DIGEST

Rules of Court: Update Obsolete Rule Reference

Amends California Rules of Court, rule 5.365, to substitute a current cross-reference for an obsolete one.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 5.365 to read as follows:

Rule 5.365

1 (a) When an order of consolidation of actions has been made under section 1048(a) of the
2 Code of Civil Procedure in cases in which a local child support agency is appearing under
3 section 17400 of the Family Code, or when a motion to consolidate or combine two or more
4 child support orders has been made under section 17408 of the Family Code, the cases in which
5 those orders were entered must be consolidated as follows:
6   (1) *Priority of consolidation*
7   The order consolidating cases that contain child support orders must designate the
8 primary court file into which the support orders must be consolidated and must also designate the
9 court files that are subordinate. Absent an order upon showing of good cause, the cases or child
10 support orders must be consolidated into a single court file according to the following priority,
11 including those cases or orders initiated or obtained by a local child support agency under
12 division 17 of the Family Code that are consolidated under either section 1048(a) of the Code of
13 Civil Procedure or section 17408 of the Family Code:
14   (A) If one of the cases or child support orders to be consolidated is in an action for
15 nullity, dissolution, or legal separation brought under division 6 of the Family Code, all cases
16 and orders so consolidated must be consolidated into that action, which must be the primary file.
17   (B) If none of the cases or child support orders to be consolidated is in an action for
18 nullity, dissolution, or legal separation, but one of the child support orders to be consolidated has
19 been issued in an action under the Uniform Parentage Act (Fam. Code, div. 12, pt. 3), all orders
20 so consolidated must be consolidated into that action, which must be the primary file.
21   (C) If none of the cases or child support orders to be consolidated is in an action for
22 nullity, dissolution, or legal separation or in an action under the Uniform Parentage Act, but one
23 of the child support orders to be consolidated has been issued in an action commenced by a
24 *Petition for Custody and Support of Minor Children* (form FL-260), all orders so consolidated
25 must be consolidated into that action, which must be the primary file.
26   (D) If none of the cases or child support orders to be consolidated is in an action for
27 nullity, dissolution, or legal separation or in an action under the Uniform Parentage Act, the case
28 or cases with the higher number or numbers must be consolidated into the case with the lowest
29 number, which must be the primary file. Child support orders in cases brought under the
30 Domestic Violence Protection Act (Fam. Code, div. 10, pt. 4) or any similar law may be
31 consolidated under this rule. However, a domestic violence case must not be designated as the
32 primary file.
33   (2) *Notice of consolidation*

34   Upon issuance of the consolidation order, the local child support agency must prepare
35 and file in each subordinate case a *Notice of Consolidation* (form FL-920), indicating that the
36 support orders in those actions are consolidated into the primary file. The notice must state the
37 date of the consolidation, the primary file number, and the case number of each of the cases so
38 consolidated. If the local child support agency was not a participant in the proceeding in which
39 the consolidation was ordered, the court must designate the party to prepare and file the notice.
40   (b) Subsequent filings in consolidated cases
41   Notwithstanding any other rule, including but not limited to rule ~~367~~3.350, upon
42 consolidation of cases with child support orders, all filings in those cases, whether dealing with
43 child support or not, must occur in the primary court action and must be filed under that case,
44 caption, and number only. All further orders must be issued only in the primary action, and no
45 further orders may be issued in a subordinate court file. All enforcement and modification of
46 support orders in consolidated cases must occur in the primary court action regardless of in
47 which action the order was originally issued.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Effective 2007, California Rules of Court rule 367 was renumbered 3.350.
However, the cross reference to rule 367 remained in California Rules of Court rule 5.365.

The Solution: This resolution would amend rule 5.365 to provide the correct cross reference to
rule 3.350.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

<u>Reasons</u>:
This resolution amends California Rules of Court, rule 5.365, to substitute a current cross-reference for an obsolete one. This resolution should be approved in principle because it corrects the outdated cross-referenced rule with the correct, current rule number.

The Judicial Council reorganized and re-numbered the California Rules of Court effective January 1, 2007. Under the new organization and numbering system, the Title formed the first digits of the rule number followed by a decimal point and then the internal rule number. Given the hundreds, if not thousands of rules changed as part of this reorganization, it is not surprising that an occasional cross-referenced rule number was missed.

The proponent correctly points out that California Rules of Court, rule 5.365(b) contains a reference to former rule 367. Since former rule 367 was replaced with California Rules of Court, rule 5.350, this error requires correction as proposed by the proponent.