

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

2017 FEB -9 PM 3:29

JEFFREY E. LEWIS
CLERK OF COURT
KINGS COUNTY
SUPERIOR COURT, CA

DEPUTY
Nancy Firo

ORDER RE: WELF & INST. CODE §827
PETITION PROCESS

No. 2017-02

On December 12, 2013, the Kings County Superior Court set forth in writing the procedures and processes to be employed in connection with petitions seeking the dissemination of records pursuant to California Welfare & Institutions Code Section 827 ("Petition Process"). A copy of the Petition Process is attached hereto.

IT IS HEREBY ORDERED:

1. The December 12, 2013 Petition Process is hereby formally adopted as the process and procedures to be employed in connection with all requests for dissemination of records pursuant to California Welfare & Institutions Code Section 827.
2. The Petition Process is intended to be consistent with the statutory requirements of California Welfare & Institutions Code Section 827 and should be interpreted in such manner.
3. A copy of the Petition Process shall be maintained by the court and updated, as appropriate.
4. A copy of the Petition Process may be made available to the public upon request.

Dated: Feb 8, 2017
2016

James LaPorte
James LaPorte,
Presiding Judge of the
Juvenile Division of the
Kings County Superior Court

COUNTY OF KINGS JUVENILE COURT
SECTION 827 PETITION PROCESS
As of December 12, 2013

California's Welfare and Institutions Code Section 827¹ and California Rules of Court, rule 5.552 provide for the inspection of juvenile court records and the release of those records.

Records defined

Juvenile case file includes:

- Documents filed with the court including reports by probation officers, CPS social workers, and CASA volunteers.²
- Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.³
- Documents available to probation officers, CPS social workers, and CASA volunteers in preparation of reports to the court.⁴
- Documents relating to a child that are maintained in the office files of probation officers, CPS social workers, and CASA volunteers.⁵
- Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or CPS.⁶

Inspection and Copies by Right

Those with inspection rights and who may receive a copy without court order are: Court personnel; criminal or juvenile prosecutor; child who is the subject of the proceeding; child's parents or guardian; those actively participating in the criminal or juvenile proceeding such as attorneys, judges or other hearing officers, and probation and other law enforcement officers; county counsel in a 300 case; CPS; and State Department of Social Services for administrative purposes.⁷

Those with inspection rights only are: An Indian child tribe representative if the tribe has intervened; superintendent or designee of the child's school district; State Department of Social Services for licensing purposes; multidisciplinary teams, persons, or agencies providing

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² California Rules of Court, rule 5.552, subdivision (a)(1) and (2).

³ California Rules of Court, rule 5.552, subdivision (a)(6).

⁴ California Rules of Court, rule 5.552, subdivision (a)(3).

⁵ California Rules of Court, rule 5.552, subdivision (a)(4).

⁶ California Rules of Court, rule 5.552, subdivision (a)(5).

⁷ Section 827, subdivisions (a)(1)(A) through (F), (H) and (I). See also California Rules of Court, rule 5.552, subdivisions (b)(1)(A) through (J).

treatment or supervision of the child; judge or other hearing officer, mediator, a court-appointed evaluator, and child's counsel in a family law case; court-appointed investigator who is actively participating in a guardianship case involving the child; child support agency for the purpose of establishing paternity and establishing and enforcing child support orders; Juvenile justice commissions; any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.⁸

Regardless of whether a party has the right to inspect and receive copies or inspect only, further dissemination of the records is prohibited absent an order of the juvenile court.⁹

Petition for Release of Records

Access to section 300 case records are limited in that there must be notice and an opportunity to file an objection to all interested parties before there can be a release of all or any of a juvenile case file.¹⁰ Unless the requesting party is authorized to inspect the records, a petition for each child must be filed with the juvenile court before the file can be inspected or the records released.¹¹ Section 300 juvenile case files may not be obtained or inspected by civil or criminal subpoena.¹²

Every person or agency seeking to inspect or obtain juvenile court records must petition the court for authorization and identify the specific records sought based on knowledge, information, and belief that such records exist and are relevant to the purpose for which they are being sought. Petitioner must describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the records.¹³

If any or all of the juvenile records are privileged or confidential under another state or federal law or regulation, that privilege shall prevail. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition.¹⁴ Under no circumstances may the court permit access to or release of records protected under any other federal or state law, including Penal Code section 11165 *et seq.*, except as provided in those statutes, or to limit access to or release of records permitted under any other federal or state statute, including Government Code section 13968.¹⁵

⁸ Section 827, subdivisions (a)(1)(G) and (I) through (P). See also California Rules of Court, rule 5.552, subdivision (b)(2).

⁹ California Rules of Court, rule 5.552, subdivision (a)(4).

¹⁰ Section 827, subdivisions (a)(3)(B).

¹¹ Section 827, subdivisions (a)(3)(A). See also California Rules of Court, rule 5.552, subdivision (d).

¹² California Rules of Court, rule 5.552, subdivision (b)(4).

¹³ California Rules of Court, rule 5.552, subdivision (c).

¹⁴ *Id.*

¹⁵ California Rules of Court, rule 5.552, subdivision (h).

Rule 5.552 Process

1. Ten days before the petition is submitted to the court, the petitioner must personally or by first-class mail serve *Request for Disclosure of Juvenile Case File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), a blank copy of *Objection to Release of Juvenile Case File* (form JV-572), and a blank copy of *Order on Request for Disclosure of Juvenile Case File* (form JV-573) for each child separately on County Counsel for a section 300 case; District attorney for a section 601 or 602 case; Child; Attorney of record for the child who remains a ward or dependent of the court; Parents/guardians of the child if under 18 years or the child is subject of a section 300 case; Probation or CPS, or both, if applicable; Indian child's tribe; and child's CASA volunteer.¹⁶

The petitioner must complete and file *Proof of Service--Request for Disclosure* (form JV-569).¹⁷

If the petitioner does not know the identity or address of any of the parties above, the clerk of the court must complete the above service and filing of the proof.¹⁸

For good cause, the court may, on the motion of the person seeking the order or on its own motion, shorten the time for service of the petition for disclosure.¹⁹

On the tenth day, the petitioner files the petition with the court.

2. The parties duly noticed have 10 days from date of service to file and serve their objections or non-oppositions.
3. Having received and reviewed the petition and any objections, the court must complete the *Order on Request for Disclosure of Juvenile Case File* (form JV-573) wherein the court may:

Deny it summarily, if petitioner does not show good cause.²⁰

Set a hearing, if petitioner shows good cause²¹ but the court requires more information or the court receives objections. The clerk must notice the hearing.²²

Request County Counsel to bring the records for an in camera review, if the petitioner shows good cause, the petition is clear on its face and there have been no objections or non-oppositions have been filed.

¹⁶ California Rules of Court, rule 5.552, subdivision (d)(1).

¹⁷ California Rules of Court, rule 5.552, subdivision (d)(2).

¹⁸ California Rules of Court, rule 5.552, subdivision (d)(3).

¹⁹ California Rules of Court, rule 5.552, subdivision (d)(4).

²⁰ California Rules of Court, rule 5.552, subdivision (e)(1).

²¹ California Rules of Court, rule 5.552, subdivision (e)(2.)

²² *Id.*

- 4 Whether or not the court holds a hearing, if the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the judge must conduct an in camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted.²³

In determining whether to authorize inspection or release of juvenile case files, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.²⁴

5. If the court grants the petition, the court must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files. The confidentiality of juvenile case files is intended to protect the privacy rights of the child.

The court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.²⁵

If, after in-camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be disclosed, the court must make appropriate orders on *Order After Judicial Review* (form JV-574) specifying the information to be disclosed and the procedure for providing access to it.²⁶ The court may issue protective orders to accompany authorized disclosure, discovery, or access.²⁷

County Counsel will be responsible for providing the *Order After Judicial Review* (form JV-574), any protective order, and making, redacting, and distributing copies as ordered.

Deceased Child

In the case of a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, the release of records requires a petition, opportunity to be heard, and a court order.²⁸

At the hearing on the petition, the presumption is in favor of the release of documents unless statutory reasons for confidentiality are shown to exist.²⁹ No weighing or balancing of the interests of those other than a child is permitted.³⁰ Any information relating to another child or

²³ California Rules of Court, rule 5.552, subdivision (e)(3).

²⁴ California Rules of Court, rule 5.552, subdivision (e)(4).

²⁵ California Rules of Court, rule 5.552, subdivision (e)(6).

²⁶ California Rules of Court, rule 5.552, subdivision (e)(7).

²⁷ California Rules of Court, rule 5.552, subdivision (e)(8).

²⁸ Section 827, subdivision (a)(2)(A).

²⁹ Section 827, subdivision (a)(1)(B).

³⁰ Section 827, subdivision (a)(2)(C).

which could identify another child shall be redacted from the juvenile case file prior to release, unless a specific order is made by the court to the contrary. Further, the court may issue an order prohibiting or limiting access to any or all of the juvenile case file, only upon a showing by a preponderance of evidence that its release is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.³¹

1. Petitioner shall complete and personally or by first-class mail serve *Request for Disclosure of Juvenile Case File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), a blank copy of *Objection to Release of Juvenile Case File* (form JV-572) and a blank copy of *Order on Request for Disclosure of Juvenile Case File* (form JV-573) on any known interested parties and on the custodian of records.

Upon receiving a petition, the custodian of records shall serve all interested parties that have not been served by the petitioner or on the interested parties already served if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.³² The custodian of records shall serve the petition within ten calendar days of receipt.³³

2. Any interested party, including the custodian of records, may file and serve an objection on the petitioner no later than 15 calendar days of service of the petition.³⁴
3. If an objection is filed, petitioner shall have 10 calendar days to file any reply.³⁵

Or,

If no objection is filed, the court shall request county counsel bring the records for an in camera review. The court shall then review the petition and the records and issue its decision within 10 calendar days of the final day for filing the objection.³⁶ County counsel will be responsible for providing the *Order After Judicial Review* (form JV-574), any protective order, and making, redacting, and distributing copies as ordered.

4. If an objection is filed, the court shall set the matter for hearing no more than 60 calendar days from the date the petition is served on the custodian of records by completing *Order on Request for Disclosure of Juvenile Case File* (form JV-573).³⁷ The clerk must notice the hearing.
5. The court shall render its decision within 30 days of the hearing. The matter shall be

³¹ Section 827, subdivision (a)(2)(A).

³² Section 827, subdivision (a)(2)(D).

³³ Section 827, subdivisions (a)(2)(E).

³⁴ *Id.*

³⁵ Section 827, subdivisions (a)(2)(F).

³⁶ *Id.*

³⁷ *Ibid.*

decided solely upon the basis of the petition and supporting exhibits and declarations, if any, the objection and any supporting exhibits or declarations, if any, and the reply and any supporting declarations or exhibits thereto, and argument at hearing. The court may solely upon its own motion order the appearance of witnesses.

The court must make appropriate orders on *Order After Judicial Review* (form JV-574) specifying the information to be disclosed and the procedure for providing access to it. The court may issue protective orders to accompany authorized disclosure, discovery, or access.

County counsel will be responsible for providing the *Order After Judicial Review* (form JV-574), any protective order, and making, redacting, and distributing copies as ordered.

Any order of the court shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.³⁸

Section 827.10 Exception

In the case of a child who is the subject of either a family law or a probate guardianship case involving custody or visitation issues, or both, a child welfare agency is authorized to permit its files and records to be inspected by, and to provide copies to, the following persons actively participating in the family law or probate case³⁹: the judge, commissioner, or other hearing officer assigned to the family law or probate case; the parent or guardian of the child; an attorney representing a party to the family law or probate case⁴⁰; a family court mediator assigned to a case involving the minor⁴¹; a court-appointed investigator, evaluator, or a person conducting a court-connected child custody evaluation, investigation, or assessment⁴²; and counsel appointed for the minor in the family law case.⁴³

A social worker may testify in any family or probate proceeding with regard to any information that may be disclosed under section 827.10.⁴⁴ But, any records or information obtained, including the testimony of a social worker, shall be maintained solely in the confidential portion

³⁸ Section 827, subdivision (a)(2)(F).

³⁹ Section 827.10, subdivision (a).

⁴⁰ Appointed pursuant to Family Code section 3150.

⁴¹ Assigned pursuant to Family Code sections 3160 et seq.

⁴² Appointed pursuant to Family Code sections 3111, 3118 or Probate Code section 1500 et seq.

⁴³ Appointed pursuant to Family Code section 3150. The court clerk may require counsel to provide a certified copy of the court ordered appointment.

⁴⁴ Section 827.10, subdivision (c).

of the family law or probate file.⁴⁵

However, any other privileged or confidential documents under any other state law, can only be released upon meeting the requirements of that state law or federal law or regulation prohibiting or limiting release of the child welfare agency files or records.⁴⁶

⁴⁵ Section 827.10, subdivision (d).

⁴⁶ Section 827.10, subdivision (b).