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# Rule 3.36. Notice of limited scope representation and application to be relieved as attorney

#### (a) Notice of limited scope representation

##### A party and an attorney may provide notice of their agreement to limited scope representation by serving and filing a *Notice of Limited Scope Representation* (form ~~MC-950~~CIV-150).

(Subd (a) amended effective September 1, 2018.)

#### (b) \* \* \*

#### (c) Procedures to be relieved as counsel on completion of representation

##### Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form ~~MC-950~~CIV-150) may use the procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney—Civil* (form MC-050).

(Subd (c) amended effective September 1, 2018.

#### (d) Application

##### An application to be relieved as attorney on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form ~~MC-955~~CIV-151).

(Subd (d) amended effective September 1, 2018.)

#### (e) Filing and service of application

##### The application to be relieved as attorney must be filed with the court and served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form ~~MC-956~~ CIV-152).

(Subd (e) amended effective September 1, 2018.)

#### (f) No objection

##### If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form ~~MC-955~~CIV-151) is served on the client, the attorney making the application must file an updated form ~~MC-955~~CIV-151 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form ~~MC-958~~CIV-153). The clerk must then forward the order for judicial signature.

(Subd (f) amended effective September 1, 2018.)

#### (g) Objection

##### If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form ~~MC-956~~CIV-152). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and the attorney.

(Subd (g) amended effective September 1, 2018.)

#### (h) Service of the order

##### If no objection is served and filed and the proposed order is signed under (f), the attorney who filed the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form ~~MC-955~~CIV-151) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

(Subd (h) amended effective September 1, 2018.)

Rule 3.36 amended effective September 1, 2018; adopted effective January 1, 2007.

### Rule 5.552. Confidentiality of records (§§ 827, 827.12, 828)

#### (a) \* \* \*

#### (b) Petition

##### Juvenile case files may ~~only~~ be obtained or inspected only in accordance with sections 827, 827.12, and 828. They may not be obtained or inspected by civil or criminal subpoena. With the exception of those persons permitted to inspect juvenile case files without court authorization under sections 827 and 828, and the specific requirements for accessing juvenile case files provided in section 827.12(a)(1), every person or agency seeking to inspect or obtain juvenile case files must petition the court for authorization using *Request for Disclosure of Juvenile Case File* (form 7-570). A chief probation officer seeking juvenile court authorization to access and provide data from case files in the possession of the probation department under section 827.12(a)(2) must comply with the requirements of subdivision (e) of this rule.

###### (1)–(2) \* \* \*

(Subd (b) amended effective September 1, 2018; adopted as subd (c); previously amended effective July 1, 1997, and January 1, 2007; previously amended and relettered effective January 1, 2018.)

#### (c)–(d) \* \* \*

#### (e) Release of case file information for research (§ 872.12(a)(2))

##### The court may authorize a chief probation officer to access and provide data contained in juvenile delinquency case files and related juvenile records in the possession of the probation department for the purpose of data sharing or conducting or facilitating research on juvenile justice populations, practices, policies, or trends if the court finds the following:

###### The research, evaluation, or study includes a sound method for the appropriate protection of the confidentiality of an individual whose juvenile delinquency case file is accessed for this purpose. In considering whether a method is sound, the court must have information on:

1. The names and qualifications of any nonprobation personnel who will have access to personally identifying information as defined in Civil Code section 1798.79.8(b);
2. Procedures to mask personally identifying information that is shared electronically; and
3. Data security protocols to ensure that access to the information is limited to those people authorized by the court.

###### No further release, dissemination, or publication of personally identifying information by the probation department or a program evaluator, researcher, or research organization that is retained by the probation department will take place for research or evaluation purposes.

###### The disclosure requirements of section 10850 are met if any dependency information in a delinquency file may be disclosed.

###### (4) A date for destruction of records containing personally identifying information in the possession of nonprobation department personnel has been set to prevent inappropriate disclosure of the records.

###### If the information is being released for human subject research as defined in 45 Code of Federal Regulations part 46, the probation department must provide notice to the office of the public defender 30 days before the court authorizes the release of the information so that the office has an opportunity to file an objection to the release with the court. If such an objection is filed within the 30 day period the court must set a hearing on the objection within 30 days of the filing of the objection to consider the objection and make a determination on whether and how release of information should be accomplished. Upon receiving authorization, but prior to the release of information, the probation department must enter into a formal agreement with the entity or entities conducting the research that specifies what may and may not be done with the information disclosed.

(Subd (e) was adopted effective September 1, 2018.)

#### ~~(e)~~(f) Reports of law enforcement agencies (§ 828)

\* \* \*

(Subd (f) relettered effective September 1, 2018; adopted as subd (f) effective January 1, 1994; previously relettered as subd (g) effective January 1, 2001, and as subd (f) effective January 1, 2009; previously amended effective January 1, 2007; previously amended and relettered as subd (e) effective January 1, 2018.)

#### ~~(f)~~(g) Other applicable statutes

\* \* \*

(Subd (g) relettered effective September 1, 2018; adopted as subd (f); previously amended and relettered as subd (h) effective July 1, 1995; previously relettered as subd (g) effective January 1, 1994, as subd (i) effective January 1, 2001, and as subd (h) effective January 1, 2009; previously amended effective January 1, 2007; previously amended and relettered as subd(f) effective January 1, 2018.)

Rule 5.552 amended effective September 1, 2018; adopted as rule 1423 effective July 1, 1992; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1994, July 1, 1995, July 1, 1997, January 1, 2001, January 1, 2004, January 1, 2009 and January 1, 2018.

### Rule 5.647. Medi-Cal: Presumptive Transfer of Specialty Mental Health Services

#### (a) Applicability

##### This rule applies to the court’s review under Welfare and Institutions Code section 14717.1 of the presumptive transfer of responsibility to arrange and provide for a child’s or nonminor’s specialty mental health services to the child’s or nonminor’s county of residence. The rule applies to presumptive transfer following any change of placement within California for a child or nonminor to a placement that is outside the county of original jurisdiction, including the initial placement. Nothing in this rule relieves the placing agency of the reporting requirements and duties under section 14717.1 when no hearing under this rule is held.

#### (b) Requesting a hearing to review the request for waiver of presumptive transfer (§ 14717.1)

###### (1) The following persons or agencies may make a request to the placing agency that presumptive transfer be waived and that the responsibility for providing specialty mental health services remain in the child’s or nonminor’s county of original jurisdiction:

(A) The foster child or nonminor;

(B) The person or agency that is responsible for making mental health care decisions on behalf of the foster child or nonminor;

(C) The child welfare services agency or the probation agency with responsibility for the care and placement of the child or nonminor; and

(D) Any other interested party who owes a legal duty to the child or nonminor involving the child’s or nonminor’s health or welfare, as defined by the department.

###### (2) The person or agency who requested the waiver, or any other party to the case who disagrees with the placing agency’s determination on the request for the waiver of presumptive transfer, may request a judicial review of the placing agency’s determination.

###### (3) A request for a hearing must be made by filing a *Request for Hearing on Waiver of Presumptive Transfer* (form JV-214). If a hearing is requested, form JV-214 must be provided to the placing agency within seven court days of the petitioner’s being noticed of the placing agency’s determination on the request for waiver of presumptive transfer.

###### (4) When a hearing is requested in (b)(3), the transfer of the responsibility for providing specialty mental health services cannot occur until the court makes a ruling as required in (c)(1).

#### (c) Setting of a hearing (§ 14717.1)

###### (1) The court on its own motion may direct the clerk to set a hearing no later than five court days after the request for a hearing was filed, or may deny the request for a hearing without ruling on the transfer of jurisdiction.

###### (2) If the court sets a hearing, the clerk must provide notice of the hearing date to:

(A) The parents—unless parental rights have been terminated—or guardians of the child;

(B) The petitioner;

(C) The social worker or probation officer;

(D) The mental health care decision maker for the child or nonminor, if one has been appointed under section 361(a)(1);

(E) The Indian child’s tribe, if applicable, as defined in rule 5.502;

(F) The child—if 10 years of age or older—or nonminor; and

(G) All other persons entitled to notice under section 293 or section 727.4(a).

###### (3) If the court grants a hearing under (c)(1), responsibility for providing specialty mental health services cannot be transferred until the court makes a ruling as required in (e)(2) and section 14717.1(d)(4).

#### (d) Reports

##### When a hearing is granted under (c)(1), the social worker or probation officer must provide a report including discussion or documentation of the following:

###### (1) The placing agency’s rationale for its decision on the request for a waiver of presumptive transfer, including:

(A) Any requests for waiver, and the exceptions claimed as the basis for those requests;

(B) The placing agency’s determination of whether waiver of presumptive transfer is appropriate under section 14717.1(d)(5)(A)–(D);

(C) Any objections to the placing agency’s determination in (B); and

(D) The ways that the child’s or nonminor’s best interests will be promoted by the placing agency’s presumptive transfer determination.

###### (2) That the child or nonminor, his or her parents if applicable, the child and family team, and others who serve the child or nonminor as appropriate—such as the therapist, mental health care decision maker for the child or nonminor if one has been appointed under section 361(a)(1), and Court Appointed Special Advocate volunteer—were consulted regarding the waiver determination.

###### (3) That notice of the placing agency’s determination of whether to waive presumptive transfer was provided to the individual who requested waiver of presumptive transfer, along with all parties to the case.

###### (4) Whether the mental health plan in the county of original jurisdiction demonstrates an existing contract with a specialty mental health care provider, or the ability to enter into a contract with a specialty mental health care provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the foster child or nonminor.

###### (5) The child’s or nonminor’s current provision of specialty mental health services, and how those services will be affected by the placing agency’s presumptive transfer determination.

#### (e) Conduct at the hearing

###### (1) The social worker or probation officer must provide the report in (d) to the court, all parties to the case, and the person or agency that requested the waiver no later than two court days after the hearing is set under (c)(1).

###### (2) At the hearing, the court may confirm or deny the transfer of jurisdiction or application of an exception based on the best interests of the child or nonminor. A waiver of presumptive transfer is contingent on the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into such a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.

###### (3) The person or agency that requested the waiver of presumptive transfer bears the burden to show that an exception to presumptive transfer is in the best interests of the child or nonminor by a preponderance of the evidence.

###### (4) The hearing must conclude within five court days of the initial hearing date, unless a showing of good cause consistent with section 352 or section 682 supports a continuance of the hearing beyond five days.

###### (5) When considering whether it is in the child’s or nonminor’s best interests to confirm or deny the request for a waiver of presumptive transfer, the court may consider the following in addition to any other factors the court deems relevant:

(A) The child’s or nonminor’s access to specialty mental health services, the current provision of specialty mental health services to the child or nonminor, and whether any important service relationships will be affected by the transfer of jurisdiction or a waiver of presumptive transfer;

(B) If reunification services are being provided, the impact that the transfer of jurisdiction would have on reunification services;

(C) The anticipated length of stay in the child’s or nonminor’s new placement;

(D) The position of the child or nonminor, or of the child’s or nonminor’s attorney, on presumptive transfer; and

(E) The ability to maintain specialty mental health services in the county of original jurisdiction or to arrange for specialty mental health services in the county of residence after the child or nonminor changes placements.

###### (6) Findings and orders must be made on *Order after Hearing on Waiver of Presumptive Transfer* (form JV-215).

#### (f) Existing out-of-county placement

##### This rule applies to presumptive transfer for any child or nonminor who resided in a county other than the county of original jurisdiction after June 30, 2017, and who continues to reside outside his or her county of original jurisdiction after December 31, 2017, and has not had a presumptive transfer determination as required under Welfare and Institutions Code section 14717.1(c)(2). Unless amended by Judicial Council action effective after the effective date of this rule, this subdivision will be repealed effective January 1, 2020.

Rule 5.647 adopted effective September 1, 2018.

Advisory Committee Comment

The exceptions to the presumptive transfer of the responsibility to provide for and arrange for specialty mental health services to the county of the child’s or nonminor’s out-of-county residence are found in Welfare and Institutions Code section 14717.1(d)(5)(A–D). A court review hearing under this rule may not necessarily be common, but under section 14717.1(d)(7), for all cases, a request for waiver, the exceptions claimed as the basis for the request, a determination whether a waiver is appropriate under Welfare and Institutions Code section 14717.1, and any objections to the determination must be documented in the child’s or nonminor’s case plan under Welfare and Institutions Code section 16501.1. The Department of Health Care Services and California Department of Social Services are responsible for providing policy guidance and regulations to implement Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603). The policy guidance and regulations should be used during the administrative process related to presumptive transfer. This would include determining who is entitled to make a request for waiver under (b)(1)(D) of the rule and section 14717.1(d)(2), where “department” refers to the Department of Health Care Services. In the policy guidance and regulations, the Department of Health Care Services and California Department of Social Services will determine who owes a legal duty to the child or nonminor and thus may request a waiver of presumptive transfer. In addition, the policy guidance and regulations will address the timelines for the period to request a hearing. Presumptive transfer cannot occur until the court has made a ruling on the request for a hearing, and if a hearing is granted, makes a ruling as required in (c)(3). In accordance with the policy guidance issued by the Department of Health Care Services and California Department of Social Services, the delivery of existing specialty mental health services to the child or nonminor must however continue without interruption, and be provided or arranged for, and paid for by the Mental Health Plan in the county of original jurisdiction until the court makes a ruling on the request for a hearing or makes a ruling as required in (c)(3) if a hearing is granted.

### Rule 5.840. Dismissal of petition and sealing of records (§ 786)

#### (a) \* \* \*

#### (b) Dismissal of petition

##### If the court finds that a minor subject to this rule has satisfactorily completed his or her informal or formal probation supervision, the court must order the petition dismissed. The court must not dismiss a petition if it was sustained based on the commission of an offense listed in subdivision (b) of section 707 when the minor was 14 or older unless the finding on that offense has been dismissed or was reduced to a misdemeanor or an offense not listed in subdivision (b) of section 707. The court may also dismiss prior petitions filed or sustained against the minor if they appear to the satisfaction of the court to meet the sealing and dismissal criteria in section 786. An unfulfilled order, condition, or restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision. The court may not extend the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786.

(Subd (b) amended effective Setember 1, 2018.)

#### (c) Sealing of records

##### For any petition dismissed by the court under section 786, including any petition dismissed before adjudication, the court must also order sealed all records in the custody of the court, law enforcement agencies, the probation department, and the Department of Justice pertaining to those dismissed petition(s) using form JV-596*, Dismissal and Sealing of Records—Welfare and Institutions Code Section 786,* or a similar form. The court may also seal records pertaining to these cases in the custody of other public agencies upon a request by an individual who is eligible to have records sealed under section 786, if the court determines that sealing the additional record(s) will promote the successful reentry and rehabilitation of the individual. The prosecuting attorney, probation officer, and court must have access to these records as specifically provided in section 786. Access to the records for research purposes must be provided as required in section 787.

(Subd (c) amended effective September 1, 2018.)

#### (d)–(f) \* \* \*

Rule 5.840 amended effective September 1, 2018; adopted effective July 1, 2016.

### Rule 5.850 Sealing of records by probation in diversion cases (§ 786.5)

#### (a) Applicability

##### This rule states the procedures to seal the records of persons who are subject to section 786.5.

**(b) Sealing of records**

Upon satisfactory completion of a program of diversion or supervision under a referral by the probation officer or the prosecutor instead of filing a petition to adjudge the person a ward of the juvenile court, including a program of informal supervision under section 654, the probation department must seal the arrest and other records in its custody relating to the arrest or referral and participation in the program. The probation department must also notify the public or private agency operating the diversion program to which the person has been referred to seal any records in its custody relating to the arrest or referral and participation in the program, and the operator of the program must do so promptly.

**(c) Notice to participant**

Within 60 days of the satisfactory completion of a program subject to this rule, the probation department must notify the person in writing that his or her records have been sealed. If the probation department determines that the program has not been completed satisfactorily, it must notify the person in writing of the reason or reasons for not sealing the record and provide the person with a copy of the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV‑598) or similar local form to allow the person to seek court review of the probation department’s determination within 60 days of making that determination.

**(d) Review of unsatisfactory completion of program by the juvenile court**

A person who receives notice from the probation department that he or she has not satisfactorily completed the program and that his or her records have not been sealed may seek review of that determination by the court by submitting a petition to the probation department on the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV‑598) or similar local form, and the probation department must file that petition with the court for a hearing to review whether he or she has met the satisfactory completion requirement and is eligible for record sealing by the probation department. The petition must be provided to the probation department within 60 days of the date the notice from the probation department was sent, and must include a copy of that notice. The probation department must file the petition with the juvenile court in the county that issued the notice within 30 days of receiving it. The clerk of the court must set the matter for hearing and notify the petitioner and the probation department of the date, time, and location of the hearing. The court must appoint counsel to represent the child before or at the hearing unless the court finds that the child has made an intelligent waiver of the right to counsel under section 634 or is already represented. If the court finds after the hearing that the petitioner is eligible to have the records sealed under section 786.5, it must order the probation department to promptly comply with the sealing and notice requirements of this rule.

Rule 5.850 adopted effective September 1, 2018.