



Judicial Council of California

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INVITATION TO COMMENT

SPR23-24

Title

Trial Courts: Report of Determinations
Affecting Voting Rights

Action Requested

Review and submit comments by May 12,
2023

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rule 10.970;
adopt form MC-600; approve form
MC-600A

Proposed Effective Date

January 1, 2024

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Proposed by

Probate and Mental Health Advisory
Committee

Hon. Jayne Chong-Soon Lee, Chair

Criminal Law Advisory Committee

Hon. Brian M. Hoffstadt, Chair

Executive Summary and Origin

The Probate and Mental Health Advisory Committee and the Criminal Law Advisory Committee propose one rule of court and two forms to implement recent legislation requiring the trial courts to report to the Secretary of State judicial determinations under Elections Code sections 2208–2211 disqualifying a person from voting or restoring a person’s right to register to vote. The legislation expressly required the Judicial Council to adopt rules and forms, including a mandatory form for the courts to use to furnish the required reports.

Background

Existing law, Elections Code sections 2208–2211, requires the superior court to report each judicial determination under those sections disqualifying a person from voting or restoring a person’s right to register to vote to both the Secretary of State and the county elections official

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

on a case-by-case basis.¹ In 2016 and 2017, representatives of the Court Executives Advisory Committee and Judicial Council staff worked with the Secretary of State’s staff to develop protocols and sample forms for these court reports. In April 2017, a letter from the Secretary of State containing the final protocols, information requirements, and sample forms was transmitted to the trial courts. Courts have followed those protocols and requirements since then.

The Proposal

Effective January 1, 2023, and operative January 1, 2024, Assembly Bill 2841 (Stats. 2022, ch. 807) codified many of the protocols and other requirements in the Secretary of State’s 2017 letter. AB 2841 also made a few notable changes. First, the legislation reduced, from one case at a time to once a month, the required frequency of the reports of the disqualification of a person from voting or the restoration of a person’s right to register to vote, though it authorized the court clerk to report more frequently. (§ 2211.5(a).) Second, AB 2841 shifted responsibility for notifying county elections officials of judicial determinations under Elections Code sections 2208–2211 away from the court clerk to the Secretary of State. (§ 2211.5(d)(2).) Effective January 1, 2024, the court will be required to report those determinations only to the Secretary of State.

AB 2841 also imposed two new reporting requirements on the court clerk. In addition to the judicial determinations under sections 2208–2211 since the clerk’s most recent report, the clerk must also report the total number of proceedings in the court during that period in which:

- The court appointed a probate conservator (Prob. Code, § 1800 et seq.);
- The court appointed a conservator under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5350 et seq.);
- The court appointed a conservator for a person found incompetent to stand trial and whose trial has been suspended under Penal Code section 1370 under the LPS Act (see *id.*, § 5352.5);²
- A person pleaded not guilty by reason of insanity, was found not guilty by reason of insanity, and was deemed “gravely disabled” as that term is defined by Welfare and Institutions Code section 5008(h)(2).³

¹ Elec. Code, §§ 2208(c), 2209(b) & (c), 2210(b) & (c), 2211(b) & (c). All subsequent statutory references are to the Elections Code unless otherwise specified.

² These proceedings, known as “Murphy” conservatorships, are, strictly speaking, a subset of conservatorships established under the LPS Act.

³ Section 2211.5(a)(2). The four types of proceedings are described in section 2208(a)(1)–(4).

Welfare and Institutions Code section 5008(h) defines “gravely disabled” for purposes of the LPS Act to refer to persons in three separate conditions. First, a person is “gravely disabled” and so may have a conservator appointed if the person, as a result of a mental health disorder, is unable to provide for their basic personal needs for food, clothing, or shelter. (Welf. & Inst. Code, § 5008(h)(1)(A).) Second, a person is “gravely disabled” and may have a

Furthermore, the court must certify, if applicable, that the person has been disqualified based on a finding, by clear and convincing evidence, that the person “cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.”⁴ This determination applies to disqualifications ordered under sections 2208 and 2209 and to contests under section 2210. It does not, however, apply to disqualifications under section 2211. Disqualifications under that section are based instead on involuntary confinement following a finding of not guilty by reason of insanity, incompetence to stand trial, mentally disordered sex offender status, or treatment at a state hospital under Penal Code section 2684.⁵

This proposal would fulfill the mandate in section 2211.5(b) to adopt rules of court to implement that section and a Judicial Council form to be used by the courts to report the information required by that section to the Secretary of State.⁶ Specifically, the committees propose that the Judicial Council, effective January 1, 2024:

- Adopt California Rules of Court, rule 10.970, to:
 - Require courts to use *Cover Sheet to Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600) to submit the reports required by section 2211.5(a);
 - Give courts the option of using *Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600A) or a substantially similar printout generated by the court’s case management system to report the information required by section 2211.5(a)(1) and 2211.5(b); and
 - Require transmission of the reports to the Secretary of State in a manner that protects the confidentiality of the information in the reports;⁷

“Murphy” conservator appointed if the person has been charged with a violent felony and been found mentally incompetent to stand trial on that charge, the charge has not been dismissed, the person as the result of a mental health disorder is unable to understand the criminal proceedings or to assist counsel, and the person poses a substantial danger of physical harm to others. (*Id.*, § 5008(h)(1)(B).) Third, a person is “gravely disabled” if the person, as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter. (*Id.*, § 5008(h)(2).)

⁴ Section 2208(a) (language of finding), section 2211.5(b)(6) (certification requirement); see section 2209(a)–(c).

⁵ Section 2211(a).

⁶ Although the Judicial Council has full authority to make rules and forms, committee staff has consulted the Secretary of State’s staff regarding these rules and forms. See § 2211.5(b). Committee staff will ensure that this Invitation to Comment is sent to the elections counsel in the Secretary of State’s office.

⁷ Several statutory provisions strongly imply or require that information contained in the reports under section 2211.5 be kept confidential. See §§ 2138.5 and 2194 (confidentiality of information, including California driver’s license number and social security number, used for voter registration), Gov. Code, § 7924.000 (confidentiality of information, including California driver’s license and social security number used for voter identification or registration), Prob. Code, §§ 1821(a) (confidentiality of information submitted with conservatorship petition) and 1826(c) (confidentiality of court investigator’s report), and Welf. & Inst. Code, § 5328 (confidentiality of

- Adopt *Cover Sheet to Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600) as a mandatory form for courts to use to submit the reports required by section 2211.5(a); and
- Approve *Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600A) as an optional form for the court to use to report the information required by section 2211.5(a)(1) and 2211.5(b), including an item whereby a clerk can certify that an order disqualifying a voter includes certain findings.

Alternatives Considered

The committees did not consider taking no action. Elections Code section 2211.5(b) requires the Judicial Council to adopt implementing rules of court and forms to be used by the courts to report the information required by that section to the Secretary of State. The committees considered proposing two completely separate sets of forms, one to report disqualifications from voting under sections 2208–2210 and another to report disqualifications under section 2211. Because the former require a judicial determination, by clear and convincing evidence, that the person cannot, with or without reasonable accommodations, communicate a desire to participate in the voting process, whereas the latter do not, developing a single form set presented challenges. The committees determined, however, that the proposed forms could accommodate all the differences among the determinations.

The committees also considered omitting from the proposed rule the requirement for confidential transmission of the statutory reports to the Secretary of State because that requirement simply reflects existing law. Because the statutes making the information confidential are scattered across several different codes, however, the committees decided to include the provision in the rule as a reminder to protect the information.

Committee staff also consulted court administrators, including a court executive officer who played an active role in implementing SB 589 and AB 1020 in 2016 and 2017 and administrators currently serving on each committee, about the effect of the proposed rules and forms on court operations. These administrators raised concerns about an alternative division of information between form MC-600 and form MC-600A. In response to this feedback, the committees propose that the aggregate information required by section 2211.5(a)(2) be reported on form MC-600 and all case-specific information required by section 2211.5(b) to be reported on form MC-600A. This arrangement will promote more efficient generation of the required reports.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are almost entirely attributable to the legislation that mandated it. The proposal will have the usual impacts associated with introducing a new form into a court’s case management system. The legislation, as implemented by the rule

information and records obtained in the course of providing treatment to persons with mental health disorders or developmental disabilities).

and forms, may allow courts to streamline their reporting operations by requiring monthly reports to the Secretary of State because existing law requires case-by-case reporting of each determination under Elections Code sections 2208–2211 to both the Secretary of State and the county elections official.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 10.970, at page 6
2. Forms MC-600 and MC-600A, at pages 7–8
3. Link A: Assembly Bill 2841 (Stats. 2022, ch. 807),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2841

Rule 10.970 of the California Rules of Court would be adopted, effective January 1, 2024, to read:

1 **Rule 10.970 Reports of findings and orders affecting voting rights (Elec. Code,**
2 **§ 2211.5)**

3
4 In making the reports required under Elections Code section 2211.5 regarding findings
5 and orders disqualifying a person from voting or restoring a person’s right to register to
6 vote under Elections Code sections 2208–2211, the following requirements apply.

7
8 **(a) Forms**

9
10 (1) The clerk must use *Cover Sheet to Confidential Report of Findings and*
11 *Orders Affecting Voting Rights* (form MC-600) for each report made under
12 this rule.

13
14 (2) To report the information required by paragraph (a)(1) and subdivision (b) of
15 Elections Code section 2211.5 for the period covered by a report, the clerk
16 must attach to form MC-600 either:

17
18 (A) Completed *Confidential Report of Findings and Orders Affecting*
19 *Voting Rights* (form MC-600A) reporting all the applicable findings
20 and orders made by the court in the period covered by the report; or

21
22 (B) A printout generated by the court’s case management system that
23 includes the same information as on form MC-600A and presents the
24 information in substantially the same format as form MC-600A.

25
26 **(b) Confidentiality**

27
28 The clerk must transmit the report to the Secretary of State using a method that
29 protects the confidentiality of the information in the report.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
COVER SHEET FOR CONFIDENTIAL REPORT OF FINDINGS AND ORDERS AFFECTING VOTING RIGHTS	

Instructions to Clerk

1. Complete items 1 and 2 on this form.
 2. Using Confidential Report of Findings and Orders Affecting Voting Rights (form MC-600A) or a report generated by the court's case management system that presents the information in substantially the same format as form MC-600A, report all the required personal and case information for each person whom the court disqualified from voting or whose right to register to vote the court restored under Elections Code sections 2208–2211 since the court's last report. Use as many pages as needed, number them consecutively, and attach all pages to this form.
 3. Certify that each disqualification order made under Elections Code sections 2208–2210 stated that it was based on the required finding of the person's inability to complete the voter registration affidavit.
 4. In a manner that protects the confidentiality of the information on form MC-600A, submit this form and all attachments at least once each calendar month to the Secretary of State at voting@sos.ca.gov or any server or platform approved by the Secretary for that purpose.
- NOTE:** More than one report may be made each month, but all the information for a given month must be reported by the first day of the following month.

1. All findings and orders affecting voting rights made by this court under Elections Code sections 2208–2211 between (date): _____ and (date): _____, inclusive, are reported on the attached (check one):
 - a. Confidential Report of Court Orders Affecting Voting Rights (form MC-600A).
 - b. Report generated by the court's case management system that presents, for each order, all the information required by Elections Code section 2211.5(b) presented in a format substantially similar to that of form MC-600A.
 Number of pages attached: _____
2. The total number of the following appointments or findings that the court made in the period in item 1 is (give the number of each of the following actions taken during the period in item 1):
 - a. _____ Appointments of a conservator of the person or of the person and estate under Probate Code section 1800 et seq.
 - b. _____ Appointments of a conservator of the person or of the person and estate under Welfare and Institutions Code section 5350 et seq.
 - c. _____ Appointments of a conservator in a proceeding initiated under Welfare and Institutions Code section 5352.5 for a person who was found incompetent to stand trial and whose trial was suspended under Penal Code section 1370.
 - d. _____ Findings that a person who had pleaded and been found not guilty by reason of insanity was, at the time of judgment, gravely disabled, as that term is defined in Welfare and Institutions Code section 5008(h)(2).

[SEAL]

CLERK'S CERTIFICATE

I certify that every time subitem k on attached form MC-600A or the equivalent on the attached printout is checked, the order on file stated that the court had disqualified the person from voting based on a finding, by clear and convincing evidence, that the person could not, with or without reasonable accommodations, complete an affidavit of voter registration.

Date: _____ Clerk, by _____, Deputy

CONFIDENTIAL REPORT OF FINDINGS AND ORDERS AFFECTING VOTING RIGHTS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF

Instructions to Clerk

Complete and attach to Cover Sheet for Confidential Report of Findings and Orders Affecting Voting Rights (form MC-600) as many copies of this form as are needed to report each person subject to a finding and order under Elections Code sections 2208–2211 made by the court in the reporting period. Provide all applicable information for each person subject to such a finding and order. Number each item and each page consecutively, and attach all pages to form MC-600 for submission.

Reporting period from (date): to (date): , inclusive.

- a. Name (first, middle, last, suffix):
b. All other known names:
c. Last known address:
d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # (if available): h. Last 4 digits of social security # (if available):
i. The order states that it was a (check one) [] disqualification from voting [] restoration of the right to register to vote.
j. The order states that it was made under Elections Code section (check one) [] 2208 [] 2209 [] 2210 [] 2211.
k. [] The order states that it was based on a judicial finding, by clear and convincing evidence, that the person could not communicate, with or without reasonable accommodations, a desire to participate in the voting process. (Not applicable to a disqualification order made under section 2211.)

- a. Name (first, middle, last, suffix):
b. All other known names:
c. Last known address:
d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # (if available): h. Last 4 digits of social security # (if available):
i. The order states that it was a (check one) [] disqualification from voting [] restoration of the right to register to vote.
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- a. Name (first, middle, last, suffix):
b. All other known names:
c. Last known address:
d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # (if available): h. Last 4 digits of social security # (if available):
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- a. Name (first, middle, last, suffix):
b. All other known names:
c. Last known address:
d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # (if available): h. Last 4 digits of social security # (if available):
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