

**California Rules Of Court Rule 5.660. Attorneys for parties (Sections 317, 317.6, 16010.6, 366.26).**

**California Rules**

**CALIFORNIA RULES OF COURT**

**Title 5. Family and Juvenile Rules**

**Division 3. Juvenile Rules**

**Chapter 11. Advocates for Parties**

*As amended through January 1, 2010*

**Rule 5.660. Attorneys for parties (Sections 317, 317.6, 16010.6, 366.26)**

**(a) Local rules**

On or before January 1, 2002, the superior court of each county must amend its local rules regarding the representation of parties in dependency proceedings.

(1) The local rules must be amended after consultation by the court with representatives of the State Bar of California; local offices of the county counsel, district attorney, public defender, and other attorneys appointed to represent parties in these proceedings; county welfare departments; child advocates; current or recent foster youth; and others selected by the court in accordance with standard 5.40(c) of the Standards of Judicial Administration.

(2) The amended rules must address the following as needed:

(A) Representation of children in accordance with other sections of this rule;

(B) Timelines and procedures for settlements, mediation, discovery, protocols, and other issues related to contested matters;

(C) Procedures for the screening, training, and appointment of attorneys representing parties, with particular attention to the training requirements for attorneys representing children;

(D) Establishment of minimum standards of experience, training, and education of attorneys representing parties, including additional training and education in the areas of substance abuse and domestic violence as required;

(E) Establishment of procedures to determine appropriate caseloads for attorneys representing children;

(F) Procedures for reviewing and resolving complaints by parties regarding the performance of attorneys;

(G) Procedures for informing the court of interests of the dependent child requiring further investigation, intervention, or litigation; and

(H) Procedures for appointment of a Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem, who may be an attorney or a CASA volunteer, in cases in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the child.

(3) Appropriate local forms may be used.

**(b) Attorneys for children**

The court must appoint counsel for a child who is the subject of a petition under section 300 and is unrepresented by counsel, unless the court finds that the child would not benefit from the appointment of counsel.

(1) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:

(A) The child understands the nature of the proceedings;

(B) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and

(C) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.

(2) If the court finds that the child would not benefit from representation by counsel, the court must make a finding on the record as to each of the criteria in (1) and state the reasons for each finding.

(3) If the court finds that the child would not benefit from representation by counsel, the court must appoint a CASA volunteer for the child, to serve as the CAPTA guardian ad litem, as required in section 326.5.

**(c) Conflict of interest guidelines for attorneys representing siblings**

(1) *Appointment*

(A) The court may appoint a single attorney to represent a group of siblings involved in the same dependency proceeding.

(B) An attorney must decline to represent one or more siblings in a dependency proceeding, and the court must appoint a separate attorney to represent the sibling or siblings, if, at the outset of the proceedings:

(i) An actual conflict of interest exists among those siblings; or

(ii) Circumstances specific to the case present a reasonable likelihood that an actual conflict of interest will arise among those siblings.

(C) The following circumstances, standing alone, do not necessarily demonstrate an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise:

(i) The siblings are of different ages;

- (ii) The siblings have different parents;
- (iii) There is a purely theoretical or abstract conflict of interest among the siblings;
- (iv) Some of the siblings appear more likely than others to be adoptable; or
- (v) The siblings may have different permanent plans.

(2) *Withdrawal from appointment or continued representation*

(A) An attorney representing a group of siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is an actual conflict of interest.

(B) The following circumstances, standing alone, do not necessarily demonstrate an actual conflict of interest:

- (i) The siblings are of different ages;
- (ii) The siblings have different parents;
- (iii) There is a purely theoretical or abstract conflict of interest among the siblings;
- (iv) Some of the siblings are more likely to be adopted than others;
- (v) The siblings have different permanent plans;
- (vi) The siblings express conflicting desires or objectives, but the issues involved are not material to the case; or
- (vii) The siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.

(C) It is not necessary for an attorney to withdraw from representing some or all of the siblings if there is merely a reasonable likelihood that an actual conflict of interest will develop.

(D) If an attorney believes that an actual conflict of interest existed at appointment or developed during representation, the attorney must take any action necessary to ensure that the siblings' interests are not prejudiced, including:

- (i) Notifying the juvenile court of the existence of an actual conflict of interest among some or all of the siblings; and
- (ii) Requesting to withdraw from representation of some or all of the siblings.

(E) If the court determines that an actual conflict of interest exists, the court must relieve an attorney from representation of some or all of the siblings.

(F) After an actual conflict of interest arises, the attorney may continue to represent one or more siblings whose interests do not conflict only if:

- (i) The attorney has successfully withdrawn from the representation of all siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent;
- (ii) The attorney has exchanged no confidential information with any sibling whose interest conflicts with those of the sibling or siblings the attorney continues to represent; and
- (iii) Continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings.

**(d) Competent counsel**

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel.

(1) *Definition*

"Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.

(2) *Evidence of competency*

The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding.

(3) *Experience and education*

Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or vvhoo have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys must complete at least eight hours of continuing education related to dependency proceedings.

(4) *Standards of representation*

Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.

(5) *Attorney contact information*

The; attorney for a child for whom a dependency petition has been filed must provide his or her contact information to the child's caregiver no later than 10 days after receipt of the name, address, and telephone number of the child's caregiver. If the child is 10 years of age or older, the attorney must also provide his or her contact information to the child for whom a dependency petition has been filed no later than 10 days after receipt of the caregiver's contact information. The attorney may give contact information to a child for whom a dependency petition has been filed who is under 10 years of age.

(6) *Caseloads for children's attorneys*

The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3) , (4) , and (5).

**(e) Client complaints**

The court must establish a process for the review and resolution of complaints or questions by a party regarding the performance of an appointed attorney. Each party must be informed of the procedure for lodging the complaint. If it is determined that an appointed attorney has acted improperly or contrary to the rules or policies of the court, the court must take appropriate action.

**(f) CASA volunteer as CAPTA guardian ad litem (§ 326.5)**

If the court makes the findings as outlined in (b) and does not appoint an attorney to represent the child, the court must appoint a CASA volunteer as the CAPTA guardian ad litem of the child.

- (1) The required training of CASA volunteers is stated in rule 5.655.
- (2) The caseload of a CASA volunteer acting as a CAPTA guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.
- (3) CASA volunteers must not assume the responsibilities of attorneys for children.
- (4) The appointment of an attorney to represent the child does not prevent the appointment of a CASA volunteer for that child, and courts are encouraged to appoint both an attorney and a CASA volunteer for the child in as many cases as possible.

**(g) Interests of the child**

At any time following the filing of a petition under section 300 and until juvenile court jurisdiction is terminated, any interested person may advise the court of information regarding an interest or right of the child to be protected or pursued in other judicial or administrative forums.

- (1) *Juvenile Dependency Petition (Version One)* (form JV-100) and *Request to Change Court Order* (form JV-180) may be used.
- (2) If the attorney for the child, or a CASA volunteer acting as a CAPTA guardian ad litem, learns of any such interest or right, the attorney or CASA volunteer must notify the court immediately and seek

instructions from the court as to any appropriate procedures to follow.

(3) If the court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the court must appoint an attorney for the child, if the child is not already represented by counsel, and do one or all of the following:

(A) Refer the matter to the appropriate agency for further investigation and require a report to the court within a reasonable time;

(B) Authorize and direct the child's attorney to initiate and pursue appropriate action;

(C) Appoint a guardian ad litem for the child. The guardian may be the CASA volunteer already appointed as a CAPTA guardian ad litem or a person who will act only if required to initiate appropriate action; or

(D) Take any other action to protect or pursue the interests and rights of the child.

**History.** Rule 5.660 amended and renumbered effective January 1, 2007; adopted as rule 1438 effective January 1, 1996; previously amended effectively July 1, 1999, July 1, 2001, January 1, 2003, January 1, 2005, and January 1, 2006.

**Note:**

***Advisory Committee Comment***

*The court should initially appoint a single attorney to represent all siblings in a dependency matter unless there is an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise. (In re Celine R. (2003) [31 Cal.4th 45](#), 58.) After the initial appointment, the court should relieve an attorney from representation of multiple siblings only if an actual conflict of interest arises. (Ibid.) Attorneys have a duty to use their best judgment in analyzing whether, under the particular facts of the case, it is necessary to decline appointment or request withdrawal from appointment due to a purported conflict of interest.*

*Nothing in this rule is intended to expand the permissible scope of any judicial inquiry into an attorney's reasons for declining to represent one or more siblings or requesting to withdraw from representation of one or more siblings, due to an actual or reasonably likely conflict of interest. (See Cal. Bar Rules, Prof. Conduct R 3-310, Subd. (C).) While the court has the duty and authority to inquire as to the general nature of an asserted conflict of interest, it cannot require an attorney to disclose any privileged communication, even if such information forms the basis of the alleged conflict. (In re James S. (1991) [227 Cal.App.3d 930](#), 934; Aceves v. Superior Court (1996) [51 Cal.App.4th 584](#), 592-593.)*