

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W19-04

Title Civil Practice and Procedure: Unlawful Detainer	Action Requested Review and submit comments by February 12, 2019
Proposed Rules, Forms, Standards, or Statutes Revise forms SUM-130 and UD-105	Proposed Effective Date September 1, 2019
Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Contact Susan R. McMullan, 415-865- 7990 susan.mcmullan@jud.ca.gov

Executive Summary and Origin

Recent legislation added to and amended the Code of Civil Procedure section regarding unlawful detainer actions to expand affirmative defenses and to clarify that the period of time in which a defendant must respond to a summons does not include Saturday, Sunday, and other judicial holidays. The Civil and Small Claims Advisory Committee proposes revising two forms, *Answer—Unlawful Detainer* (form UD-105) and *Summons Unlawful Detainer—Eviction* (form SUM-130), to make them consistent with these statutory changes.

The Proposal

***Answer—Unlawful Detainer* (form UD-105)**

Existing Code of Civil Procedure section 1161.3 provides that a landlord cannot terminate a tenancy or fail to renew a tenancy based on acts against a tenant or a tenant's household member that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. The acts must be documented by a temporary restraining order, a protective order, or a copy of a written report by a peace officer that is not more than 180 days old. Assembly Bill 2413 (Chiu; Stats. 2018, ch. 190) amended section 1161.3 to provide an alternative form of documentation that is acceptable: documentation from a qualified third party acting in his or her professional capacity to indicate that the tenant or household member is seeking assistance for injuries or abuse resulting from acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. This bill also adds subdivision (f) to section 1161.3 to require the Judicial Council, by September 1, 2019, to

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“develop a new form or revise an existing form that may be used by a party to assert in the responsive pleading the grounds set forth in this section as an affirmative defense to an unlawful detainer action.” This proposal would revise *Answer—Unlawful Detainer* (form UD-105) to do so.

In addition, AB 2413 added Code of Civil Procedure section 1946.8 to provide that a landlord cannot impose or threaten to impose penalties on a tenant or resident who exercises the right to summon law enforcement or emergency assistance as, or on behalf of, an abuse victim, a crime victim, or an individual in an emergency. (§ 1946.8(c).) Similarly, it provides that a landlord cannot impose or threaten to impose penalties on a tenant or resident as a consequence of someone who is not a resident or tenant summoning law enforcement or emergency assistance in the same circumstances. (*Ibid.*) In an action for unlawful detainer, a tenant, resident, or occupant may raise as an affirmative defense that the landlord violated this provision. (§ 1946.8(f).) This proposal would add that affirmative defense to form UD-150, allowing a tenant or resident to assert that an eviction was due to the tenant or resident summoning assistance on behalf of an abuse or crime victim or person in an emergency.

Form UD-105 is an optional Judicial Council form to be used by a defendant in an unlawful detainer case. Item 3 on the form includes a number of affirmative defenses that can be checked by the defendant before filing the answer. To comply with AB 2413, the Civil and Small Claims Advisory Committee proposes that the form be revised to:

- Add the following underlined text to item 3i:
 - Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant’s household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult (*This defense requires a temporary restraining order, protective order, or police report not more than 180 days old, naming you or your household member as the protected party or victim of these crimes, or documentation from a qualified third party indicating that you or a household member are seeking assistance for injuries or abuse resulting from these acts.*)
- Add new item 3j, which would read as follows:
 - Plaintiff seeks to evict defendant based on defendant or another person summoning law enforcement *assistance* or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.

With the addition of new item 3j, the items that follow in item 3 would be relettered.

Summons—Unlawful Detainer—Eviction (form SUM-130)

Assembly Bill 2343 (Chiu; Stats. 2018, ch. 260) amended Code of Civil Procedure section 1167, effective September 1, 2019, to define the five-day period in which a defendant must respond to

an unlawful detainer summons and complaint as excluding Saturday, Sunday, and other judicial holidays. The current summons form, which is a mandatory form, states that a defendant has five *calendar* days, counting Saturday and Sunday, after service of the summons and complaint, to respond.

To make form SUM-130 consistent with SB 2343's amendment to section 1167, it would be revised to state, "You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff." The parenthetical statement about calculating the days would be removed from the form.

Though not required by legislation, other changes would be made to make the form easier to read and comprehend: It would be split into two columns, separating the English and Spanish text; and information about fee waivers, currently in two places, would be put together under the heading "FEE WAIVER." The following language would be added and would appear on the first line: "NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days." This notice appeared on the form at one time and similar notices appear on other summons forms.

The space addressing proof of service and for the court seal, clerk's signature, and notice to the person served have been moved from the first to the second page and placed as the last item on the form. Currently, these appear at the bottom of first page of the form, in between items 3 and 4 (two questions about use of an unlawful detainer assistant), which detract from the flow of the form. Finally, several URLs that are out of date would be corrected.

Note: Except for removing the parenthetical statement about calculating days, the Spanish language part of form SUM-130 has not yet be revised.

Alternatives Considered

Because the revisions are required by legislation and there is little flexibility in how they are made, the advisory committee did not consider any alternatives. The committee believes that changes to the format of form SUM-130, though not required, will make it easier to read.

Fiscal and Operational Impacts

The proposal has no operational impacts on courts. If a court provides hard copies of the forms, some costs will be incurred in replacing the forms due to the statutory changes.

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 space addressing proof of service and for the court seal, clerk's signature, and notice to the person served have been moved to the second page and placed as the last item on the form. Should this remain on the first page of the form and, if so, why?

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 3 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. Forms SUM-130 and UD-105, at pages 5–8
2. Link A: Assembly Bill
2413, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2413
3. Link B: Assembly Bill
2343, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2343

SUMMONS
(CITACION JUDICIAL)

UNLAWFUL DETAINER—EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT

11-27-2018

Not approved by
the Judicial Council

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days. You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website (www.lawhelpca.org), the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), or by contacting your local court or county bar association.

FEE WAIVER: If you cannot pay the filing fee, ask the clerk for a fee waiver form. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

1. The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER (número del caso):

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

3. (Must be answered in all cases) An **unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415)** did not did for compensation give advice or assistance with this form. (If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

4. **Unlawful detainer assistant** (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):

- a. Assistant's name:
- b. Telephone no.:
- c. Street address, city, and zip:

- d. County of registration:
- e. Registration no.:
- f. Registration expires on (date) :

Date: _____ Clerk, by _____, Deputy
 (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (form POS-010).)

[SEAL]

5. **NOTICE TO THE PERSON SERVED:** You are served
- a. as an individual defendant.
 - b. as the person sued under the fictitious name of (specify):
 - c. as an occupant
 - d. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> CCP 415.46 (occupant)	<input type="checkbox"/> other (specify):
 - e. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 11-27-2018 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
ANSWER—UNLAWFUL DETAINER	CASE NUMBER: _____

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a. Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b. Defendant admits that all of the statements of the complaint are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false (state paragraph numbers from the complaint or explain below or on form MC-025): Explanation is on MC-025, titled as Attachment 2b(1).
- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025): Explanation is on MC-025, titled as Attachment 2b(2).

3. **AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in item 3f (page 2).)**

- a. (Nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. (Nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. (Nonpayment of rent only) On (date): _____ before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. Plaintiff waived, changed, or canceled the notice to quit.
- e. Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g. Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): _____

(Also, briefly state in item 3f the facts showing violation of the ordinance.)
- h. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i. Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires a temporary restraining order, protective order, or police report not more than 180 days old naming you or your household member as the protected party or victim of these crimes, or documentation from a qualified third party indicating that you or a household member are seeking assistance for injuries or abuse resulting from these acts.)

CASE NUMBER: _____

3. AFFIRMATIVE DEFENSES (cont'd.)

- j. Plaintiff seeks to evict defendant based on defendant or another person summoning law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- k. Other affirmative defenses are stated in item 3l.
- l. Facts supporting affirmative defenses checked above (identify facts for each item by its letter below or on form MC-025):
 - Description of facts is on MC-025, titled as Attachment 3l.

4. OTHER STATEMENTS

- a. Defendant vacated the premises on (date):
- b. The fair rental value of the premises alleged in the complaint is excessive (explain below or on form MC-025):
 - Explanation is on MC-025, titled as Attachment 4b.
- c. Other (specify below or on form MC-025 in attachment):
 - Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c. reasonable attorney fees.
- d. that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e. Other (specify below or on form MC-025):
 - All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 64000-6415)

7. (Must be completed in all cases.) An **unlawful detainer assistant** did not did for compensation give advice or assistance with this form. (If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:
- b. Telephone No.:
- c. Street address, city, and zip code:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF DEFENDANT OR ATTORNEY)
(TYPE OR PRINT NAME)	▶	(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT)
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