council's form ADOPT-330 *Request for*
2   *Appointment of Confidential Intermediary and Order*.(form ADOPT-
3   330)
4
5 **(c)**   **Waiver submitted by person under the age of 18 years under Family**
6   **Code section 9205(f)**
7
8   (1)   *Adoptee or sibling waiver*
9
10 Each adoptee or sibling under the age of 18 years may submit a waiver to the
11 department or the licensed adoption agency, provided a consent is also
12 completed.
13
14   (2)   *Court consent*
15
16 If the sibling is under the jurisdiction of the juvenile court and his or her
17 parent or legal guardian is unwilling, unable, or unavailable to sign a
18 consent, the court may sign the consent
19
20 **(d)**   **No waiver on file——sibling requesting contact   (Fam. Code#§(9205(g))**
21
22 If after contacting the department or licensed adoption agency, the sibling
23 learns that no waiver is on file for the other sibling, the sibling seeking
24 contact may ask the court to designate a confidential intermediary to help
25 locate the sibling, by following the procedure below:
26
27   (1)   *Sibling's request*
28
29   (A)   A sibling requesting contact under Family Code section 9205
30   must file for Appointment of Confidential Intermediary and
31   Order(form ADOPT-330)
32
33   (B)   If the sibling requesting contact is under the age of 18 years, the
34   request to appoint a confidential intermediary must be made
35   through the child's duly appointed guardian ad litem under Civil
36   Code section 373 or attorney.
37
38   (2)   *Appointment of a confidential intermediary*
39
40   (A)   The court must grant the request unless the court finds that it
41   would be detrimental to the adoptee or sibling with whom contact
42   is sought. The court may consider any and all relevant
43   information in making this determination, including, but not
44   limited to, a review of the court file.

1   (B)   If the court finds that the sibling with whom contact is being
2   sought is an adoptee, the court will appoint the department or
3   licensed adoption agency named in the request as the confidential
4   intermediary.

6   (C)   If the court finds economic hardship to the licensed adoption
7   agency named in the request, the court may appoint any one of the
8   following, who agree to serve, as an alternate confidential
9   intermediary:

11   (i)   A CASA program volunteer;
12   (ii)   A certified family law mediator;
13   (iii)   Adoption service provider as defined in Family Code
14   section 8502(a);
15   (iv)   An attorney;
16   (v)   A county bar association family law pro bono panel
17   attorney;
18   (vi)   An appropriate family member of either sibling;
19   (vii)   Any appropriate individual from a list provided by the
20   adoption agency; or
21   (viii) Any other appropriate individual as designated by the court.

23   (D)   The licensed adoption agency must provide all records related to
24   the adoptee or sibling to the court;

26 (3)   *Adopted sibling seeking contact with a sibling who is a dependent* child

28   An adoptee seeking contact with his or her sibling who is a dependent
29   child must follow the procedure set forth under Welfare and Institutions
30   Code section 388 to seek contact with the sibling.

Request for Appointment of Confidential Intermediary and Order

Clerk stamps date here when form is filed.

You must request contact with your sibling through the agency or department that joined in the adoption before you give this form to the court.

After filling out this form, bring it to the clerk of the court. Once the court signs the order, a copy will be forwarded to the California Department of Social Services or adoption agency as designated by the court and a copy will be given to you.

**DRAFT 10
04/13/07 mc
Not approved by the
Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

(1) Information about the sibling asking the court to appoint a confidential intermediary *(sibling seeking contact):*
   a. Name: _____
   b. Address: _____
   c. Phone number: (____)_____

(2) Information about the Department of Social Services office or adoption agency that joined in the adoption petition of either sibling:
   a. ☐ Information about sibling #1.
       ☐ Information about sibling #5.
   b. Name of agency: _____
   c. Address: _____
   d. Phone number: (____)_____

Clerk fills in case number when form is filed.

Case Number:

(3) If an attorney or guardian ad litem is completing this form for the sibling in #1, fill out information below :
   a. Name: _____
   b. Relationship to you:
       (1) ☐ Court–appointed guardian ad litem
       (2) ☐ Attorney *(State Bar number):* _____
   c. Address: _____
   d. Phone number: (____)_____

(4) If the sibling in #1 has been represented by an attorney before, fill out information below:
   a. Name of attorney: _____
   b. Address of attorney: _____
   c. Phone number of attorney: (____)_____
   d. Why did you have this attorney? _____

(5) Information about the sibling you (person identified in #1) are seeking contact with:
   a. Name: _____
   b. Current address *(if known):*_____
   c. If your sibling is under the age of 18, who does your sibling currently live with? *(name):* _____
       Relationship:_____
   d. If your sibling is under the age of 18, who did your sibling previously live with? *(name):* _____
       Relationship:_____

Judicial Council of California, *www.courtinfo.ca.gov*
New January 1, 2008, Mandatory Form
Welfare and Institutions Code, § 366.26(n);
Cal. Rules of Court, rule 5.726

**Request for Appointment of
Confidential Intermediary and Order**

ADOPT-330, Page 1 of 3

➔

6

6 The sibling in ⑤ was adopted in this county: ☐ Yes ☐ No ☐ Unknown

7 The sibling in ⑤ was previously a dependent of this court: ☐ Yes ☐ No ☐ Unknown

8 The following are true *(check all that apply):*

a. ☐ I have submitted a written waiver Department of Social Services form AD 904(A) or AD 904(B) to the agency designated in ②. A copy is attached to this request.

b. ☐ The agency in ② has sent a letter to me stating that no waiver is in their file for the sibling named in ⑤. A copy is attached to this request.

c. ☐ I am asking the court designate a confidential intermediary in my efforts to contact my sibling.

d. ☐ I am under the age of 18.

    (1) A consent of my parent/guardian has been executed ☐ Yes ☐ No

    (2) A consent of the court has been executed ☐ Yes ☐ No

e. ☐ The sibling in ⑤ is under the age of 18.

f. ☐ There is not now, and never has been, an order declaring that I have no contact with my sibling named in ⑤.

9 Any other information you believe would be helpful to this court:

_____

_____

_____

_____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 9, and in all attachments, is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____ _____ ▸ _____

                               Type or print your name

                               Sign your name

Relationship to sibling named in ①:

☐ Self

☐ Guardian ad litem

☐ Attorney

Court Order

Court will fill out section below.

The Court Finds and Orders:

(10) ☐ The request is granted.

(11) ☐ One or both siblings are adoptees. The following entity, as identified in the request, is hereby appointed as the confidential intermediary:
 a. ☐ The California Department of Social Services
 b. ☐ The licensed adoption agency named in the request

(12) ☐ Sibling being sought was formerly under the jurisdiction of the juvenile court but has not been adopted. The following entity, as identified in the request, is hereby appointed as the confidential intermediary:
 a. ☐ The California Department of Social Services
 b. ☐ The county child welfare agency that provided services to the dependent child
 c. ☐ The licensed adoption agency that provided adoption services to the sibling seeking contact

(13) ☐ There is economic hardship to the licensed adoption agency to serve as a confidential intermediary. The following entity or person is appointed as the alternate confidential intermediary:
 a. Name: _____
 b. Relationship to sibling named in **(1)**: _____
 c. Relationship to sibling named in **(5)**: _____
 d. Address: _____
 e. Phone number: (____) _____

(14) A copy of this Order is to be provided to the confidential intermediary named above.

(15) A copy of this Order is to be forwarded to the person making this request.

(16) ☐ The request is denied because the court finds that granting this request would be detrimental to the adoptee or sibling with whom contact is sought.

Date: _____

▶ _____
Judge (or Judicial Officer)

Assembly Bill No. 2488

CHAPTER 386

An act to amend Section 9205 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

AB 2488, Leno. Adoption.

Existing law authorizes the State Department of Social Services or an adoption agency, as defined, that joined in an adoption petition to release the names and addresses of biological siblings to one another if both siblings have attained 21 years of age and have filed a specified request and waiver of rights with respect to the disclosure with the department or agency.

This bill would further authorize the disclosure of the names and addresses of an adoptee and his or her half-sibling or step-sibling to one another, if the above-described requirements are met. The bill would also lower the age of consent to 18 years of age, and would authorize an adoptee or sibling, as defined, who is under 18 years of age to file that request with the consent of his or her adoptive parents or, if a sibling, with the consent of the sibling's legal parent or guardian, or the dependency court under specified circumstances. If an adoptee or sibling has not filed a waiver with the department or adoption agency, the bill would also authorize the adoptee or sibling to petition the court to appoint a confidential intermediary, as specified, which would have the authority to contact the adoptee and his or her adoptive parents or the sibling with regard to disclosure. The bill would require the confidential intermediary to inform those persons that consent is optional, and, upon denial, would prohibit the intermediary from making any further attempt at disclosure.

By imposing additional duties on, among others, licensed county adoption agencies to act as a confidential intermediary, as described above, and by increasing the number of sibling and adoptee requests, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

93

The people of the State of California do enact as follows:

SECTION 1.   Section 9205 of the Family Code is amended to read:

9205.   (a) Notwithstanding any other law, the department or adoption agency that joined in the adoption petition shall release the names and addresses of siblings to one another if both of the siblings have attained 18 years of age and have filed the following with the department or agency:

(1) A current address.

(2) A written request for contact with any sibling whose existence is known to the person making the request.

(3) A written waiver of the person's rights with respect to the disclosure of the person's name and address to the sibling, if the person is an adoptee.

(b) Upon inquiry and proof that a person is the sibling of an adoptee who has filed a waiver pursuant to this section, the department or agency may advise the sibling that a waiver has been filed by the adoptee. The department or agency may charge a reasonable fee, not to exceed fifty dollars ($50), for providing the service required by this section.

(c) An adoptee may revoke a waiver filed pursuant to this section by giving written notice of revocation to the department or agency.

(d) The department shall adopt a form for the request authorized by this section. The form shall provide for an affidavit to be executed by a person seeking to employ the procedure provided by this section that, to the best of the person's knowledge, the person is an adoptee or sibling of an adoptee. The form also shall contain a notice of an adoptee's rights pursuant to subdivision (c) and a statement that information will be disclosed only if there is a currently valid waiver on file with the department or agency. The department may adopt regulations requiring any additional means of identification from a person making a request pursuant to this section as it deems necessary.

(e) The department or agency may not solicit the execution of a waiver authorized by this section. However, the department shall announce the availability of the procedure authorized by this section, utilizing a means of communication appropriate to inform the public effectively.

(f) Notwithstanding the age requirement described in subdivision (a), an adoptee or sibling who is under 18 years of age may file a written waiver of confidentiality for the release of his or her name, address, and phone number pursuant to this section provided that, if an adoptee, the adoptive parent consents, and, if a sibling, the sibling's legal parent or guardian consents. If the sibling is under the jurisdiction of the dependency court and has no legal parent or guardian able or available to provide consent, the dependency court may provide that consent.

(g) Notwithstanding subdivisions (a) and (e), an adoptee or sibling who seeks contact with the other for whom no waiver is on file may petition the court to appoint a confidential intermediary. If the sibling being sought is the adoptee, the intermediary shall be the department or licensed adoption agency that provided adoption services as described in Section 8521 or 8533 of the Family Code. If the sibling being sought was formerly under

the jurisdiction of the juvenile court, but is not an adoptee, the intermediary shall be the department, the county child welfare agency that provided services to the dependent child, or the licensed adoption agency that provided adoption services to the sibling seeking contact, as appropriate. If the court finds that the licensed adoption agency that conducted the adoptee's adoption is unable, due to economic hardship, to serve as the intermediary, then the agency shall provide all records related to the adoptee or the sibling to the court and the court shall appoint an alternate confidential intermediary. The court shall grant the petition unless it finds that it would be detrimental to the adoptee or sibling with whom contact is sought. The intermediary shall have access to all records of the adoptee or the sibling and shall make all reasonable efforts to locate and attempt to obtain the consent of the adoptee, sibling, or adoptive or birth parent, as required to make the disclosure authorized by this section. The confidential intermediary shall notify any located adoptee, sibling, or adoptive or birth parent that consent is optional, not required by law, and does not affect the status of the adoption. If that individual denies the request for consent, the confidential intermediary shall not make any further attempts to obtain consent. The confidential intermediary shall use information found in the records of the adoptee or the sibling for authorized purposes only, and may not disclose that information without authorization. If contact is sought with an adoptee or sibling who is under 18 years of age, the confidential intermediary shall contact and obtain the consent of that child's legal parent before contacting the child. If the sibling is under 18 years of age, under the jurisdiction of the dependency court, and has no legal parent or guardian able or available to provide consent, the intermediary shall obtain that consent from the dependency court. If the adoptee is seeking information regarding a sibling who is known to be a dependent child of the juvenile court, the procedures set forth in subdivision (b) of Section 388 of the Welfare and Institutions Code shall be utilized. If the adoptee is foreign born and was the subject of an intercountry adoption as defined in Section 8527, the adoption agency may fulfill the reasonable efforts requirement by utilizing all information in the agency's case file, and any information received upon request from the foreign adoption agency that conducted the adoption, if any, to locate and attempt to obtain the consent of the adoptee, sibling, or adoptive or birth parent. If that information is neither in the agency's case file, nor received from the foreign adoption agency, or if the attempts to locate are unsuccessful, then the agency shall be relieved of any further obligation to search for the adoptee or the sibling.

(h) For purposes of this section, "sibling" means a biological sibling, half-sibling, or step-sibling of the adoptee.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

Item SPR07-24   Response Form

Title: Family Law: Sibling Contact After Adoption (adopt Cal. Rules of
Court rule 5.410; and adopt form ADOPT- 330)

☐ **Agree** with proposed changes

☐ **Agree** with proposed changes **if modified**

☐ **Do not agree** with proposed changes

Comments: _____

_____

_____

_____

_____

Name:_____**Title:**_____

Organization:_____

☐ **Commenting on behalf of an organization**

Address:_____

City, State, Zip:_____

Please **write** or **fax** or **respond using the Internet** to:

  Address: Ms. Camilla Kieliger,
        Judicial Council, 455 Golden Gate Avenue,
        San Francisco, CA 94102
  Fax: (415) 865-7664   Attention: Camilla Kieliger
  Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007

**Your comments may be written on this *Response Form* or directly on the proposal or as a letter.
If you are not commenting directly on this sheet please remember to attach it to your comments
for identification purposes.**