



# Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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## INVITATION TO COMMENT

### SPR24-06

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**Title**

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

**Action Requested**

Review and submit comments by May 3, 2024

**Proposed Effective Date**

January 1, 2025

**Proposed Rules, Forms, Standards, or Statutes**

Revise form CIV-165

**Contact**

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**Proposed by**

Civil and Small Claims Advisory Committee  
Hon. Tamara L. Wood, Chair

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revisions to form CIV-165, *Order on Unlawful Use of Personal Identifying Information*, effective January 1, 2025, to include information about the business entity at issue in the petition underlying an order. The proposed revisions respond to a request from the Secretary of State's office for more information to allow it to act on a court's determination that a petitioner's personal identifying information was used unlawfully. The revisions are intended to assist the Secretary of State in (1) redacting the victim's name and personal identifying information from the business entity filing or label the data to show that it is impersonated and (2) removing the data from publicly accessible electronic indexes and databases.

### Background

The Judicial Council adopted form CIV-165, effective September 1, 2019, in response to legislation (Sen. Bill 1196; Stats. 2018, ch. 696) that prohibited the unlawful use of personal identifying information in documents filed with the Secretary of State (business entity filings). The bill required the council to develop a form for issuing an order on this type of unlawful use of personal identifying information. Form CIV-165 has not been revised since its adoption.

*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 It is circulated for comment purposes only.*

## The Proposal

The committee proposes adding two items to form CIV-165 (new items 2 and 3) for the court to complete based on a successful petition for relief under Civil Code section 1798.201. Item 2 would allow the court to enter the business entity's name identified in the petition. Item 3 would allow the court either to note that the petition does not identify the business entity's file number with the Secretary of State or to note that the petition does and enter the file number. Finally, the committee recommends extending the blank for the petitioner's name in item 1.

In its present state, form CIV-165 asks the court to identify the petitioner, the hearing date and time, and the department in which the successful petition was heard. The form states the findings required under Civil Code section 1798.202 for a court order and instructs the petitioner to file a certified copy of this order with the Secretary of State for the order to be carried out. The order's language makes the necessary findings without naming the business entity filing in which the victim's personal identifying information has been used unlawfully. The problem with the current version of the form, according to the Secretary of State's office, is that the Secretary of State cannot easily act on a court's order with only a victim's name and contact information because the Secretary of State's business records are organized by entity name or the entity's file number with the Secretary of State. To identify the business entity filing that is the subject of a meritorious petition, the Secretary of State's office would need to request additional information from the petitioner (or their counsel) after a certified copy of an order is filed with the Secretary of State. The Secretary of State's office would like to avoid those extra steps through form revisions that add an option for the court order to identify the business entity's name and, if known, its assigned file number.

Because an increase in the number of petitions filed is anticipated as more individuals learn of fraudulent business filings in their name, the committee believes that a court's order will be easier to carry out if form CIV-165 allows a court to identify the business entity name and file number that is the subject of a meritorious petition. These business entity filings are typically registrations of new corporations, limited liability companies, and limited partnerships. For some recent period of time, filing fees for forming new entities were waived, reportedly leading to an uptick in bogus entity formations—at least some of which likely contain personal identifying information. Petitioners may become aware of these filings when they receive mail addressed to the business entity at their residence or other mailing address.

The committee is uncertain about how often petitioners learn of a business entity's file number when they discover or suspect that their personal identifying information has been used unlawfully in a business entity filing or whether they regularly include a file number in a petition. (Section 1798.201 does not require a victim to identify the business entity's file number in a petition.) For those reasons, the committee proposes including an option in item 3 that permits a court to indicate that the petition does not identify the file number for the business entity at issue.

The committee seeks specific comment on whether it would be helpful for form CIV-165 to allow a court to supply information about more than one business entity. It is possible a petition could concern business entity filings for more than one business entity. The committee would like input on whether petitions under Civil Code section 1798.201 involve more than one business entity, and if so, whether lengthy blanks on the order form are sufficient for handling that situation.

### **Alternatives Considered**

The committee discussed taking no action because form CIV-165 presently contains all the information necessary for a court order under the relevant statutes. The committee concluded that facilitating the Secretary of State's statutory obligations, such as removing or redacting a petitioner's personal identifying information that has been used unlawfully, could be accomplished without overburdening courts. Adding two new items to the form would allow a court to provide information that is helpful to the Secretary of State in carrying out the order and ultimately to petitioners' ability to achieve the relief granted by the court.

### **Fiscal and Operational Impacts**

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the newly revised form. Courts will also incur costs to incorporate the revised form into any paper or electronic processes.

## 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 form's proposed new items each ask for one piece of information. Do petitions under Civil Code section 1798.202 sometimes involve the use of personal identifying information in more than one business entity filing such that an option to identify more than one business entity name and more than one file number would be helpful? If so, are longer blanks sufficient to address this situation?

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. Form CIV-165, at page 5
2. Link A: Sen. Bill 1196 (Stats. 2018, ch. 696),  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB1196](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1196)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>02/20/2024</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF ( <i>name</i> ):	
<b>ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION</b>	CASE NUMBER:

1. The petition of (*name*):  
 under Civil Code section 1798.201 came on for hearing on (*date*): at (*time*):  
 in (*department*):

2. The petition concerns a business entity filing for (*name of business entity*):

3. The petition

- a.  does not identify the business entity's Secretary of State file number.
- b.  identifies the business entity as having the Secretary of State file number (*entity's file number*):

4. THE COURT FINDS, based on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court, that the petition is meritorious and there is no reasonable cause to believe that the petitioner's personal identifying information has been used lawfully in the business entity filing. The court finds that the victim's personal identifying information has been used unlawfully in the business entity filing.

5. THE COURT ORDERS that the name and associated personal identifying information in the business entity filing is to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity and the name and personal identifying information is to be removed from publicly accessible electronic indexes and databases.

6. For this order to be carried out, the petitioner must file a certified copy of this order with the Secretary of State.

Date: \_\_\_\_\_ JUDICIAL OFFICER