

California Rules**REORGANIZED CALIFORNIA RULES OF COURT [Effective January 1, 2007]****Title 5. Family and Juvenile Rules****Division 3. Juvenile Rules****Chapter 13. Cases Petitioned Under Section 300****Article 4. Reviews, Permanent Planning**

As amended through January 1, 2007

Rule 5.726. Prospective adoptive parent designation (Section 366.26(n)).**(a) Request procedure**

A dependent child's caregiver may be designated as a prospective adoptive parent. The court may make the designation on its own motion or on a request by a caregiver, the child, a social worker, or the attorney for any of these parties.

(1) A request for designation as a prospective adoptive parent may be made at a hearing where parental rights are terminated or thereafter, whether or not the child's removal from the home is at issue.

(2) A request may be made orally.

(3) If a request for prospective adoptive parent designation is made in writing, it must be made on *Request for Prospective Adoptive Parent Designation, Notice, and Order (form JV-321)*.

(4) The address and telephone number of the caregiver and the child may be kept confidential by filing *Confidential Information Prospective Adoptive Parent (form JV-322)*, with form JV-321. Form JV-322 must be kept in the court file under seal, and only the court, the child's attorney, the agency, and the child's CAS A volunteer may have access to this information.

(b) Criteria for designation as prospective adoptive parent

A caregiver must meet the following criteria to be designated as a prospective adoptive parent:

- (1) The child has lived with the caregiver for at least six months;
- (2) The caregiver currently expresses a commitment to adopt the child; and
- (3) The caregiver has taken at least one step to facilitate the adoption process. Steps to facilitate the adoption process include:
 - (A) Applying for an adoption home study;
 - (B) Cooperating with an adoption home study;
 - (C) Being designated by the court or the licensed adoption agency as the adoptive family;
 - (D) Requesting de facto parent status;
 - (E) Signing an adoptive placement agreement;
 - (F) Discussing a postadoption contact agreement with the social worker, child's attorney, child's CAS A volunteer, adoption agency, or court;
 - (G) Working to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency; and
 - (H) Attending any of the classes required of prospective adoptive parents.

(c) Hearing on request for prospective adoptive parent designation

The court must evaluate whether the caregiver meets the criteria in (b).

- (1) The petitioner must show on the request that the caregiver meets the criteria in (b).
- (2) If the court finds that the petitioner does not show that the caregiver meets the criteria in (b) , the court may deny the request without a hearing.
- (3) If the court finds that the petitioner has shown that the current caregiver meets the criteria in (b) , the court must set a hearing as set forth in (4) below.
- (4) If it appears to the court that the request for designation as a

prospective adoptive parent will be contested, or if the court wants to receive further evidence on the request, the court must set a hearing.

(A) If the request for designation is made at the same time as an objection to removal, the court must set a hearing as follows:

(i) The hearing must be set as soon as possible and not later than five court days after the objection is filed with the court.

(ii) If the court for good cause is unable to set the matter for hearing five court days after the petition is filed, the court must set the matter for hearing as soon as possible.

(iii) The matter may be set for hearing more than five court days after the objection is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(B) If the request for designation is made before a request for removal is filed or before an emergency removal has occurred, the court must order that the hearing be set at a time within 30 calendar days after the filing of the request for designation.

(5) If all parties stipulate to the request for designation of the caregiver as a prospective adoptive parent, the court may order the designation without a hearing.

(d) Notice of designation hearing

After the court has ordered a hearing on a request for prospective adoptive parent designation, notice of the hearing must be as described below.

(1) The following participants must be noticed:

(A) The adoption agency;

(B) The current caregiver,

(C) The child's attorney;

(D) The child, if the child is 10 years of age or older;

(E) The child's identified Indian tribe if any;

(F) The child's Indian custodian if any; and

(G) The child's CAS A program if any.

(2) If the request for designation was made at the same time as a request for hearing on a proposed or emergency removal, notice of the designation hearing must be provided with notice of the proposed removal hearing, as stated in rule 5.727.

(3) If the request for designation was made before a request for removal was filed or before an emergency removal occurred, notice must be as follows:

(A) Service of the notice must be either by first-class mail sent at least 15 calendar days before the hearing date to the last known address of the person to be noticed, or by personal service on the person at least 10 calendar days before the hearing.

(B) *Request for Prospective Adoptive Parent Designation, Notice, and Order (form JV-321)*, must be used to provide notice of a hearing on the request for prospective adoptive parent designation.

(C) The clerk must provide notice of the hearing to the participants listed in (1) above, if the court, caregiver, or child requested the hearing.

(D) The child's attorney must provide notice of the hearing to the participants listed in (1) above, if the child's attorney requested the hearing.

(E) *Proof of Notice of Hearing (form JV-325)* must be filed with the court before the hearing on the request for prospective adoptive parent designation.

(e) Termination of designation

If the prospective adoptive parent no longer meets the criteria in rule 5.726(b), a request to vacate the order designating the caregiver as a prospective adoptive parent may be filed under section 388 and rule 5.570.

(f) Confidentiality

If the telephone or address of the caregiver or the child is confidential, all forms must be kept in the court file under seal. Only the court, the child's attorney, the agency, and the child's CASA volunteer may have access to this information.

History. Rule 5.726 amended and renumbered effective January 1, 2007; adopted as rule 1463.1 effective July 1, 2006.

