Item number: 01

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: 08/20/2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Use of an Appendix in Limited Civil Cases
Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP-101-INFO and APP-103

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 10/28/2019
Project description from annual agenda: 10. Use of an appendix in limited civil cases. Consider amending the rules governing the record on appeal in limited civil cases to allow an appendix as a record of the written documents from the trial court proceedings as an alternative to a clerk's transcript. Source of the project: committee member. Subcommittee: Appellate Division.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-??
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Use of an Appendix in Limited Civil Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP-101-INFO and APP-103

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 13, 2020

Contact
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Executive Summary

The Appellate Advisory Committee recommends adopting a new rule and amending four current rules to allow litigants in limited civil appeals to use an appendix in lieu of a clerk's transcript as the record of documents filed in the trial court. The California Rules of Court contain a rule for use of an appendix in the Court of Appeal but do not include such a rule for civil appeals in the appellate division. The proposed rule is based on the existing rule and closely follows its structure and content. To assist litigants in using an appendix, the committee also proposes approving a new form and revising an information sheet and a form for designating the record in limited civil cases.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt California Rules of Court, rule 8.845 to allow litigants in limited civil appeals to use an appendix in lieu of a clerk's transcript as the record of documents in the trial court;
2. Amend rules 8.830, 8.840, 8.843, and 8.882 to add provisions and procedures related to use of an appendix;
3. Approve *Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111) to facilitate the respondent's choosing an appendix as the form of the documents filed in the trial court; and
4. Revise *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to include information on an appendix and *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to include an appendix as a form of the record of documents the appellant may designate.

The text of the new and amended rules and the new and revised forms are attached at pages 7 through 39.

Relevant Previous Council Action

Rule 8.124 of the California Rules of Court, governing the use of an appendix in unlimited civil appeals, was adopted as rule 5.1 in 2002, renumbered in 2007, and has been amended several times, but the amendments are not relevant to this proposal. Rules 8.830, 8.840, 8.843, and 8.882, governing the record and briefs in limited civil cases, were adopted in 2009 as part of a large project to comprehensively review and update the rules for appellate division proceedings.[1] None of the amendments is relevant to this proposal.

Analysis/Rationale

Background

As noted above, under rule 8.124, litigants in unlimited civil appeals have long had the option of choosing to use an appendix. The appellant may elect to use an appendix when designating the record on appeal. Even if the appellant does not elect to use an appendix, the respondent may be able to do so if the appellant has not been granted a fee waiver for the cost of a clerk's transcript. The parties may prepare separate appendixes or may stipulate to a joint appendix. (Cal. Rules of Court, rule 8.124(a).)

Rule 8.124(b) specifies the contents of an appendix, including items that must be included, items that may be included, and items that must not be included. Much of the content is specified by cross-references to other rules. The rule also sets forth a procedure for including in an appendix a copy of a document or exhibit in the possession of another party and returning documents or exhibits that were sent nonelectronically when the remittitur issues. (See rule 8.124(c).)

[1] See Judicial Council of Cal., Appellate Advisory Com. Rep., *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Dec. 21, 2007, date of report) (Feb. 22, 2008, date of council meeting) (Judicial Council of Cal. binder, Feb. 22, 2008, tab 7).

In addition, the rule includes provisions regarding the form of an appendix, service and filing, the cost of an appendix, and sanctions for an inaccurate or noncomplying appendix. (See rule 8.124(d)–(g).) There are several detailed advisory committee comments explaining and clarifying various subdivisions of the rule.

New rule 8.845

The new rule would allow litigants in limited civil appeals to elect to use an appendix in lieu of a clerk's transcript as the record of documents in the trial court. A principal benefit of electing to use an appendix is saving the cost of paying the court to prepare and copy the clerk's transcript. Thus, adoption of this rule would help litigants reduce the cost of appeals in cases involving $25,000 or less. It would also benefit the superior courts by reducing staff time in preparing the record.

The new rule is modeled on rule 8.124 governing appendixes in unlimited civil appeals. Where that rule contains cross-references to other rules of court for unlimited civil appeals, the new rule cross-references the parallel rules for limited civil appeals, thus maintaining the same structure as the existing rule and consistency between the rules for the Court of Appeal and the appellate division.

As in unlimited civil appeals, the new rule would allow the appellant in a limited civil appeal to elect to use an appendix when designating the record on appeal. It would also allow the respondent to elect an appendix if the appellant has not been granted a fee waiver for the cost of a clerk's transcript. The parties may prepare separate appendixes or may stipulate to a joint appendix. (Cal. Rules of Court, rule 8.845(a).)

New rule 8.845 would mirror rule 8.124 in specifying the contents of an appendix in subdivision (b) and procedures for including a copy of a document or exhibit in the possession of another party, and returning documents or exhibits that were sent nonelectronically when the remittitur issues in subdivision (c). Rule 8.845 would also include provisions regarding form, service and filing, cost, and sanctions for an inaccurate or noncomplying appendix in subdivisions (d) through (g), as well as advisory committee comments explaining and clarifying various subdivisions of the rule.

The only provision that is not retained in the new limited civil rule is subdivision (b)(3)(C) of rule 8.124, which states that an appendix must not contain the record of an administrative proceeding and that any such administrative record must be transmitted to the reviewing court as specified in a separate rule (rule 8.123). The appellate division rules do not contain a rule regarding administrative records, and thus there is no rule for such a provision to cross-reference. The committee requested comments on whether there should be rules regarding administrative records in the appellate division; based on the responses, such rules do not appear to be necessary. These comments are discussed below in the Comments section.

Amend rules 8.830, 8.840, 8.843, and 8.882

To implement the new rule, the committee recommends amending four existing rules of procedure in the appellate division. Rule 8.830 would be amended to add an appendix under rule 8.845 as a form of the record of written documents that must be included in the record on appeal. Rule 8.840, which governs completion and filing of the record, would be amended to add clarifying language and a provision on when the record is complete if the parties are using an appendix and a record of the oral proceedings. Rule 8.843, which governs transmitting exhibits, would be amended to add an appendix as a form of the record of written documents. Finally, provisions would be added to rule 8.882 regarding the time to file an appellant's opening brief if there is an election under rule 8.845 to use an appendix; the proposed language is similar to existing language in rule 8.212(a)(1)(A) for unlimited civil appeals.

New form APP-111

The committee recommends a new optional form—*Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111)—for respondents electing to use an appendix. The form's content is based on the existing form for respondents in unlimited civil appeals, *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011).

The election procedure for use of an appendix differs from all other rules governing designation of the record on appeal. Under the other rules, the appellant designates, or the parties stipulate, to the form of the record. By contrast, under existing rule 8.124(a) and proposed new rule 8.845(a), the respondent may be able to elect to have the appeal proceed by way of an appendix even if the appellant has designated a different form of the record of documents filed in the trial court. Unless the superior court orders otherwise, and if the appellant does not have a waiver of the fee for a clerk's transcript, the respondent may serve and file a timely notice electing to use an appendix. New form APP-111 would provide instructions and information for respondents to assist them in making this election.

Revise forms APP-101-INFO and APP-103

The committee recommends revising *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to include information on an appendix as another form of the record of the documents in the trial court. These revisions are based on the parallel information sheet for litigants in unlimited civil appeals, *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO).

The recommended changes to *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) add the option of choosing an appendix as the form of the documents filed in the trial court.

Policy implications

This proposal furthers the Judicial Council's constitutional mandate to improve the administration of justice and, more specifically, its mission to increase access to justice, by allowing a less expensive form of the record in limited civil appeals. It also, at a time when courts are facing extraordinary challenges, provides an opportunity to reduce court workload.

Comments

The proposed new and amended rules and new and revised forms were circulated for public comment between April 10 and June 9, 2020, as part of the regular spring comment cycle. The committee received five comments on this proposal. Four commenters, the Superior Court of Los Angeles County, the Superior Court of San Diego County, the Committee on Appellate Courts, Litigation Section, of the California Lawyers Association (CLA), and the Orange County Bar Association (OCBA), agreed with the proposal. The fifth commenter, the Superior Court of Orange County, did not take a position but responded to questions in the invitation to comment. A chart with the full text of the comments received and the committee's responses is attached at pages 40 through 43.

The committee requested comments on whether the new rule on appendixes should address administrative records and whether a rule on administrative records in the appellate division should be developed. Both courts supported addressing administrative records in the limited civil rules to maintain consistency with the unlimited civil rules. Taking the opposite position, in support of not addressing administrative records in either the proposed rule or any other new rule, CLA opined, "Designating an appendix saves money and streamlines the appellate process, especially for pro se litigants. Requiring the separate transmittal of an administrative record would undercut these goals."

The committee chose not to include provisions on administrative records or a new rule on administrative records in the proposal that circulated because there was no indication that either was necessary in the appellate division. The committee was unaware of any problems experienced by litigants or courts due to the lack of a rule on administrative records, and was concerned about unwarranted complexity and proposing a solution in need of a problem. The comments support the committee's conclusion that there is no need to add any such provisions to the limited civil rules. Although maintaining consistency between the limited civil and unlimited civil rules on appendixes is important, the committee recommends that the rules for limited civil appeals not address administrative records. If a need to do so comes to light in the future, for example, if a law provides that review of some category of cases involving administrative records is in the appellate division, the committee will revisit this issue.

Alternatives considered

The committee considered not proposing a rule for the use of an appendix in limited civil cases, but decided to move forward with the proposal because there is no apparent reason for not allowing litigants this option. Litigants can save money in the record preparation process, and courts can save time if litigants opt to prepare appendixes rather than request clerks' transcripts.

The committee also considered the complexity of the current rule on use of an appendix in unlimited civil cases and examined whether a parallel rule for limited civil cases should contain fewer provisions. With the exception of provisions for an administrative record, the committee concluded that all provisions in rule 8.124 should be retained in new rule 8.845 because the procedures are similar and the same information and requirements would be helpful in the context of limited civil appeals.

In addition, the committee considered additional revisions to the forms in both unlimited civil and limited civil appeals to provide more information regarding a respondent's option to elect to use an appendix as the record of the documents in the trial court. The committee decided against more revisions to the forms because this option is rarely used, and the committee has received no feedback that the current process for electing to use an appendix in unlimited civil appeals is confusing or otherwise not working well.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts from this proposal. Feedback received in the comments indicates that implementation requirements would include training for court staff, adding the new form to the case management system, and updating appeal procedures and any local forms, and that this would require two to three hours of staff time. With respect to cost, the same commenter indicated that the proposal would provide some savings for the court in staff time, paper, copying, and binding. The committee believes that the benefits of the proposal, including savings of money for litigants and time for the courts, outweigh the implementation cost.

Attachments and Links

1. Cal. Rules of Court, rules 8.830, 8.840, 8.843, 8.845, and 8.882, at pages 7–15
2. Forms APP-101-INFO, APP-103, and APP-111, at pages 16–39
3. Chart of comments, at pages 40–43

Rule 8.845 of the California Rules of Court is adopted, and rules 8.830, 8.840, 8.843, and 8.882 are amended, effective January 1, 2021, to read:

Rule 8.830. Record on appeal

(a) Normal record

Except as otherwise provided in this chapter, the record on an appeal to the appellate division in a civil case must contain the following, which constitute the normal record on appeal:

(1) A record of the written documents from the trial court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.832;

(B) An appendix under rule 8.845;

~~(B)~~ (C) If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file under rule 8.833; or

~~(C)~~ (D) An agreed statement under rule 8.836.

(2) * * *

(b) * * *

Advisory Committee Comment

Subdivision (a). The options of using the original trial court file instead of a clerk's transcript under (1)~~(B)~~(C) or an electronic recording itself, rather than a transcript, under (2)(B) are available only if the court has local rules for the appellate division authorizing these options.

Rule 8.840. Completion and filing of the record

(a) When the record is complete

(1) If the appellant elected under rule 8.831 or 8.834(b) to proceed without a record of the oral proceedings in the trial court and the parties are not proceeding by appendix under rule 8.845, the record is complete:

(A) If a clerk's transcript will be used, when the clerk's transcript is certified under rule 8.832(d);

(B) If the original trial court file will be used instead of the clerk's transcript, when that original file is ready for transmission as provided under rule 8.833(b); or

(C) If an agreed statement will be used instead of the clerk's transcript, when the appellant files the agreed statement under rule 8.836(b).

(2) If the parties are not proceeding by appendix under rule 8.845 and the appellant elected under rule 8.831 to proceed with a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript or other record of the documents from the trial court is complete as provided in (1) and:

(A) If the appellant elected to use a reporter's transcript, when the certified reporter's transcript is delivered to the court under rule 8.834(d);

(B) If the appellant elected to use a transcript prepared from an official electronic recording, when the transcript has been prepared under rule 8.835;

(C) If the parties stipulated to the use of an official electronic recording of the proceedings, when the electronic recording has been prepared under rule 8.835; or

(D) If the appellant elected to use a statement on appeal, when the statement on appeal has been certified by the trial court or a transcript or an official electronic recording has been prepared under rule 8.827(d)(6).

(3) If the parties are proceeding by appendix under rule 8.845 and the appellant elected under rule 8.831 to proceed with a record of the oral proceedings in the trial court, the record is complete when the record of the oral proceedings is complete as provided in (2)(A), (B), (C), or (D).

(b) * * *

Rule 8.843. Transmitting exhibits

(a) Notice of designation

(1) If a party wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the

clerk's transcript under rule 8.832 or the appendix under rule 8.845 or included in the original file under rule 8.833, within 10 days after the last respondent's brief is filed or could be filed under rule 8.882 the party must serve and file a notice in the trial court designating such exhibits.

(2) Within 10 days after a notice under (1) is served, any other party wanting the appellate division to consider additional exhibits must serve and file a notice in the trial court designating such exhibits.

(3) A party filing a notice under (1) or (2) must serve a copy on the appellate division.

(b)–(e) * * *

Rule 8.845. Appendixes

(a) Notice of election

(1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:

(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.831; or

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the notice of appeal is filed, and no waiver of the fee for a clerk's transcript is granted to the appellant.

(2) When a party files a notice electing to use an appendix under this rule, the superior court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(3) The parties may prepare separate appendixes or they may stipulate to a joint appendix.

(b) Contents of appendix

(1) A joint appendix or an appellant's appendix must contain:

(A) All items required by rule 8.832(a)(1), showing the dates required by rule 8.832(a)(2);

(B) Any item listed in rule 8.832(a)(3) that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on;

(C) The notice of election; and

(D) For a joint appendix, the stipulation designating its contents.

(2) An appendix may incorporate by reference all or part of the record on appeal in another case pending in the reviewing court or in a prior appeal in the same case.

(A) The other appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified both in the body of the appendix and in a separate section at the end of the index.

(B) If the appendix incorporates by reference any such record, the cover of the appendix must prominently display the notice "Record in case number:___ incorporated by reference," identifying the number of the case from which the record is incorporated.

(C) On request of the reviewing court or any party, the designating party must provide a copy of the materials incorporated by reference to the court or another party or lend them for copying as provided in (c).

(3) An appendix must not:

(A) Contain documents or portions of documents filed in superior court that are unnecessary for proper consideration of the issues.

(B) Contain transcripts of oral proceedings that may be designated under rule 8.834.

(C) Incorporate any document by reference except as provided in (2).

(4) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.

(5) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.

(6) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.

(c) Document or exhibit held by other party

If a party preparing an appendix wants it to contain a copy of a document or an exhibit in the possession of another party:

(1) The party must first ask the party possessing the document or exhibit to provide a copy or lend it for copying. All parties should reasonably cooperate with such requests.

(2) If the request under (1) is unsuccessful, the party may serve and file in the reviewing court a notice identifying the document or specifying the exhibit's trial court designation and requesting the party possessing the document or exhibit to deliver it to the requesting party or, if the possessing party prefers, to the reviewing court. The possessing party must comply with the request within 10 days after the notice was served.

(3) If the party possessing the document or exhibit sends it to the requesting party nonelectronically, that party must copy and return it to the possessing party within 10 days after receiving it.

(4) If the party possessing the document or exhibit sends it to the reviewing court, that party must:

(A) Accompany the document or exhibit with a copy of the notice served by the requesting party; and

(B) Immediately notify the requesting party that it has sent the document or exhibit to the reviewing court.

(5) On request, the reviewing court may return a document or an exhibit to the party that sent it nonelectronically. When the remittitur issues, the reviewing court must return all documents or exhibits to the party that sent them, if they were sent nonelectronically.

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.838 for a clerk's transcript.

(2) In addition to the information required on the cover of a brief by rule 8.883(c)(8), the cover of an appendix must prominently display the title "Joint Appendix" or "Appellant's Appendix" or "Respondent's Appendix" or "Appellant's Reply Appendix."

(3) An appendix must not be bound with or transmitted electronically with a brief as one document.

(e) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

(2) A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief.

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

(4) An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief.

(f) Cost of appendix

(1) Each party must pay for its own appendix.

(2) The cost of a joint appendix must be paid:

(A) By the appellant;

(B) If there is more than one appellant, by the appellants equally; or

(C) As the parties may agree.

(g) Inaccurate or noncomplying appendix

Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file. The reviewing court may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this rule.

Advisory Committee Comment

Subdivision (a). Under this provision, either party may elect to have the appeal proceed by way of an appendix. If the appellant's fees for a clerk's transcript are not waived and the respondent timely elects to use an appendix, that election will govern unless the superior court orders otherwise. This election procedure differs from all other appellate rules governing designation of a record on appeal. In those rules, the appellant's designation, or the stipulation of the parties, determines the type of record on appeal. Before making this election, respondents should check whether the appellant has been granted a fee waiver that is still in effect. If the trial court has granted the appellant a fee waiver for the clerk's transcript, or grants such a waiver after the notice of appeal is filed, the respondent cannot elect to proceed by way of an appendix.

Subdivision (a)(2) is intended to assist appellate counsel in preparing an appendix by providing counsel with the list of pleadings and other filings found in the register of actions or "docket sheet" in those counties that maintain such registers. (See Gov. Code, § 69845.) The provision is derived from rule 10-1 of the United States Circuit Rules (9th Cir.).

Subdivision (b). Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must contain any register of actions that the clerk sent to the parties under subdivision (a)(2). This provision is intended to assist the reviewing court in determining the accuracy of the appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).

In support of or opposition to pleadings or motions, the parties may have filed a number of lengthy documents in the proceedings in superior court, including, for example, declarations, memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and photocopies of judicial opinions or other publications. Subdivision (b)(3)(A) prohibits the inclusion of such documents in an appendix when they are not necessary for proper consideration of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th Cir.).

Subdivision (b)(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings that may be made part of a reporter's transcript. (Compare rule 8.834(c)(4) [the reporter must not copy into the reporter's transcript any document includable in the clerk's transcript under rule

8.832].) The prohibition is intended to prevent a party filing an appendix from evading the requirements and safeguards imposed by rule 8.834 on the process of designating and preparing a reporter's transcript. In addition, if an appellant were to include in its appendix a transcript of less than all the proceedings, the respondent would not learn of any need to designate additional proceedings (under rule 8.834(a)(3)) until the appellant had served its appendix with its brief, when it would be too late to designate them. Note also that a party may file a certified transcript of designated proceedings instead of a deposit for the reporter's fee (Cal. Rules of Court, rule 8.834(b)(2)(D)).

Subdivision (d). In current practice, served copies of filed documents often bear no clerk's date stamp and are not conformed by the parties serving them. Consistent with this practice, subdivision (d) does not require such documents to be conformed. The provision thereby relieves the parties of the burden of obtaining conformed copies at the cost of considerable time and expense, and expedites the preparation of the appendix and the processing of the appeal. It is to be noted, however, that under subdivision (b)(1)(A) each document necessary to determine the timeliness of the appeal must show the date required under rule 8.822 or 8.823. Note also that subdivision (g) of rule 8.845 provides that a party filing an appendix represents under penalty of sanctions that its copies of documents are accurate.

Subdivision (e). Subdivision (e)(2) requires a joint appendix to be filed with the appellant's opening brief. The provision is intended to improve the briefing process by enabling the appellant's opening brief to include citations to the record. To provide for the case in which a respondent concludes in light of the appellant's opening brief that the joint appendix should have included additional documents, subdivision (b)(5) permits such a respondent to present in an appendix filed with its respondent's brief (see subd. (e)(3)) any document that could have been included in the joint appendix.

Under subdivision (e)(2)–(4), an appendix is required to be filed "with" the associated brief. This provision is intended to clarify that an extension of a briefing period ipso facto extends the filing period of an appendix associated with the brief.

Subdivision (g). Under subdivision (g), sanctions do not depend on the degree of culpability of the filing party—i.e., on whether the party's conduct was willful or negligent—but on the nature of the inaccuracies and the importance of the documents they affect.

Rule 8.882. Briefs by parties and amici curiae

(a) Briefs by parties

(1) The appellant must serve and file an appellant's opening brief within:

(A) 30 days after the record—or the reporter's transcript, after a rule 8.845 election in a civil case—is filed in the appellate division; or

(B) 60 days after the filing of a rule 8.845 election in a civil case, if the appeal proceeds without a reporter's transcript.

(2)–(5) * * *

**(b)–(e) * * *

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is $25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

- ***Prejudicial error:*** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error").

  Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm* in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at *http://leginfo.legislature.ca.gov/faces /codes.xhtml*.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

8 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally

delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a "Notice of Entry" of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at *www.courts.ca.gov/7646.htm* (note that the "Appeal and Writ Related Fees" section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov/faces /codes.xhtml*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court's judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the

appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm*.

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of what was said in the trial court (this is called the "oral proceedings")
- A record of the documents filed in the trial court (other than exhibits)
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of what was said in the trial court (the "oral proceedings")

The first part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- If you or the other party arranged to have a court reporter there during the trial court proceedings, the

reporter can prepare a record, called a "reporter's transcript."

- If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.
- You can use an agreed statement.
- You can use a statement on appeal.

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter's transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose ("elect") to have the court reporter prepare a reporter's transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.
If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#rtf.* If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Contents: If you elect to use a transcript of an official electronic recording, you must identify by date (this is called "designating") what proceedings you want included in the transcript. You can use the same form you used to tell the court you wanted to use a transcript of an official electronic recording —*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

Cost: The appellant is responsible for paying the court for the cost of either (a) preparing a transcript *or* (b) making a copy of the official electronic recording.

(a) If you elect to use a transcript of an official electronic recording, you will need to deposit the estimated cost of preparing the transcript with the trial court clerk and pay the trial court a $50 fee. There are two ways to determine the estimated cost of the transcript:

- You can use the amounts listed in rule 8.130(b)(1)(B) for each full or half day of court proceedings to estimate the cost of making a transcript of the proceeding you have designated in your notice designating the record on appeal. Deposit this estimated amount and the $50 fee with the trial court clerk when you file your notice designating the record on appeal.
- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in you notice designating the record on appeal. You must deposit this amount and the $50 fee with the trial court within 10 days of receiving the estimate from the clerk.

(b) If the court has a local rule permitting the use of a copy of the electronic recording itself, rather than a transcript, and you have attached your agreement with the other parties to do this ("stipulation") to the notice designating the record on appeal that you filed with the court, the trial court clerk will provide you with an estimate of the costs for this copy of the recording. You must pay this amount to the trial court.

If you cannot afford to pay the cost of preparing the transcript, the $50 fee, or the fee for the copy of the official electronic recording, you can ask the court to waive these costs. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. (See rule 8.836 of the California Rules of Court.)

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it

may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you

file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

b. Record of the documents filed in the trial court

The second part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

- *A clerk's transcript or an appendix*
- The original *trial court file* or
- An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript or appendix

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court. An appendix is a record of these documents prepared by a party. (See rule 8.845 of the California Rules of Court.)

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript or appendix. These documents are listed in rule 8.832(a) and rule 8.845(b) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

Clerk's transcript: If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other

documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www. courts.ca.gov /forms.* The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

Appendix: If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.845 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the appellate division has ordered otherwise) and file the appendix in the appellate division. The appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief. See (15) for information about the brief.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov /forms*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the

list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request. You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

Contents: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division or 60 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.845. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by

mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument"?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You

can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm*.

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 13 above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information

about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at w*ww.courtreportersboard.ca.gov/consumers /index.shtml#trf.* The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(b) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(c) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated the appellant is raising on appeal. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm*.

(d) Clerk's transcript or appendix

Clerk's transcript: If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's

transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

Appendix: If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 8-9 for more information about preparing an appendix.

25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

The appellant serves and files the first brief, called an "appellant's opening brief." You may, but are not required to, respond by serving and filing a respondent's brief within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed. You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

APP-103 Appellant's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

DRAFT

01-24-20

Not approved by the Judicial Council

Instructions

- This form is only for choosing ("designating") the record on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

(2) On *(fill in the date):* _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, you will need to provide the appellate division with a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, you will need to provide a record of the oral proceedings.

(3) I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item* (4); *go to item* (5)). I understand that if I elect to proceed without providing a record of the oral proceedings, the appellate division will not be able to review any issues I might want to raise about what was said in the trial court during those proceedings or any claim that there was not evidence to support the judgment, order, or decision I am appealing.
(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item* (4) *below)*. I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal. *(Write initials here)*: _____

(4) I want to use the following record of what was said in the trial court proceedings in my case *(check and complete **only one** of the following below—a, b, c, d, or e):*

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Complete (1) and (2).*

(1) **Designation of proceedings to be included in reporter's transcript.** I request that the following proceedings in the trial court be included in the reporter's transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings* [*for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions*]*, the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Description	Reporter's Name	Prev. prepared?
(a)				☐ Yes ☐ No
(b)				☐ Yes ☐ No
(c)				☐ Yes ☐ No
(d)				☐ Yes ☐ No
(e)				☐ Yes ☐ No
(f)				☐ Yes ☐ No
(g)				☐ Yes ☐ No

☐ *Check here if you need to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 4a."*

4 a. (continued)

(2) The proceedings designated in (1) ☐ include ☐ do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. *(Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on a motion, the appellate division permits otherwise.)*

_____

_____

_____

☐ *Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write "APP-103, item 4a(2)."*

(3) ☐ **Certified transcripts.** I have attached to this Appellant's Notice Designating Record on Appeal an original certified transcript of *all the proceedings I have designated* in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court. Under rule 8.834, no payment is due for this transcript (skip the rest of 4 and go to 5).

(4) **Payment for reporter's transcript.**

(a) ☐ I will pay for the reporter's transcript I have designated in (1). Within 10 days of getting the reporter's estimate of the cost of the transcript, I will:

☐ Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of $50 for the superior court to hold this deposit in trust. I understand that if I do not comply with this requirement, my appeal may be dismissed.

☐ File with the trial court a copy of the written waiver of deposit signed by the reporter. I understand that if I do not comply with this, my appeal may be dismissed.

(b) ☐ I am unable to afford the cost of the reporter's transcript I have designated in (1) and am therefore applying to the Transcript Reimbursement Fund to pay for this transcipt. Within 10 days of receipt of the court reporter's estimate of the costs for this transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbusement from the Transcript Reimbursement Fund.

(5) **Format of reporter's transcript.** I request that the reporter provide my copy of the transcript in:

(a) ☐ Paper format only.

(b) ☐ Electronic format only.

(c) ☐ Both paper and electronic format.

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings:*

Date	Department	Description	Electronic Monitor's Name
(a)			
(b)			
(c)			

☐ *Check here if you need more space to describe any proceeding or to list more proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-103, item 4b."*

4 b. (continued)

Check and complete (1) or (2).

(1) ☐ I will pay the trial court clerk for this transcript myself. I understand that if I do not pay for the transcript, my appeal may be dismissed.

(a) ☐ With this notice designating the record on appeal, I have deposited with the trial court clerk the approximate cost of transcribing the proceedings I designated above, calculated as provided in rule 8.130(b)(1)(B).

(b) ☐ Within 10 days of receipt of the clerks estimate of the cost of the transcript, I will deposit that amount with the trial court clerk.

(2) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. Check and complete (1) or (2).*

(1) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the cost of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

d. ☐ **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. Check (1) or (2).*

(1) ☐ I have attached an agreed statement to this notice.

(2) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal, and if I do not, the court may dismiss my appeal.

4 (continued)

OR

e. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement. Check (1) or (2).*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Limited Civil Case) *(form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Record of the Documents Filed in the Trial Court

5 I elect (choose)/My client elects to use the following record of the documents filed in the trial court *(check a, b, or c and fill in any required information):*

a. ☐ **Clerk's Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.*

(1) **Required documents.** *The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.*

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

5 a. (continued)

(2) **Additional documents.** *If you want any documents in addition to the required documents listed in (1) above to be included in the clerk's transcript, you must identify those documents here.*

☐ I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	
(e)	

☐ *Check here if you need to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 5a(2)."*

(3) **Exhibits.**

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit, and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No

☐ *Check here if you need to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 5a(3)."*

5 a. (continued)

(4) **Payment for clerk's transcript.** *(Check a or b.)*

(a) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (i) or (ii) and submit the checked document):*

(i) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

b. ☐ **An appendix under rule 8.845.**

OR

c. ☐ **Agreed statement.** *(This option is only available if you have chosen to use an agreed statement as the record of the oral proceedings under item 4 above and you attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 5a(1) above and in rule 8.832 of the California Rules of Court.)*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

APP-111 Respondent's Notice Electing to Use an Appendix (Limited Civil Case)

Clerk stamps date here when form is filed.

DRAFT

01-28-2020

Not approved by the Judicial Council

Instructions

- This form is only for choosing ("electing") to use an appendix as the record of the documents filed in the trial court on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must serve and file this form **no later than 10 days** after the notice of appeal is filed.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

b. Respondent's contact information *(skip this if the respondent has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

c. Respondent's lawyer *(skip this if the respondent does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About the Appeal

(2) On *(fill in the date):* _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

(3) On *(fill in the date):* _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

(4) The appellant has not been granted a waiver of the fees for a clerk's transcript. I elect under rule 8.845(a) to use an appendix instead of a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

Date: _____

_____
Type or print your name

_____
Signature of respondent or attorney

SPR20-02

Appellate Procedure: Use of an Appendix in Limited Civil Cases (Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP101-INFO and APP-103)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs, California Lawyers Association Leah Spero, Chair Committee on Appellate Courts	A	The Committee on Appellate Courts supports the entirety of this proposal. The proposal appropriately addresses the stated purpose, and the proposed modifications to Forms APP-101-INFO and APP-103, as well as the addition of Form APP-111, appropriately reflect the rule changes. The Committee on Appellate Courts further supports the decision not to address administrative records in either the proposed rule or any other new rule. Designating an appendix saves money and streamlines the appellate process, especially for pro se litigants. Requiring the separate transmittal of an administrative record would undercut these goals.	The committee notes the commenter's agreement with the proposal. The committee agrees with this approach.
2.	Orange County Bar Association By Scott B. Garner, President	A	No specific comment provided.	The committee notes the commenter's agreement with the proposal. No further response required.
3.	Superior Court of Los Angeles County	A	1. Should the proposed new rule specify that an appendix should not contain the record of an administrative proceeding (see current rule 8.124(b)(3)(C))? Yes, consistency in how the rule is executed across jurisdictions will be helpful to litigants and staff.	The committee notes the commenter's agreement with the proposal and appreciates the responses to questions asked in the invitation to comment. The committee decided not to address administrative records in this rule because it does not appear to be necessary. Limited civil appeals only rarely, if ever, involve administrative records. The added complexity and potential for confusion outweigh any benefit from maintaining

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committee Response
				consistency on this point with the rules on unlimited civil appeals.
			2. If so, should the rules for limited civil appeals include a rule on the record of administrative proceedings, similar to rule 8.123 for unlimited civil appeals?	
			Yes.	See response above.
			NOTE: This process will likely result in confusion for pro per litigants who will feel compelled to file the appendix as well as requesting a clerk's transcript.	The committee appreciates the difficulties self represented litigants face in navigating the appeals process. This is one reason the committee opted not to include a rule on administrative records in the appellate division.
4.	Superior Court of Orange County Training and Analyst Group (TAG) Team	NI	Similar to existing unlimited civil rules, this rule allows litigants with limited appeals to also use appendices in lieu of transcripts thus saving litigants money and streamlining the process. This will require trial courts to review local rules to ensure local rules are consistent with these revisions.	The committee appreciates receiving these comments.
			1. Does the proposal appropriately address the stated purpose? Yes	No further response required.
			2. Should the proposed new rule specify that an appendix should not contain the record of an administrative proceeding (see current rule 8.124(b)(3)(C))? If so, should the rules for	

	Commenter	Position	Comment	DRAFT Committee Response
			limited civil appeals include a rule on the record of administrative proceedings, similar to rule 8.123 for unlimited civil appeals? Yes, mirroring the current rule regarding unlimited civil appeals would provide consistency and make implementation easier. 3. Should any provisions in the proposed new and amended rules or forms be changed or eliminated to better reflect appellate division practice and procedure? No 4. Would the proposal provide cost savings? If so, please quantify. Yes, the proposal would provide some cost savings for the court in staff time, paper, copying and binding. It would also benefit litigants. 5. 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? The appeal procedure would need to be updated to reflect the option of an appendix as well as references to the new and revised forms. The case management system would need to be configured to add the new form. Local forms would also require similar updates. Staff will	See response to Superior Court of Los Angeles County, above. For the same reasons, the committee does not recommend a rule on administrative records for limited civil appeals. No further response required. The committee appreciates this feedback. The committee appreciates this feedback.

SPR20-02

Appellate Procedure: Use of an Appendix in Limited Civil Cases (Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP101-INFO and APP-103)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
			need to be informed and/or trained. But this would require only 2-3 hours of training staff time to make the needed procedural updates and to configure the case management system. 6. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes 7. How well would this proposal work in courts of different sizes? The proposal should work well in all courts regardless of the size.	 No further response required. No further response required.
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's agreement with the proposal. No further response required.

Item number: 02

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 20, 2020

Title of proposal: Appellate Procedure: Consent to Electronic Service

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 8.25, 8.72, and 8.78; revise form APP-009-INFO

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Eric Long, 415-865-7691, eric.long@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: October 28, 2019
Project description from annual agenda: Amend rules 8.72, 8.74, and 8.78 to conform to section 1010.6 of the Code of Civil Procedure, which was recently amended and provides that the act of electronic filing does not constitute consent to electronic service. Subcommittee: Rules.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Consent to Electronic Service

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.25, 8.72, and 8.78; revise form APP-009-INFO

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 4, 2020

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary

To clarify the procedures for electronic service, or e-service, in the Supreme Court and the Courts of Appeal, the Appellate Advisory Committee recommends amending certain service and e-filing rules and revising an information sheet. Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, and form APP-009-INFO would be revised, to reflect the procedures for e-service in these reviewing courts, and to distinguish appellate procedure under these rules in light of recent amendments to the Code of Civil Procedure that address e-service in the trial courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 8.25 of the California Rules of Court to reflect actual practice for delivery of electronic proofs of service, and amend the accompanying advisory committee comment to clarify e-service consent procedure in the Supreme Court and Courts of Appeal;

2. Amend rule 8.72 to confirm that furnishing an email address does not necessarily mean that a party has authorized e-service because a party may opt out of e-service under rule 8.78(a)(2)(B);

3. Amend rule 8.78 and its accompanying advisory committee comment to reflect existing appellate practice concerning agreement to e-service through an electronic filing service provider (EFSP), and to exempt courts from the e-service rules applicable to parties; and

4. Revise form APP-009-INFO to clarify that Code of Civil Procedure section 1010.6(a)(2)(A)(ii) addresses e-service in the trial courts, or superior courts, including their appellate divisions, and that rule 8.78 addresses e-service in the Courts of Appeal, and to reflect the option of using an EFSP to e-serve a document.

The text of the amended rules and the revised form is attached at pages 8–13.

Relevant Previous Council Action

Rule 8.25, adopted as rule 40.1, addresses service, filing, and filing fees. There are no relevant previous amendments to the rule.

Rules 8.70 to 8.79, the appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended and renumbered since that time. Effective January 1, 2017, rule 8.72 was revised to state additional responsibilities of the court. At the same time, rule 8.78 was renumbered from rule 8.71, and amended to (1) allow a party who files a document electronically to indicate the party's preference to be served paper copies, by filing a notice with the court and serving it on the other parties; (2) apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; (3) provide that a proof of electronic service need not state that the person making service is not a party; and (4) delete the requirement that a proof of electronic service state the time of service.

Analysis/Rationale

Effective January 1, 2018, the Legislature amended Code of Civil Procedure section 1010.6 to authorize electronic service only on persons who have expressly consented to receive electronic service in that specific action in the trial court.[1] The trial court and appellate court rules had allowed the act of electronically filing alone to evidence consent to receive electronic service, but the 2018 amendments to section 1010.6 eliminated this option for trial courts. As amended, subdivision (a)(2)(A)(ii) states:

> For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has

[1] All further unspecified statutory references are to the Code of Civil Procedure.

> ordered electronic service on a represented party or other represented person under subdivision (c) or (d). Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent.

(Code Civ. Proc., § 1010.6(a)(2)(A)(ii).)

Subdivision (e) directs the Judicial Council to "adopt uniform rules for electronic filing and service of documents *in the trial courts of the state*, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service." (§ 1010.6(e) (emphasis added).) There are no provisions in section 1010.6 that expressly speak to appellate court proceedings or to the adoption of rules for electronic service in the appellate courts.[2]

It appears that the 2018 amendments to section 1010.6 only apply to the trial courts, not to the appellate courts, and that because section 1010.6 and its legislative history are silent about e-service in the appellate courts, the existing procedures in the Supreme Court and the Courts of Appeal do not need to change. To clarify the procedures in these reviewing courts, the committee therefore proposes amending rules 8.25, 8.72, and 8.78 and revising form APP-009-INFO to affirm that express consent to electronic service is not required from every party in each specific appellate proceeding.

The committee recommends making the following clarifying changes to the rules:

Proof of service

Rule 8.25 establishes general requirements relating to serving and filing documents in reviewing courts, including requirements relating to proof of service. Currently, however, this rule does not reflect that a proof of service may be generated by an EFSP. This amendment clarifies that, if a document is to be served electronically by the EFSP, a proof of service need not be attached to the document presented for filing because one will be generated by the EFSP.

Responsibilities of e-filers

Rule 8.72 presently requires e-filers to furnish an email address at which they agree to accept service. The proposal acknowledges that furnishing an email address does not necessarily mean a party has authorized e-service because a party may opt out of e-service under rule 8.78(a)(2)(B).

[2] References herein to "appellate courts" and "reviewing courts" do not include the appellate divisions of the superior courts.

Electronic service
The proposal amends rule 8.78(a)(2)(B) to reflect existing appellate practice. Although the rule has long provided that the act of electronically filing any document with the court is deemed to show a party's agreement to e-service, the actual practice has been to rely on a party's registration with the court's EFSP and concurrent provision of an email address—prerequisites to electronically filing any document with the court—as a basis for showing agreement to e-service. This proposed change maintains the status quo with respect to e-filing and e-service in the Supreme Court and the Courts of Appeal, and more accurately reflects how parties authorize e-service in these courts.

The proposal also amends the advisory committee comments to rules 8.25 and 8.78, and revises form APP-009-INFO, to clarify that e-service consent procedures in the Supreme Court and the Courts of Appeal are governed by these appellate rules, not section 1010.6(a)(2)(A)(ii).

Finally, the proposal exempts courts from the e-service rules applicable to parties, reflecting that courts send notifications and transmit documents rather than serving documents on parties. No changes are proposed with respect to e-service on courts.

Policy implications
In the appellate courts, e-filing and e-service are cost effective and convenient options for most individuals. With access to the internet, individuals may participate in appellate proceedings even if they do not have access to transportation or a permanent mailing address. E-filing and e-service eliminate the need and associated costs of paper, printers, copiers and fax machines, and obviate barriers like having to take paper documents to a post office or other courier to effect service and to a courthouse for filing.

Although e-filing and e-service are conveniences for most, it has been reported that they could disadvantage others, including those in rural and low-income households who do not have regular or reliable internet access. The committee acknowledges that internet access is not universally available in California, and it is committed to providing equal access to courts. The e-filing and e-service rules exempt self-represented litigants from the requirement to file documents electronically (Cal. Rules of Court, rule 8.71(a)), and include an option allowing individuals to choose to be served paper copies at a specified address (Cal. Rules of Court, rule 8.78(a)(2)(B)). This proposal makes no changes to these options and, in the committee's view, does not impose any additional burdens on self-represented litigants or individuals without consistent access to the internet.

Experience and other practicalities support maintaining existing appellate procedures, despite recent changes to the procedures in the trial courts. E-filing and e-service in the appellate courts and the trial courts are in different stages of implementation. The Judicial Council first adopted rules for e-filing and e-service in the appellate courts in 2010 as a pilot project in the Court of Appeal, Second Appellate District, and then in 2012 for all appellate courts. Last year, the Appellate Advisory Committee proposed instituting mandatory e-filing with statewide formatting requirements (subject to certain exceptions), effective January 1, 2020, which the

council approved. Consistent with mandatory e-filing in the appellate courts, the appellate rules treat e-filing as agreement to receive e-service unless a party opts out of e-service. (Cal. Rules of Court, rule 8.78(a)(2)(B).) As for the trial courts, e-filing was authorized in 2012, when the Legislature enacted Assembly Bill 2073 (Stats. 2012, ch. 320). A pilot project on mandatory e-filing in the Superior Court of Orange County from 2013 was a success;[3] as of 2019, 29 of the 58 superior courts provide e-filing and e-service to the public.[4] Although the trial courts are making commendable progress in implementing e-filing, it nevertheless remains true that while all appellate courts uniformly rely on e-filing and e-service, only half of the trial courts have standardized the practice.

Comments

The proposed amendments were circulated for public comment as part of the spring 2020 comment cycle. Five commenters—three professional bar associations, one superior court, and one publisher—submitted comments on this proposal. Two commenters agreed with the proposal, and two agreed with the proposal only if modified. One commenter did not indicate a position but suggested language changes to rule 8.25. The committee has modified its proposal to address a suggestion concerning proof of service.

A court-rules publisher that provides information to firms practicing in California urged retaining the phrase "by any method permitted by the Code of Civil Procedure" in rule 8.25(a)(1), suggesting that its removal could cause confusion about how service may be accomplished. The committee recommends removing this phrase because it is too broad. (As one example, section 1017 provides for service by telegraph, which is not a permissible method of service in these reviewing courts.) Both the accompanying advisory committee comment and *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) provide guidance on how to serve documents in these courts.

The publisher also suggested revising the advisory committee comment to state expressly that section 1010.6(a)(2)(A)(ii)'s consent requirement is inapplicable in matters before the Supreme Court and Courts of Appeal. The committee concluded that the proposed new language for the advisory committee comments to rules 8.25 and 8.78 adequately explains that the appellate e-filing rules—not the title 2 trial court rules, which are derived from section 1010.6(a)(2)(A)(ii)—govern electronic service consent procedures in the Supreme Court and Courts of Appeal.

The Appellate Practice Section of the San Diego Bar Association agreed with the proposal, but suggested language for rule 8.25(a)(2) to more accurately reflect how e-service works if a party uses an EFSP to serve electronically a document. If an e-filer chooses to use the EFSP's e-servicing option, the EFSP serves the document on selected recipients, and a proof of service is

[3] See Judicial Council of Cal., *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project* (Sept. 30, 2014), www.courts.ca.gov/documents/lr-SC-of-Orange-e-file-pilot-proj.pdf.

[4] See Judicial Council of Cal., *Report to the Legislature: State Trial Court Electronic Filing and Document Service Accessibility Compliance* (Dec. 23, 2019), https://jcc.legistar.com/View.ashx?M=F&ID=7977274&GUID=AE037AC0-DC91-496B-83D9-CDCDE8D0674A.

automatically generated. The e-filer does not physically attach a proof of service to the document presented for filing, as the rule currently provides. To bring the general proof-of-service provision into conformity with current practice, the committee recommends a minor change that was not circulated for public comment. The change codifies existing practice, as noted by the commenter, by adding alternative language to subdivision (a)(2), "or, if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service."

A chart with the full text of the comments received and the committee's responses is attached at pages 14–20.

Alternatives considered

The committee considered proposing rules that would implement section 1010.6's express consent requirements in the appellate courts. The committee concluded that such a significant change in procedure was not supported for at least three reasons. First, the Legislature did not address the appellate courts when it amended section 1010.6. Second, case filings might be delayed due to unexpected service requirements where the parties have been relying on e-service in the appellate courts for several years. Third, there could be substantial costs associated with directing the courts' EFSPs to develop an opt-in option at case initiation.

The committee concluded that e-filing and e-service have proved to be successful in the appellate courts, and that their benefits outweigh any potential disadvantages. The committee also is not aware of any compelling reasons to adopt the trial courts' practice at this time. The committee, therefore, proposes clarifying and maintaining existing appellate procedures for e-service.

The committee also considered leaving the appellate rules and information sheet unchanged at this time. Considering the trial courts' e-service procedures, however, the committee was concerned that preexisting references to the Code of Civil Procedure in the appellate rules and information sheet could cause confusion for practitioners and litigants. The committee also recognized that the appellate rules did not fully reflect current practice and wanted the rules to be clearer about when e-service is authorized in the Supreme Court and the Courts of Appeal.

Fiscal and Operational Impacts

Implementation of this proposal should not have significant fiscal or operational impacts. This proposal is intended to create efficiencies and to assist parties and courts in understanding the existing appellate procedures. Unlike the alternative of implementing section 1010.6(a)(2)(A)(ii), which could burden the courts and litigants with additional requirements relating to e-service, no costs of implementation are anticipated other than informing courts and litigants of the new rule amendments and form revisions.

Attachments and Links

1. Cal. Rules of Court, rules 8.25, 8.72, and 8.78, at pages 8–10
2. Form APP-009-INFO, at pages 11–13

3. Chart of comments, at pages 14–20
4. Link A: Code Civ. Proc., § 1010.6, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP

Rules 8.25, 8.72, and 8.78 of the California Rules of Court are amended, effective January 1, 2021, to read:

Rule 8.25. Service, filing, and filing fees

(a) Service

(1) Before filing any document, a party must serve~~, by any method permitted by the Code of Civil Procedure,~~ one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1), or, if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service. The proof must name each party represented by each attorney served.

(b)–(c) * * *

Advisory Committee Comment

Subdivision (a). ~~Subdivision (a)(1) requires service "by any method permitted by the Code of Civil Procedure." The reference is to the several permissible methods of service provided in~~ Code of Civil Procedure sections 1010.6– ~~1020~~ 1013a describe generally permissible methods of service. *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) provides additional information about how to serve documents and how to provide proof of service. In the Supreme Court and the Courts of Appeal, registration with the court's electronic filing service provider is deemed to show agreement to accept service electronically at the email address provided, unless a party affirmatively opts out of electronic service under rule 8.78(a)(2)(B). This procedure differs from the procedure for electronic service in the superior courts, including their appellate divisions. See rules 2.250–2.261.

* * *

Rule 8.72. Responsibilities of court and electronic filer

(a) * * *

(b) Responsibilities of electronic filer

Each electronic filer must:

(1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept ~~service~~ receipt and filing confirmations under rule 8.77 and, if applicable, at which the electronic filer agrees to receive electronic service; and

(3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Rule 8.78. Electronic service

(a) Authorization for electronic service; exceptions

(1) A document may be electronically served under these rules:

(A) If electronic service is provided for by law or court order; or

(B) If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.

(2) A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) ~~Electronically filing any document with the court~~ Registering with the court's electronic filing service provider and providing the party's electronic service address. ~~The act of electronic filing shall be~~ Registration with the court's electronic filing service provider is deemed to show that the party agrees to accept service at the electronic service address that the party has ~~furnished to the court under rule 8.72(b)(2)~~ provided, unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

(3) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for

by law or court order. All provisions of this rule that apply or relate to a party also apply to any nonparty who has agreed to or is otherwise required by law or court order to accept electronic service or to electronically serve documents.

(b)–(f) * * *

(g) Electronic ~~service~~ delivery by court and electronic service ~~or~~ on court

(1) The court may ~~electronically serve~~ deliver any notice, order, opinion, or other document issued by the court ~~in the same manner that parties may serve documents~~ by electronic ~~service~~ means.

(2) * * *

Advisory Committee Comment

In the Supreme Court and the Courts of Appeal, registration with the court's electronic filing service provider is deemed to show agreement to accept service electronically at the email address provided, unless a party affirmatively opts out of electronic service under rule 8.78(a)(2)(B). This procedure differs from the procedure for electronic service in the superior courts, including their appellate divisions. See rules 2.250–2.261.

INFORMATION SHEET FOR PROOF OF SERVICE
(COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in the Court of Appeal, a party must serve one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To "serve" a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. Section 1010.6(a)(2)(A)(ii) addresses electronic service in the trial courts, or superior courts, including their appellate divisions. Rule 8.78 of the California Rules of Court addresses electronic service in any case in the Court of Appeal. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by (1) electronic transmission, transmitting a document to the electronic service address of a person; or by (2) electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service, or if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have internet access, a fillable version of form APP-009 is available at *www.courts.ca.gov/forms*. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Form Approved for Optional Use
Judicial Council of California
APP-009-INFO [Rev. January 1, 2021]

www.courts.ca.gov

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side*: Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.
3. Fill in the name of the document that you are serving.
   a. If you are serving the document by mail, check the box in item 3a and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:
      (1) Check the box in item 3a(1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox. Check the box in item 3a(1)(b) if you will put the document in the mail at your place of business.
      (2) Provide the date the documents are being mailed.
      (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item 3a(3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
      (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

      Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

   b. If you personally delivered the document, check the box in item 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under item 3b, for each person to whom you delivered the document, you need to provide:
      (1) The name of the person;
      (2) The address at which you delivered the document;
      (3) The date on which you delivered the document; and
      (4) The time at which you delivered the document.

      If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

Continued on the reverse

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically (and you are not using an electronic filing service provider's automatic electronic document service), you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at *www.courts.ca.gov/forms*. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Electronic Service (Court of Appeal)* (form APP-009E) as follows:

1. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–4 as follows:

1. You are stating that you are at least 18 years of age.
2. a. Check one of the boxes and provide your home or business address.
   b. Provide your electronic service address. This is the email address at which you have agreed to accept electronic service.
3. Fill in the names of the documents that you are serving.
4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item 4c and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."
   a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or names of the parties represented.
   b. Provide the electronic service address of the person to whom you are sending the document.
   c. Provide the date on which you transmitted the document.

After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled-in form with the document you are serving to each person served.

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

If you are not the party for whom the documents are served, give the original completed Proof of Service to the party for whom you served the document.

SPR20-03

Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Aderant CompuLaw By Miri K. Wakuta Rules Attorney Culver City	NI	Aderant CompuLaw respectfully submits the following comments to the proposed amendments set forth in SPR 20-03. We are concerned that the proposed amendment to CRC 8.25 is too broad for the stated purpose and may raise confusion as to the general applicability of CCP 1010.6 to appellate cases. Invitation to Comment SPR20-03 points out that the e-service consent procedure set forth in CCP 1010.6(a)(2)(A)(ii) does not apply to appellate court proceedings since subdivision (e) only directs the adoption of uniform rules for "electronic filing and service of documents in the trial courts of the state." (SPR 20-03, 2.) The Committee states that the purpose of the proposed amendments is to clarify e-service consent procedures in the Supreme Court and the Courts of Appeal. Removing the phrase, "by any method permitted by the Code of Civil Procedure," from Rule 8.25(a)(1) seems unnecessary. Despite differing e-service consent procedures, it would remain accurate that a party may serve a document "by any method permitted by the Code of Civil Procedure." Even the proposed amendment to CRC 8.25 Advisory Committee Comment states, "Code of Civil Procedure sections 1010.6, 1013a describe generally permissible methods of service." The need for clarification is not with the permissible method of service but with the inapplicability of CCP	The committee thanks the commenter for this input. No further response required. The committee recommends removing the phrase, "by any method permitted by the Code of Civil Procedure," because it is too broad. For example, section 1017 provides for service by telegraph, which is not a permissible method of service in these reviewing courts. The accompanying advisory committee comment and related information sheet (form APP-009-INFO) advise that Code of Civil Procedure sections 1010.6–1013a describe generally permissible methods of service.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			1010.6(a)(2)(A)(ii) in the Supreme Court and the Courts of Appeal. We recommend the language of Rule 8.25 not be amended. Rather, the Advisory Committee Comment should specifically comment to the inapplicability of CCP 1010.6(a)(2)(A)(ii). We suggest the Advisory Committee Comment to CRC 8.25 be revised to include the following statement: "The express consent requirement set forth in CCP 1010.6(a)(2)(A)(ii) for electronic service does not apply to matters before the Supreme Court and Courts of Appeal. Rather, CRC 8.78(a)(2) governs electronic service consent procedures in the Supreme Court and Courts of Appeal." Aderant CompuLaw is a software-based court rules publisher providing deadline information to many firms practicing before the California Supreme Court and Courts of Appeal. We expect this issue to be important to our users. Thank you for your consideration of these comments.	The committee declines to make these changes. With respect to rule 8.25(a), see discussion above. With respect to the advisory committee comment, the language in the proposal makes clear that rule 8.78, not California Code of Civil Procedure section 1010.6(a)(2)(A)(ii), governs electronic service consent procedures in the Supreme Court and Courts of Appeal. The language also includes (1) a reference to the existing opt-out provision in the appellate e-filing rules, and (2) a reference to the rules in title 2, trial court rules, that do not apply in these reviewing courts. No further response required.
2.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs, Leah Spero, Chair Sacramento	AM	The Committee on Appellate Courts supports this proposal so long as parties are given notice at the time they register with the court's electronic filing service provider (EFSP) that by registering and providing an electronic service address, they consent to electronic service for all purposes during their case, including service by the court and the opposing party, unless they opt out.	The committee notes the commenter's support for the proposal if modified. As discussed in the committee response below, the requested modification is beyond the scope of this rules proposal. However, although notice is not furnished by the EFSP at the time of registration as suggested by the commenter, rule 8.78 and the advisory committee comments to rule 8.25 and 8.78 notify parties of their consent by registration

	Commenter	Position	Comment	Committee Response
				with the court's EFSP and the option to opt-out affirmatively under rule 8.78(a)(2)(B).
			The Committee on Appellate Courts is mindful that digital inclusion is still a work in progress in California. We celebrate the appellate courts' transition to e-filing and eservice, but we do not want the resulting convenience to some to disadvantage others, including those in rural and low-income households. As the Advisory Committee and the Judicial Council are already aware, many Californians do not have household internet access (or have only a cellphone, or an extremely slow connection). Although they may be able to access WiFi for a limited time at a public location, or use their cellphone data plan, to successfully register with an EFSP and initiate an appeal, they will be seriously disadvantaged if, by doing so, they inadvertently relinquish paper/mail service of notice and filings if they do not have regular, reliable internet access.	The committee appreciates the commenter supplying this information about access to the internet.
			Only a third of rural California households have internet access, compared to 78% of urban households, according to an EdSource analysis of California Public Utilities Commission data in December 2019. (EdSource, Disconnected: Internet Stops Once School Ends for Many Rural California Students, available at <https://edsource.org/2019/disconnected-internet-stops-once-school-ends-for-manyrural-california-students/620825>.) The Public Policy Institute of California has noted:	No further response required.

SPR20-03
Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			"Though most demographic groups have seen significant increases in broadband subscriptions at home, gaps persist for low-income, less educated, rural, African American, and Latino households. Between 54% and 67% of these households had broadband subscriptions in 2017, compared to 74% for all households. Among low income households without broadband, 53% cited lack of interest and 25% cited affordability as key barriers. Notably, these households were more likely to rely on cellphones to access the internet." (California's Digital Divide, available at <https://www.ppic.org/publication/californias-digital-divide/>.) It is also a practical reality that many households are sharing a single device with children who are engaged in distance schoolwork during the COVD-19 pandemic, fire evacuations, and other periodic disruptions. In those households, inadvertent relinquishment of paper/mail service carries privacy and parenting implications. (See EdSource, More California Students Are Online, But Digital Divide Runs Deep with Distance Learning, available at <https://edsource.org/2020/more-california-students-areonline-but-digital-divide-runs-deep-with-distance-learning/630456>; see also California Emerging Technology Fund, Annual Report, available at <http://www.cetfund.org/progress/annualsurvey>.)	No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Thus, we recommend that a clear, plain-language advisory regarding the practical implications of registration, and the opt out alternative, should be required to be prominently displayed by EFSPs at the time of registration.	The committee appreciates this suggestion and shares the commenter's focus on providing equal access to the courts. The committee also acknowledges that internet access is not universally available in California. For this and other reasons, the existing appellate rules include an opt-out provision. Making changes to EFSPs' systems is beyond the scope of this rules proposal, but the committee will convey the recommendation to staff who work with these providers.
3.	Orange County Bar Association By Scott B. Garner, President Newport Beach	A	No specific comment provided.	The committee notes the commenter's support for the proposal.
4.	San Diego Bar Association Appellate Practice Section By Helen Izra, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to review and comment on the proposed amendments SPR20-03 to the California Rules of Court that relate to electronic service of documents. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments. The APS supports the changes proposed by SPR20-03 but suggests that the Council further amend the rules to reflect better how electronic service works with Electronic Filing Service Providers ("EFSP"). As worded, rule 8.25, subdivision (a)(2) states that "[t]he party must attach to the document presented for filing a proof of service." EFSPs, however, can	The committee thanks the commenter and notes its support for the proposal if modified. The committee appreciates the commenter supplying this information about current e-filing practices and has modified the proposal accordingly.

	Commenter	Position	Comment	Committee Response
			automatically generate a proof of service when a filer utilizes the service for electronic filing and service. Such a proof of service is therefore not attached to the actual document that the filer submits but is rather generated by the EFSP itself. For example, the TrueFiling system, which most California appellate courts utilize, says this about how the system generates a proof of service: "Auto-Servicing: Through auto-servicing you can choose to automatically e-serve filings and send a system-generated Proof of Service filing to the Court. When auto servicing is indicated, you no longer need to file a Proof of Service for the filing – one will be automatically created when you submit a filing to the Court." (TrueFiling User Guide, Release 1.0.36 p. 85, at <http://www.truefiling.com/documentation/UserGuide.pdf>). Such a system generated proof of service is therefore not attached to the document that the filer filed. The APS therefore proposes that the Judicial Council further amend rule 8.25, subdivision (a)(2) to add language such as "[t]he party must attach to the document presented for filing a proof of service **or, if filing electronically, the party may have the Electronic Filing Service Provider generate a proof of service."** Such language would better reflect how the EFSP system works and also allow filers to take advantage of the EFSP's full functionality.	The committee agrees and has revised the language of rule 8.25(a)(2) to bring the proof of service provision into conformity with current e-filing practices, which includes automatic electronic service and generation of a proof of service by the EFSP.

SPR20-03

Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's support for the proposal.

Item number: 03

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 20, 2020

Title of proposal: Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend rule 8.77

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Eric Long, 415-865-7691, eric.long@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: October 28, 2019
Project description from annual agenda: Amend rule 8.77 to clarify that an e-filed document received by the court before midnight that meets the filing requirements is deemed to have been filed that day. This project addresses an ambiguity in the rule that has resulted in inconsistent treatment of e-filed documents that are received after business hours. Source of the project: California Lawyers Association. Subcommittee: Rules.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.77

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 31, 2020

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule regarding confirmation of receipt and filing of electronically submitted documents to clarify the date and time of filing. Among other things, rule 8.77 of the California Rules of Court currently addresses the receipt date of submissions received electronically after the close of business but is silent as to when a received document is deemed filed. The committee proposes amending rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council amend rule 8.77 of the California Rules of Court to clarify the date and time of filing for documents submitted electronically, effective January 1, 2021.

The text of the amended rule is attached at page 5.

Relevant Previous Council Action

Rules 8.70 to 8.79, the appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended and renumbered since that time. Effective January 1, 2017, rule 8.77 was renumbered and amended to state the requirements for a court to give notice to the filer when a document is received by the court and when a document is accepted or rejected for filing.

Analysis/Rationale

Electronic filing allows for submission of documents at any time, even after a clerk's office is closed. Regardless of the date and time a document is submitted and received, however, the clerk's office needs time to confirm that the document complies with filing requirements. Such review by the clerk's office must be prompt, but it is not instantaneous for an electronically submitted document. Moreover, when a document is submitted after court business hours, the document will not be reviewed by the clerk's office before the next business day.

Under rule 8.77(a)(1), an electronically submitted document is initially "received" by the court, and a confirmation of receipt is generated. Rule 8.77(c) instructs that if a document is received after 11:59 p.m., it is considered received on the next court day.[1] Once a court clerk confirms that the document complies with filing requirements, a confirmation of "filing" indicating the date and time of filing is generated under rule 8.77(a)(2). However, rule 8.77 does not specify when the document is deemed filed.[2]

The California Lawyers Association, Committee on Appellate Courts, Litigation Section, suggested that the committee consider clarifying rule 8.77 to resolve any ambiguity about when an electronic document is filed. A member of the association reported that appellate courts have been determining the date and time of filing in different ways. Some courts deem compliant documents filed on the day they were received, but other courts deem them filed on the day the clerk approves the document for filing.

A practitioner reported electronically submitting a writ petition for filing in an appellate district on Day 1 at 5:30 p.m. A court clerk reviewed the materials on Day 2 and determined that the filing requirements had been satisfied. The clerk filed the document on Day 2 even though it was

[1] "A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day." (Cal. Rules of Court, rule 8.77(c).)

[2] Some California appellate courts also address this topic by local rule. The local rules for the Courts of Appeal, First and Fifth Appellate Districts, state: "Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight." (Ct. App., First Dist. and Fifth Dist., Local Rules, rules 12(f) and 8(g), respectively, Electronic Filing.) Additionally, the Third Appellate District provides: "Electronic filing does not alter any filing deadlines. An electronic filing not completely received by the court by 11:59 p.m. will be deemed to have been received on the next court day." (Ct. App., Third Dist., Local Rules, rule 5(j), Electronic Filing.) The local rules for the Second, Fourth, and Sixth Districts do not address the topic.

received by the court on Day 1. If the litigant's writ petition had been due on Day 1, it would have been untimely.

The amended rule would alleviate concerns of litigants and practitioners that their timely, compliant submissions may be deemed untimely solely because they were e-filed after a clerk's office's hours. The proposal is of particular importance when an appellate due date is jurisdictional (e.g., a statutory writ).

Policy implications

A uniform time-of-filing provision will assist with the consistent handling of electronically submitted documents and is consistent with California Rules of Court, rule 1.20, which states, "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk." (Cal. Rules of Court, rule 1.20.) Rule 8.77(a)(2) will now provide that an electronically submitted document that complies with filing requirements is deemed filed on the date and time it was received by the court as stated in the confirmation of receipt.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the spring rules cycle. The committee received comments from five bar associations and courts, including the Superior Court of San Diego County and the Superior Court of Orange County, Family Law Division. One court commenter answered the questions posed in the proposal and indicated that the proposal appropriately addressed the stated purpose; three commenters agreed with the proposal; and one commenter agreed with the proposal if modified. The committee considered all comments; the primary issue raised is discussed below.

Receipt by the court versus submission to the electronic filing service provider

The proposed rule circulated using the date and time of receipt by a court of an electronic submission from an electronic filing service provider (EFSP) as the date and time of filing. Under current practice, a document to be filed electronically reaches an appellate court through an EFSP. Although courts generally receive e-filers' submissions from the EFSP almost instantaneously, the committee recognized the possibility that transmission delays could occur. For example, an e-filer might submit a document just before midnight, but the court might not receive the document from the EFSP until after midnight because of a transmission delay between the EFSP and the court. Given the possibility of delay, the committee considered two alternatives to using the date and time of receipt as the date and time of filing: (1) using the date and time of submission to the EFSP as the date and time of filing, or (2) imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely that a court will receive a submission before midnight.

With possible transmission delays in mind, the invitation to comment asked commenters to document any transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court. Only one commenter, the San Diego Bar Association, Appellate Practice Section, addressed the potential for delays. The commenter canvased its members but did not document any of its members' experiences with transmission delays using

TrueFiling. Instead, the commenter urged the committee to use the date and time of submission by the e-filer to the EFSP as the date and time of filing—one of the two alternatives considered—based on the EFSP's User Guide publication showing an example from 2013. The committee is not persuaded to change the proposal as suggested without additional information. Absent real-world examples of transmission delays, the committee understands that transmission is almost instantaneous, and recommends using receipt by the court, over receipt by the EFSP, as proposed. The committee notes that the rule also allows an e-filer to file a motion to accept a document as timely filed if a deadline is not met because of delayed delivery. (Cal. Rules of Court, rule 8.77(d).) If the committee becomes aware of delays that cause deadlines to be impacted, the committee will reconsider the issue in a future rulemaking cycle.

A chart with the full text of the comments received and the committee's responses is attached at pages 6–10.

Alternatives considered

The committee considered no action but determined that the experience of litigants and practitioners warrants the change proposed. As discussed above, the committee considered using the date and time of submission to the EFSP as the date and time of filing. The committee also considered imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely that a court will receive a submission before midnight.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

Attachments and Links

1. Cal. Rules of Court, rule 8.77, at page 5
2. Chart of comments, at pages 6–10

Rule 8.77 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 8.77. Actions by court on receipt of ~~electronic filing~~ electronically submitted document; date and time of filing

(a) Confirmation of receipt and filing of document

(1) *Confirmation of receipt*

When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt by the court. ~~A document is considered received at the date and time the confirmation of receipt is created.~~

(2) *Filing*

If the electronically submitted document received by the court complies with filing requirements, the document is deemed filed on the date and time it was received by the court as stated in the confirmation of receipt.

~~(2)~~ (3) *Confirmation of filing*

~~If the document received by the court under (1) complies with filing requirements,~~ When the court files an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing as specified in the confirmation of receipt, and ~~is proof that the document was filed on the date and at the time specified. The filing confirmation~~ must also specify:

(A) Any transaction number associated with the filing; and

(B) The titles of the documents as filed by the court.

~~(3)~~ (4)– ~~(4)~~ (5) * * *

(b)–(e) * * *

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs Leah Spero, Chair Sacramento	A	The Committee supports the proposal to amend rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date the document was received by the court. This proposal recognizes the importance of establishing a uniform practice among the Courts of Appeal in filing electronically submitted documents, and in providing practitioners with certainty as to when their electronically submitted documents will be deemed filed by the courts.	The committee thanks the commenter and notes its support for the proposal.
2.	Orange County Bar Association By Scott B. Garner, President	A	No specific comment provided.	The committee notes the commenter's support for the proposal.
3.	San Diego Bar Association Appellate Practice Section By Helen Izra, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to review and comment on the proposed amendments SPR20-04 to the California Rules of Court that relate to the filing date for electronically filed documents. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments. The APS urges that a document be deemed filed on the date and time a party submitted it to an Electronic Filing Service Provider ("EFSP"). Currently, the proposed amendment would change rule 8.77 to state that "an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court." Invitation to Comment SPR20-04 p. 1, at <	The committee thanks the commenter and notes its support for the proposal if modified. The committees appreciate the commenter's concerns relating to a possible delay between a filer's submission to an Electronic Filing Service Provider ("EFSP") and the EFSP's transmission of that submission to the court. Despite the example set out in the TrueFiling User Manual, which is a 2015 publication that reflects a 2013 example, the committee understands that the transmission between the two is virtually

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			https://www.courts.ca.gov/documents/spr20-04.pdf> Problems may arise, however, if there is a delay between when the filer submits to the EFSP and when the EFSP submits to the court. The EFSP utilized by most California courts, TrueFiling, often imposes a delay between when the filer submits to the system and when the system transmits the document to the court. For example, the TrueFiling User Manual shows an example of the Filing Detail in a hypothetical case. That Filing Detail indicates that the system received a filing at 8:07 p.m. That document was conditionally accepted by TrueFiling at 8:19 p.m. It was not until 8:27 p.m. that the system reflects "Payment received. Filing officially accepted and filed." (TrueFiling User Guide, Release 1.0.36 p. 90, at <http://www.truefiling.com/documentation/UserGuide.pdf>) A problem, therefore, could arise if a filer submits to an EFSP close to midnight. For example, if that filer submits to the EFSP at 11:30 p.m. on May 20, 2020 but the EFSP does not submit to the court until 12:01 am on May 21, 2020, the court will deem that document filed on May 21, 2020. If the filer had a deadline of May 20, 2020, the document would be late even though the filer submitted it to the EFSP before the deadline.	instantaneous. If delays like those described in the example are occurring in practice, the committee is not aware of them. However, if e-filers do experience any issues like the one described in the comment, the committee is interested in hearing about them and with that information, the committee would consider further revisions to the rule's language in a future rulemaking cycle. The committee is especially interested in hearing from any e-filers who experience delays of this duration, and any issues with deadlines being impacted.

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Due to the problems caused by this delay, the APS therefore recommends that the proposed rule 8.77, subdivision (a)(1) instead read as follows: "When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt by the court. A document is considered received at the date and time the filer submitted it to the Electronic Filing Service Provider."	The committee will reconsider in a future rulemaking cycle the proposed language if users bring examples of transmission delays in practice.
4.	Superior Court of Orange County Family Law Division	NI	No comments on this proposal as a whole. Request for Specific Comments **Does the Proposal appropriately address the stated purpose?** Yes **The proposed rule uses the court's receipt date and time as the date and time of filing because transmission from the electronic filing service provider to the court is generally instantaneous. Would it be more appropriate, however, to use the date and time of submission to the EFSP as the date and time of filing? Or would another alternative prove more workable? If an alternative is appropriate, describe the alternative and explain why it would be preferable to the instant proposal.**	The committee thanks the commenter for the responses to the questions posed in the Invitation to Comment. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			The proposed rule is appropriate, since transmission is instantaneous for most filings. There have been a few instances where the submission gets stuck, but it's rare. For those that do get delayed, once the issue is resolved, the court is able to retrieve the original date and time of submission. **Can you document one or more transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court? If so, would an after-hours submission deadline adequately address such a transmission delay, and if so, what would the deadline be?** Yes, but it doesn't happen often. **Would the proposal provide cost savings? If so, please quantify.** No foreseeable savings or costs to implement. **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 CMS's, or modifying CMS's?** In Orange County, appeals are not handled via eFiling. Implementing this as a new process would require a revision of procedures and minimal training hours.	The committee thanks the commenter for this information. No further response required. No further response required. The committee thanks the commenter for the input, but notes that this rule applies to the appellate courts, not the superior courts.

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes **How well would this proposal work in courts of different sizes?** For those courts that process appeals via eFiling this should work well for courts of any size.	No further response required. No further response required.
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's support for the proposal.

Item number: 04

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Method of Notice to Court Reporter; Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Sarah Abbott, 415-865-7687, Sarah.Abbott@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Consider amending rules 8.405, 8.450, and 8.454 to remove or modify the requirement that the clerk notify the court reporter "by telephone and in writing" to prepare a transcript. This language may be outdated or inconsistent with other rules requiring notification by the clerk. Source of the project: Director of Juvenile Operations, Los Angeles Superior Court. Subcommittee: Rules.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Method of Notice to Court Reporter

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 31, 2020

Contact
Sarah Abbott, 415-865-7687
Sarah.Abbott@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending three appellate court–related California Rules of Court governing juvenile appeals and writs to replace the requirement that the clerk notify the court reporter to prepare the reporter's transcript "by telephone and in writing" with a requirement that the reporter be notified "in a manner providing immediate notice" to the reporter. The existing "by telephone and in writing" requirement is not found in other appellate rules governing notice to court reporters, and the change would provide clerks more flexibility in how they provide notice while retaining the requirement that the notice be immediate.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021, amend rules 8.405, 8.450, and 8.454 of the California Rules of Court to:

1. Omit the requirement that the court clerk notify the court reporter "by telephone and in writing" to prepare the reporter's transcript, to more closely align these rules with other

appellate rules, and provide clerks with more flexibility in how they provide notice to court reporters; and

2. Add a requirement that the clerk notify the reporter "in a manner providing immediate notice."

The text of the amended rules is attached at pages 6–8.

Relevant Previous Council Action

Rule 8.405 of the California Rules of Court, governing juvenile appeals, was adopted in 2010. Effective January 1, 2016, the Judicial Council amended rule 8.405, but the amendments are not relevant to this proposal. Rules 8.450 and 8.454—governing notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28—were adopted in 2005, renumbered in 2007, and amended in 2007, 2008, 2009, 2010, 2013, and 2017, but the amendments are not relevant to this proposal.

Analysis/Rationale

Rules 8.400 through 8.474 of the appellate rules govern juvenile appeals and writs. Rule 8.405(b)(1) currently requires that when a notice of appeal is filed in a juvenile case, the superior court clerk "must immediately . . . [n]otify the reporter *by telephone and in writing* to prepare a reporter's transcript . . ." (Italics added.) Rules 8.450 and 8.454 address the filing of a notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28, respectively.[1] Subdivision (h)(1) of each of these rules requires that: "When the notice of intent is filed, the superior court clerk must: [¶] (1) Immediately notify each court reporter *by telephone and in writing* to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review. . ." (Italics added.)

No other appellate rule requires a court clerk to immediately notify a court reporter "by telephone and in writing" to prepare a transcript. Some appellate rules require that the reviewing court clerk "make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail" of an urgent situation such as an appellate decision to grant a writ or issue an order staying or prohibiting a proceeding to occur in the lower court within a short time frame.[2] Other appellate rules require the clerk to notify the parties "by telephone or another expeditious method" of events that would seem to require immediate attention, such as shortening the time

[1] Welfare and Institutions Code section 366.26 governs hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court, and section 366.28 governs the appeal of decisions involving placement or removal orders following the termination of parental rights.

[2] See, e.g., rules 8.452(h)(3), requiring the appellate court clerk to make "reasonable effort to notify the clerk of the respondent court by telephone or e-mail" if a writ under Welfare and Institutions Code section 366.26 staying or prohibiting a proceeding to occur within seven days or requiring action within seven days is granted; 8.456(h)(3) (same for writ or order under juvenile writ under Welf. & Inst. Code, § 366.28); 8.489(b)(1) (same for writ or order in Supreme Court and Court of Appeal); 8.975(b)(1) (same for small claims writ in appellate division).

for oral argument.[3] However, none of these rules requires immediate telephonic and written notification for court reporters. Instead, the rules addressing notice to court reporters in other types of appeals generally require court clerks to "promptly" send notice of an appeal to court reporters without specifying the method of notification.[4] Notably, however, by statute juvenile appeals have priority over most other appeals.[5]

This proposal would replace the requirement in rules 8.405, 8.450, and 8.454 that court clerks notify court reporters "by telephone and in writing" with a requirement that the superior court clerk notify reporters "in a manner providing immediate notice." The committee believes that the amendments will more closely align these rules with other appellate rules and provide clerks with additional flexibility in how they provide notice, while retaining the requirement that notice of the need to prepare a transcript in juvenile writs and appeals be immediate.

Policy implications

The committee did not identify any significant policy implications relating to the proposed amendments.

Comments

The proposed amended rules were circulated for public comment between April 10 and June 9, 2020, as part of the regular spring comment cycle. As circulated, the proposal was to omit—rather than replace—the phrase "by telephone and in writing." The committee received six comments on this proposal. Two commenters, the Superior Court of San Diego County and the Litigation Section of the Committee on Appellate Courts of the California Lawyers Association (CLA), agreed with the proposal. Four commenters—the Court of Appeal for the Third Appellate District, the California Court Reporters Association (CCRA), the Orange County Bar Association (OCB), and the Service Employees International Union (SEIU)—disagreed with the

[3] See, e.g., rules 8.256(b), requiring the appellate clerk to "immediately notify the parties by telephone or other expeditious method" if the notice period for oral argument in Court of Appeal is shortened; 8.392(b)(5) (same if Court of Appeal requires an answer to a request for certificate of appealability to review superior court decision denying relief on successive habeas corpus petition in death penalty–related proceeding); 8.524(c) (same if notice period for oral argument in Supreme Court is shortened); 8.702(g) (same if notice period for oral argument in CEQA appeals is shortened); 8.716 (same if notice period for oral argument in appeal of decision to compel arbitration is shortened); 8.885(c)(1) (same if notice period for oral argument in misdemeanor appeal is shortened); 8.889(b)(2) (same if court decides to require answer to request for rehearing in misdemeanor appeal); 8.929(c)(1) (same if notice period for oral argument in infraction appeal is shortened).

[4] See, e.g., rules 8.130(d)(2) (in civil appeals, "clerk must promptly send the reporter notice of the designation [of the reporter's transcript] and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent to the reporter" when the clerk receives specified items); 8.304(c)(1) (in criminal appeals, "[w]hen a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing . . . to each court reporter, and to any primary reporter or reporting supervisor"); 8.834(b)(4) (in limited civil appeals to the appellate division of the superior court, "clerk must promptly notify the reporter to prepare the transcript when the court receives" the deposit or substitute for the cost); 8.864(a)(1) (in misdemeanor appeals, "[i]f the appellant elects to use a reporter's transcript, the clerk must promptly send a copy of appellant's notice making this election and the notice of appeal to each court reporter"); 8.915(a)(1) (same for infraction appeals).

[5] See Welf. & Inst. Code, §§ 800(a) [delinquency], 395(a)(1) [dependency]; Code Civ. Proc., § 45 [appeals from orders freeing a minor from parent's custody/control].

proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9 through 14.

Of the two commenters who agreed with the proposal, the Superior Court of San Diego County provided no substantive comment, while CLA agreed that removal of the phrase "by telephone and in writing" would bring the rules more in line with other appellate rules and provide clerks with greater flexibility.

In contrast, the four commenters that disagreed with the proposal expressed concern that, if the phrase "by telephone and in writing" were removed from the rules, court reporters and appellate courts would be negatively impacted due to the unique time constraints of juvenile writs and appeals. In particular, the Court of Appeal for the Third Appellate District emphasized that juvenile writs and appeals are "priority" cases with very short deadlines. The appellate court opined that if the rules were amended as proposed, a trial court clerk might provide notice to the reporter by paper mail only, which—even if mailed "immediately"—could delay the reporter's actual notice of the need to prepare a transcript, which in turn could delay the Court of Appeal's receipt of the transcript and hinder its ability to conduct a timely review. The appellate court suggested that, if the rules are amended to remove the telephonic notice requirement, they also be amended to require notice "by the most expedient method available."

CCRA similarly disagreed with the proposal, opining that the existing notice requirements are "imperative" because (1) juvenile writs and appeals are time-sensitive and take precedence over all other court reporter work, and (2) changing the rules would hinder appellate courts' timely receipt of transcripts in juvenile cases. CCRA commented that immediate notice by telephone is needed to inform reporters that a notice of writ or appeal has been filed while written notice gives the reporter other necessary information to complete the transcript.

OCB expressed a similar opinion that immediate notice both by telephone and in writing is useful in juvenile writs and appeals. SEIU, a union representing court reporters in 37 counties, also disagreed with eliminating required telephonic notice to court reporters in juvenile writs and appeals, noting that notice often goes to an office of court reporter services before the relevant individual reporter receives the notice, which results in a loss of time for the individual reporter. SEIU suggested that if the proposal is not rejected, then email notice be provided directly to the individual reporter.

In response to the comments received, and to address timing concerns while still providing court clerks with greater flexibility in how they accomplish the required immediate notice to court reporters, the committee modified the proposal. Rather than merely omitting the "by telephone and in writing" requirement, the committee decided to also replace it with a requirement that the clerk be notified of the need to prepare a transcript "in a manner providing immediate notice." This modification is intended to reiterate the need for immediate notice and foreclose the possibility of notice only by paper mail or of notice being directed to an office as opposed to court reporters themselves, without dictating the manner in which such immediate notice must be given.

The only other substantive comment made by the Court of Appeal, Third Appellate District, addressed the potential implementation requirements for courts. The appellate court commented that, while there would be no cost savings as a result of the proposal, there would also be no implementation requirements and no different impact based on the size of the court, and three months would be sufficient time for implementation.

Alternatives considered

Because the requirement that court clerks notify court reporters "by telephone and in writing" does not directly conflict with another rule, the committee considered not recommending any amendment to these rules. Following public comment, the committee further considered this alternative, but determined that withdrawing the proposal would not address one of the reasons that initially prompted it: to allow greater flexibility in how court clerks provide notice to court reporters in these cases.

The committee also considered simply omitting the phrase "by telephone and in writing" from each rule without replacement. However, based on public comments received, the committee modified the proposal as discussed above.

Following public comment, the committee also considered the Court of Appeal's suggestion to insert the phrase "by the most expedient method available," as well as other phrasing variations, but ultimately decided that inserting the phrase "in a manner providing immediate notice" would best accomplish the goals of the proposal. To avoid repeated use of the terms "immediate" and "immediately" as well as "notify" and "notice" in a single phrase, the committee considered substituting the word "inform" for "notify" and "immediately notify" at the beginning of the relevant rule provisions, but concluded that this change might be misinterpreted and would make the phrasing of these rules inconsistent with other rules relating to notice to court reporters.

Fiscal and Operational Impacts

The proposal replaces the requirement that the court clerk immediately notify court reporters "by telephone and in writing" to prepare a reporter's transcript in juvenile appeals and writs with a requirement that court reporters be notified "in a manner providing immediate notice." This will likely result in minimal or no implementation costs.

Attachments and Links

1. Cal. Rules of Court, rules 8.405, 8.450, and 8.454, at pages 6–8
2. Chart of comments, at pages 9–14

Rules 8.405, 8.450, and 8.454 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 5. Juvenile Appeals and Writs

Article 2. Appeals

Rule 8.405. Filing the appeal

(a) * * *

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) Send a notification of the filing to:

(i) Each party other than the appellant, including the child if the child is 10 years of age or older;

(ii) The attorney of record for each party;

(iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(iv) Any Court Appointed Special Advocate (CASA) volunteer;

(v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and

(vi) The reviewing court clerk; and

(B) Notify the reporter ~~by telephone and in writing~~, in a manner providing immediate notice, to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

(2)–(6) * * *

Article 3. Writs

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter ~~by telephone and in writing~~, in a manner providing immediate notice, to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

(i)–(j) * * *

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter ~~by telephone and in writing~~, in a manner providing immediate notice, to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

(i)–(j) * * *

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Court Reporters Association by Joshua Thubei Sacramento, CA	N	The California Court Reporters Association (CCRA) a statewide organization whose membership includes freelance court reporters, CART/captioning, official and student communities, opposes deleting or changing the duties of the clerk to notify court reporters. The specific duty of the clerk to notify the reporter by telephone and in writing is imperative. Juvenile appeals take precedence over all other work. They are also time sensitive. Reporters must be notified timely with both a telephonic and written notification, their time runs before receiving a written notice of appeal and the phone call is to give the reporter a heads up that an appeal has been filed. Written notice gives the reporter all the pertinent information they need to complete the transcript, such as dates, appealing parties, and what is to be contained within the reporter's transcript. Changing this rule would be detrimental to appellate courts receiving timely reporters' transcripts on juvenile appeals.	The committee appreciates the commenter's perspective on the benefit of both telephonic and written notice to court reporters and the appellate courts. The committee has considered this comment and modified the proposal to reiterate the need for immediate notice to the court reporter, while providing some flexibility for clerks in how they provide immediate notice.
2.	California Lawyers Association by Committee on Appellate Courts, Litigation Section Sacramento, CA	A	The Committee on Appellate Courts supports this proposal, which omits anomalous wording from the rules governing notices from court clerks to court reporters (regarding transcript preparation)	The committee notes the commenter's support for the proposal; no further response is required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			in juvenile appeals and writs. Rules 8.405, 8.450, and 8.454 currently require court clerks to notify court reporters "by telephone and in writing" to direct transcript preparation. This language is unique: No other appellate rules require telephonic and written notice. The proposal merely removes this phrase and instead provides clerks with greater flexibility in how to provide notice. The proposal originated with a superior court clerk in charge of juvenile appeals. This proposal appropriately resolves the problem and should be adopted.	
3.	Court of Appeal, Third Appellate District by Colette M. Bruggmann, Assistant Clerk/Executive Officer Sacramento, CA	N	The proposed rule change is likely to cause delay in providing notice to the court reporter of the need to prepare reporter's transcripts for these expedited writs and appeals. The proposed rule change would permit notice to the reporter to be provided "immediately" by mail only, potentially resulting in several days of delay. The requirement of immediate telephonic and written notice in these cases is not an "anomaly" but, rather, a necessity for these unusual cases with priority and short timelines. In notice of intent cases, the reporter has only 12 calendar days within which to lodge their transcripts with the	The committee appreciates the commenter's perspective on the impact that elimination of the telephonic notice requirement could have, and the delay that could result, if only "paper mail" is used. The committee has considered this comment and modified the proposal to reiterate the need for immediate notice to the court reporter, while providing some flexibility for clerks in how they provide immediate notice. The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			superior court clerk. Any extension of time requires an "exceptional showing of good cause." (Cal. Rules of Court, rule 8.450(d).) Accordingly, any delay (even a day or two) in getting notice to the reporter of the need to prepare transcripts is significant and puts a strain on both the reporter and the appellate court. Compliance with the time limits, including those for preparation and submission of the record, is especially crucial to implementing the Legislature's stated intent that reasonable efforts be made to complete appellate review of extraordinary writ petitions within the applicable time periods for conducting the selection and implementation hearing (Welf. & Inst. Code, § 366.26, subd. (l)(3)(B) and (4)(A)); In re Albert A. (2016) 243 Cal.App.4th 1220, 1241–1242.) Any delay in transmitting the record to the appellate court makes it difficult, if not impossible, for the appellate court to do so. Even with the current rule requiring immediate telephonic notice to the court reporters, this court has had ongoing and substantial difficulty getting reporters' transcripts in time to process extraordinary	The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			writ petitions prior to the selection and implementation hearings. Juvenile appeals are also priority proceedings. In appeals, the reporter must lodge the transcripts within 20 calendar days. While time constraints are not as restrictive in appeals, delays in obtaining records due to requests for extension of time to prepare transcripts in appeals from a termination of parental rights, especially adversely affect the appellate court's ability to timely process the appeal. In order to minimize delays in providing permanency to minors, the appellate court is charged with making reasonable efforts to complete such appeals within 250 days of the filing of the notice of appeal. Does the proposal appropriately address the stated purpose? The only stated purpose provided for the rule change is to more closely align these rules with other appellate rules and to provide flexibility to the superior court clerks in how they might choose to provide notice to reporters. While the proposal may address these goals, it does so at the expense of implementing the purpose of the	The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this. The committee appreciates the commenter's responses to the specific questions presented in the invitation to comment; no further response is required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			rules and the ability of the appellate court to timely obtain the record in these priority cases. If it is determined that the requirement of telephonic notice is burdensome to the superior court clerks, perhaps a modification to delete "by telephone and in writing" and replace with "by the most expedient method available" would be more advisable. This would eliminate the option of providing notification only by mail, but permit immediate, instant electronic notification, which would be equally expedient as telephone notification.	The committee appreciates the commenter's suggestion to revise the proposal to reiterate that immediate notice is required and has modified the proposal accordingly.
			Would the proposal provide cost savings? If so, please quantify.	
			There is no cost savings.	The committee has considered the stated implementation requirements; no further response is required.
			What would the implementation requirements be for courts?	
			None. Although the proposal affects the courts, it would not require implementation by the appellate court.	The committee has considered the stated implementation requirements; no further response is required.
			Would three months from Judicial Council approval of this proposal until its effective	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? It does not appear to have any different impact to court based on the size of the court.	The committee has considered the stated implementation requirements; no further response is required. The committee has considered the stated implementation requirements; no further response is required.
4.	Orange County Bar Association by Scott B. Garner, President Newport Beach, CA	N	The proposal notes that juvenile appeals have priority over most other appeals. What is the impetus to remove the belt and suspenders approach with respect to juvi cases? Is it that burdensome to place a call to the reporter? Sounds like the recommendation was made by a director of juvenile operations at one court but not otherwise considered.	The committee appreciates the commenter's perspective on the utility of the proposed amendments. No further response is required.
5.	Service Employees International Union by Michelle Castro, Director of Government Relations Sacramento, CA	N	The proposed rule would eliminate telephone notice to court reporters. With only 10 days to submit a juvenile writ and 20 days for an appeal, time is of the essence with regard to notice. The reporter must prepare and submit the transcript within that time frame and not from when the notice is provided. The original telephone notice was instituted because of these tight timelines. Oftentimes, notice goes to the office of court reporter services THEN to the reporter and precious time is lost. If the proposed	The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			rule is not rejected then we request email notice be provided directly to the affected court reporter. If not, the telephone notice remains essential to ensure court reporters have adequate time to file transcripts. Thank you for your consideration.	
6.	Superior Court of San Diego By Michael M. Roddy, Court Executive Officer	A	The Appellate Advisory Committee proposes amending three appellate rules of court for juvenile appeals and writs to update the language regarding the notice the clerk must give to the court reporter to prepare the reporter's transcript. The requirement that the notice must be "by telephone and in writing" is not found in other appellate rules governing notice to court reporters and the change would provide clerks with more flexibility in how they provide notice.	The committee notes the commenter's support for the proposal; no further response is required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Item number: 05

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: August 20, 2020

Title of proposal: Jury Instructions: Revisions to the Judicial Council of California Criminal Jury Instructions (CALCRIM)

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
revisions to several jury instructions

Committee or other entity submitting the proposal:
Advisory Committee on Criminal Jury Instructions

Staff contact (name, phone and e-mail): Kara Portnow, 865-4961, kara.portnow@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: October 28, 2019
Project description from annual agenda: Maintenance, New Instructions and Expansion into New Areas, Technical Corrections

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-075
For business meeting on September 24, 2020

Title
Jury Instructions: Revisions to Criminal Jury Instructions

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Criminal Jury Instructions (CALCRIM)

Recommended by
Advisory Committee on Criminal Jury Instructions
Hon. Peter J. Siggins, Chair

Agenda Item Type
Action Required

Effective Date
September 24, 2020

Date of Report
July 31, 2020

Contact
Kara Portnow, 415-865-4961
kara.portnow@jud.ca.gov.

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2020 supplement of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective September 24, 2020, approve the following changes to the criminal jury instructions prepared by the committee:

1. Revisions to CALCRIM Nos. 105, 202, 226, 358, 505, 508, 511, 524, 525, 540B, 563, 571, 580, 581, 582, 590, 592, 604, 766, 767, 810, 820, 860, 862, 863, 875, 970, 982, 983, 1071, 1080, 1124, 1128, 1191B, 1201, 1202, 1300, 1402, 1501, 1530, 1551, 1945, 1950, 1952, 2501, 2503, 2514, 2578, 2622, 2623, 2720, 2721, 2745, 2746, 2747, 3100, 3101, 3102, 3103, 3130, 3145, 3149, 3150, 3160, 3161, 3162, 3163, 3456, 3457, 3177, and 3477; and

2. Updates to the Introduction to Felony-Murder Series to delete the reference to an appendix. The publisher will remove the appendix of revoked and former felony murder instructions now that appellate courts have upheld the constitutionality of the legislative changes to felony murder liability.

A table of contents and the full text of the revised instructions are attached at pages 21–338.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the Advisory Committee on Criminal Jury Instructions and its charge.[1] In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court.

Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM.* The council approved the last *CALCRIM* release at its April 2020 meeting.

Analysis/Rationale

The committee revised the instructions based on comments and suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes.

Instructions that define Great Bodily Injury (CALCRIM Nos. 505, 508, 511, 524, 525, 571, 580, 581, 582, 590, 592, 604, 810, 820, 860, 862, 863, 875, 970, 982, 983, 1300, 1402, 1501, 1530, 1551, 2501, 2503, 2514, 2578, 2720, 2721, 2745, 2746, 2747, 3130, 3145, 3149, 3150, 3160, 3161, 3162, 3163, 3177, and 3477)

In *People v. Medellin* (2020) 45 Cal.App.5th 519, 524 [258 Cal.Rptr.3d 867], the court reversed felony assault convictions because "the prosecutor's closing argument, relying on and quoting CALCRIM's great bodily injury definition, prejudicially misstated the law." A few weeks after *Medellin* was decided, *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] upheld CALCRIM's great bodily injury definition over an objection that the definition was ambiguous and erroneous. Unlike *Medellin*, the prosecutor in *Quinonez* argued, consistent with the great bodily injury definition, that the victim's injuries were "significant or substantial." The committee added a bench note alerting users about these two cases and warning that the instruction's definition of great bodily injury could result in reversal if the prosecutor improperly argues that great bodily injury is anything that is more than minor injury alone.

[1] Rule 10.59(a) states: "The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's criminal jury instructions."

Conspiracy to Commit Murder (CALCRIM No. 563)

In *People v. Beck and Cruz* (2019) 8 Cal.5th 548, 639 [256 Cal.Rptr.3d 1, 453 P.3d 1038], the California Supreme Court found harmless error when the trial court failed to instruct that conspiracy to commit murder requires express malice. In its holding, the court noted that CALCRIM No. 563 "would avoid any possibility of confusion if [it] told the jury that when it refers to the instructions that define murder, it should not consider any instructions regarding implied malice because conspiracy to commit murder may not be based on a theory of implied malice." *Id.* at p. 642. Based on this suggestion, the committee added language to the instruction to clarify that the jury should not consider any theory of implied malice when determining whether the defendant is guilty of conspiracy to commit murder.

Death Penalty: Weighing Process (CALCRIM Nos. 766 & 767)

An appellate attorney and a committee member both pointed out that a bracketed sentence in No. 766 is contrary to the holding in *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 203–206 [112 Cal.Rptr.3d 746, 235 P.3d 62]. The optional sentence states, "In making your decision about penalty, you must assume that the penalty you impose, death or life without the possibility of parole, will be carried out." This sentence, which is based on the holding in *People v. Kipp* (1988) 18 Cal.4th 349, 378–379 [75 Cal.Rptr.2d 716, 956 P.2d 1169], contradicts *Letner and Tobin,* which disapproved instructing the jury to assume that whatever sentence it chooses will be carried out. The committee deleted the sentence as well as the reference to *Kipp* in the bench notes. The committee also modified the title of No. 767 and the bench notes to clarify that No. 767 (which is based on the language in *Letner and Tobin*) should be given upon request, and not only in response to a jury question.

Contacting Minor With Intent to Commit Certain Felonies (CALCRIM No. 1124)

In *People v. Korwin* (2019) 36 Cal.App.5th 683, 688 [248 Cal.Rptr.3d 763], the court held that the attempt prong of Penal Code section 288.3 does not require that the victim be an actual minor. The committee expanded the third element of the instruction to include when the defendant reasonably believed that the victim was a minor and cited the case in the authority section. The committee also deleted the bench note discussion about whether the court has a duty to instruct on good faith belief that the victim was not a minor.

Engaging in Oral Copulation or Sexual Penetration With a Child 10 Years of Age or Younger (CALCRIM No. 1128)

In *People v. Vital* (2019) 40 Cal.App.5th 925 [254 Cal.Rptr.3d 22], the defendant was prosecuted as an aider and abettor for violating Penal Code section 288.7(b). The trial court instructed with CALCRIM No. 1128, which told the jury that the prosecutor had to prove that Vital (instead of the direct perpetrator) was at least 18 years old at the time of the offense. The appellate court found this was error, holding that the court should have instructed the jury that the direct perpetrator must satisfy the 18-year-old age requirement. The committee added a bench note to this instruction advising about the holding in *Vital* and directing the user to substitute the word "perpetrator" in place of "defendant" in the instruction if the defendant is charged under an aiding and abetting theory.

Kidnapping: For Ransom, Reward, or Extortion (CALCRIM No. 1202)

People v. Stringer (2019) 41 Cal.App.5th 974, 983 [254 Cal.Rptr.3d 678] and *People v. Harper* (2020) 44 Cal.App.5th 172, 192–193 [257 Cal.Rptr.3d 440] both pointed out that CALCRIM No. 1202 failed to specify a secondary victim for the fourth type of aggravated kidnapping ("to exact from another person any money or valuable thing"). The committee added "from a different person" to element 3 and made other changes to distinguish the primary victim from the secondary victim. The committee also added both cases to the Authority section.

Filing False Document (CALCRIM No. 1945)

In *People v. Schmidt* (2019) 41 Cal.App.5th 1042 [254 Cal.Rptr.3d 694], the court held that recording a deed acquired through fraud does not render the deed "false" or "forged" within the meaning of Penal Code section 115. The committee added this case to the Related Issues section.

Intimidating a Witness (CALCRIM Nos. 2622 & 2623)

People v. Brackins (2019) 37 Cal.App.5th 56 [249 Cal.Rptr.3d 261] held that subdivision (b) of Penal Code section 136.1 does not require malice. In CALCRIM No. 2622, the committee deleted the bracketed word "maliciously" from Alternatives 1B, 1C, and 1D and added the case to the Authority section. In both instructions, the committee removed the discussion in the bench notes that suggested the malice requirements could apply to all violations of Penal Code section 136.1(b).

Prior Convictions (CALCRIM Nos. 3100, 3101, 3102, & 3103)

A trial court judge noted that the commentary section in CALCRIM No. 3100 contained an outdated reference to *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054] and failed to mention *People v. Gallardo* (2017) 4 Cal.5th 120, 134 [226 Cal.Rptr.3d 379, 407 P.3d 55], which held that "the approach sanctioned in *McGee* is no longer tenable." The committee removed the reference to *McGee*, added *Gallardo*, and substantially edited the discussion about when the court or the jury should determine the prior conviction. The committee also made conforming changes to the authority sections in Nos. 3101, 3102, and 3103.

Policy implications

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

The proposed additions and revisions to *CALCRIM* circulated for public comment from June 8 through July 10, 2020. The committee received responses from four commenters. The text of all comments received and the committee's responses are included in a comments chart attached at pages 6–20.

Alternatives considered

The proposed revisions are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council's contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments and Links

1. Chart of comments, at pages 6–20
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 21–338

CALCRIM-2020-01 Invitation to Comment
Revised CALCRIM Instructions
All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
105, 226, 202, 358, 540B, 563, 1124, 1128, 1191B, 1201, 1202, 1945, 2622, 2623, 3100, 3101, 3102, 3103, 3456, 3457, Introduction to Felony-Murder Series.	Scott B. Garner, president, on behalf of the Orange County Bar Association	Agree.	No response necessary.
Instructions that define Great Bodily Injury	Karl Fenske, Deputy Public Defender, Los Angeles County	Agree if modified. GBI should be defined as follows: "Great bodily injury means significant or substantial physical injury. It is an injury that is greater than moderate harm." If something is greater than minor harm AND greater than moderate harm it logically must be greater than moderate harm. Use of the word "minor" at all just invites the argument that is error but also invites jurors to have similar confusion by the use of the adjective.	The committee declines to make the suggested change. *People v. Quinonez* recently upheld the GBI definition. Further, *People v. Medellin* held that the definition itself was not wrong; the prosecutor's erroneous argument was the basis for reversal.
505, 508, 511, 524, 525, 571, 580, 581, 582, 590, 592, 604, 810, 820, 860, 862, 863, 875, 970, 982, 983, 1300, 1402, 1501, 1530, 1551, 2501, 2503, 2514, 2578, 2720, 2721, 2745, 2746, 2747, 3130, 3145, 3149, 3150, 3160, 3161, 3162, 3163, 3177, 3477	Scott B. Garner, president, on behalf of the Orange County Bar Association	Agree if Modified. The proposal adds new case authority under Bench Notes: **The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)** As proposed, the legal proposition from *People v. Medellin*, as stated, is confusing. The following change is suggested: "It is error to argue great bodily injury is shown by greater than minor injury alone." Citation to *People v. Quinonez* upholding the instruction is correctly cited and is an accurate statement of the legal proposition.	The committee disagrees with the comment that the proposed bench note is confusing.

CALCRIM-2020-01 Invitation to Comment
Revised CALCRIM Instructions
All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
563	John Philipsborn[*] State Bar 83944	Given the suggested revisions to this instruction contained at the foot of page 237 of the packet of proposed revisions, I respectfully suggest that the last sentence, which reiterates the requirement of an intent to kill in this type of conspiracy also reiterate the timing element specified in the case law and in (1) of the instruction. Please consider the following revision: "**Conspiracy to commit murder requires an intent to kill and an intent to agree at the time of the agreement**." [This phrasing is supported by the Supreme Court's discussion in *People v. Morante* (1999) 20 Cal.4th 403, 416-17. The proposal made here avoids misunderstandings caused by misleading or incomplete argument on both the elements and timing of the concurrence of intents of the time of the agreement.]	The committee decided not to add the suggested language about timing because it would be redundant. The instruction already sets forth the timing requirements in the elements section.
766 & 767	John Philipsborn*	CALCRIM Instruction 766 [Death Penalty: Weighing Process] and 767 [Jurors' Responsibility During Deliberation] each are revised significantly. In 766, the revision deletes what had been permissible language to the effect that jurors should "...assume that if they returned a verdict of death, the penalty of death would be carried out." *People v. Kipp* (1998) 18 Cal.4th 349, 377-78. The revisions proposed completely excise this option, notwithstanding the fact that the State Supreme Court's decision in *Kipp*, and that other decisions cited therein, make it clear that this instruction or one that is comparable may be given "if there is a reason to believe the jury may have some concerns or misunderstanding in this regard." *Id.*, at 379. The proposed revision also affects the Bench Notes to CALCRIM 766 by deleting mention of *Kipp*. The indication going forward is that trial courts should place reliance on the discussion in *People v. Letner and Tobin* (2010) 50 Cal.4th 99 to offer the only acceptable response about jurors' responsibility during deliberations when questions arise about matters like future changes in law; postconviction litigation; the effect of the moratorium, etc. The revision is flawed for that reason. First, the proposed revisions fail to underscore for the trial courts and parties in capital cases the discussion in *Caldwell v. Mississippi* (1985) 472 U.S. 320, 328-29, that it is "...constitutionally impermissible to rest a death sentence on a determination made by a	The committee disagrees with this comment. CALCRIM No. 767 incorporates the holding of *Letner and Tobin* and is in accordance with subsequent case law. Concerns about any apparent tension with *Caldwell* must be decided by the courts, not by this committee. Further, the proposed deletion in No. 766 would not prevent a court from giving a *Kipp* instruction upon a defendant's request.

[*] Certified criminal law specialist; offered response to initial CALCRIM instructions; chair/vice chair of CACJ amicus curiae committee since 1992; author/co-author, CEB Criminal Law/Procedure book 3 chs; California Death Penalty Defense Manual, author/coauthor; extensive homicide trial experience; counsel in more than 30 death eligible cases.

Instruction	Commentator	Comment	Response
		sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." Second, the revisions ignore the statements by the State Supreme Court in the above-cited *Letner and Tobin* to the effect that: "We must acknowledge that our cases have displayed some inconsistency concerning instructions akin to the following one requested [in this case by the defense]...." *Id*., at 204-05. Part of what had been requested in that case was an instruction that the jurors "...'presume that if a defendant is sentenced to death, he will be executed in the gas chamber.'" *Ibid.* A plain reading of the decision in *Letner and Tobin* makes it clear that the instruction now embodied in CALCRIM Revision 767 is language that the State Supreme Court explained as follows: "In the future, if in a particular case the parties and trial court decide that an instruction on this issue would be appropriate, the trial court might instruct the jury as follows: ...[setting forth the language that is now in proposed CALCRIM 767 revision]...." See 50 Cal.4th 99, at 206-07 [emphasis supplied]. The decision makes it clear that the Court was suggesting one possible acceptable approach– not the only acceptable approach. The problems being encountered by trial courts, as demonstrated by some current pending litigation that CACJ is involved in, call for allowing trial courts (and parties requesting instructions) the kind of flexibility that is discussed in *Kipp, supra,* and in *Letner and Tobin* in addressing jurors' beliefs, preconceptions, and stated attitudes during jury selection and in avoiding the incursion of specified personal beliefs or allegedly 'informed opinions' about the actual operation of the death penalty at the time that jurors are either on the cusp of penalty deliberations or in those deliberations and questions about whether the legal or factual situation may change in the future. The revisions should recognize that given questions may require a different response than the one embodied in CALCRIM Revision 767 as currently formulated and discussed in the Bench Notes and subsequent appended explanatory material. The *Letner and Tobin* instruction may be insufficient in a given case to ensure compliance with the constitutionally rooted directive, cited above from *Caldwell v. Mississippi, supra*, at 328-29.	

All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
		The proposed deletion of the bench notes and possible '*Kipp* Instruction' provided for in current CALCRIM 766, and the absence of further recommendations and discussion of recommended alternatives to merely sticking with the *Letner and Tobin, supra,* language is unwise, and appears to ignore the sorts of issues that trial courts and parties in death penalty cases have been dealing with for a number of years given California's insistence on going forward with death penalty prosecutions. A failure to provide trial courts the encouragement to carefully review the discussion in *Kipp* and *Letner and Tobin* risks further misleading prospective and actual death penalty jurors in future cases, should your current revisions persist as currently indicated.	
766 & 767	Miles David Jessup, Senior Deputy Public Defender on behalf of the Orange County Public Defender's Office	We believe that the modification of the above referenced jury instructions should improve rather than diminish jurors' appreciation of the gravity of their decision. Our concerns are particularly grave given recent amplification of public perception that death verdicts do not lead to actual executions, and the recent prosecution-backed ballot proposition to expedite and enforce death verdicts. A violation of the defendant's Eighth Amendment rights arises from any juror mindset to the effect that others may second-guess their decision to impose the death penalty because this diminishes the awesome responsibility[1] of the penalty phase jury in a capital case. Courts in California have implicitly assumed that no instruction on this point is warranted unless an explicit juror question or comment manifests to indicate a juror is considering the issue. That assumption is entirely unwarranted in California today. The current CALCRIMs 766 and 767 contain one bracketed phrase to directly address this issue, and include use notes to support giving the instruction if requested by the defense. In response to court decisions finding fault in the wording of that admonition, the current proposed revisions would eliminate rather than fix it, leaving only an ambiguous and vaguely implied admonition in CALCRIM 767.	The committee disagrees with this comment, for the reasons stated above: CALCRIM No. 767 incorporates the guiding principle of *Letner and Tobin* and any apparent tension of its holding with *Caldwell* is beyond the scope of the committee's work.

[1] In *Caldwell v. Mississippi* (1985) 472 U.S. 320, 329-330, the jury was told that if they voted for death, the defendant would not be taken behind the court that day and hanged, but rather he would have an automatic appeal to the state Supreme Court to correct any error. The United States Supreme Court found error in that a core and *constitutionally-necessary* premise of any capital sentencing scheme is "that jurors [are] confronted with the truly awesome responsibility of decreeing death for a fellow human [and they] will act with due regard for the consequences of their decision…" *(Ibid.)* Jurors must not be permitted to treat their potential death decision as anything but actually imposing death on another specific person.

Instruction	Commentator	Comment	Response
		The phrase proposed to be cut from CALCRIM 766 is accurate and lawful in effect, but problematic in wording as it imposes an assumption not backed by fact. Rather the phrase should be reworded to accurately label as speculation any prospect that the condemned might escape execution. Further, CALCRIM 767 as currently drafted paraphrases and waters down the already vague actual instruction upon which it is based (*People v. Letner and Tobin* (2010) 50 Cal.4th 99); at a minimum, it should be revised to reflect that original instruction[2] and revised instructions should preserve recognition of a defense demand right. ***CALDWELL* JURY INSTRUCTIONS: THE POINT** The issues presented by the *Caldwell* case, and by its progeny in California, centers upon the essential acceptance of responsibility by each juror for any decision to kill the defendant, a human being. The defense would assert that the essence of the constitutional violation in *Caldwell* was the imposition of a death verdict by jurors who might not have appreciated the gravity of their decision to put a human being to death: counsel's discussion of appellate review so denigrated the weight of that decision that the entire sentencing process failed. The prosecutor's statements – that any execution would not be immediate and only after an appellate process – was not *itself* the problem; *Caldwell* was not a prosecutorial misconduct case at its core. Rather the *likely effect* of the prosecutor's comments upon the mindset of the jurors was the problem, in particular as the court failed to remedy that issue. In short, the *Caldwell* trial court should have realized the jurors were likely operating under an inappropriate comfort to their psyches, and the court failed to dispossess the jurors of that balm and ensure the jurors really felt the weight of their decision. Moreover, rather than relying upon the absolute minimum instruction that might allow a death verdict to avoid reversal on appeal, the goal of these jury instructions should be to engender the jury mindset deemed essential by the Supreme Court in *Caldwell*. Clearly, there would be no error in explicitly impressing upon a death-qualified jury the full weight of their decision.	

[2] "It is your responsibility to decide which penalty is appropriate in this case. You must base your decision upon the evidence you have heard in court, informed by the instructions I have given you. You must not be influenced by speculation or by any considerations other than those upon which I have instructed you." *Id.* at p. 206

Instruction	Commentator	Comment	Response
		Historical court decisions have built upon an increasingly implausible premise that jurors will not feel their responsibility reduced by the rarity of executions actually conducted in California. This premise should be reexamined given increasingly well-publicized actions of judicial and executive authorities to wholesale block executions in California, together with the widespread action of the electorate to weigh in on the issue. **I. JURORS ARE AWARE OF POSSIBLE IMPEDIMENTS TO ACTUAL IMPOSITION OF THE DEATH PENALTY IN CALIFORNIA, EVEN IF THOSE IMPEDIMENTS MAY HAVE DISSIPATED** It is entirely implausible to assume that any capital case jury in California would not include several jurors who were entirely aware of California's difficulties in actually executing death row inmates for the last 14 years if not much longer. In 2006, a federal judge recognized serious lapses of reliability in the execution protocol then used in California, and halted executions until those issues could be fixed. In 2016, at least 44% of all California adults (a greater percentage of eligible jurors) voted on ballot Proposition 66, a measure specifically calling out the system's failures to carry out executions. And in 2019, Governor Newsom very publicly *paused* all executions in the State (but did not pardon those prisoners or commute the underlying death verdicts). Every capital jury will now have numerous jurors starting the case believing California's condemned prisoners do not face actual execution. Compounding this issue, in *November 2016*, the electorate approved Proposition 66 which entirely changed the process that *until then* had failed to accomplish the killing of condemned prisoners. It is far too early to credibly assess the effectiveness of current efforts to execute those on death row, or prospects to execute new additions to that population. There is no reason to believe the historical progress of death verdicts will be similar to future results. **A. Juror Awareness: Judicial Moratorium (2006)** Any resident of California with any awareness of current events will be aware of California's historical difficulties with actually executing the condemned. In February 2006, U.S. District Court Judge Jeremy D. Fogel blocked the execution of convicted murderer Michael Morales in a lawsuit against the lethal injection protocol, finding that	

Instruction	Commentator	Comment	Response
		the procedure was unconstitutional but could be fixed.[3] This decision was a huge media event at the time, resurfacing sporadically into the headlines since then. From at least that time through passage of Proposition 66 in November 2016, the death penalty apparatus in California has been all but non-functional. **B. Juror Awareness: Proposition 66 (2016)** On November 8, 2016, nearly 13 million California voters expressed their will in a vote for (6,626,159) or against (6,333,731) then Proposition 66.[4] That total represents 44% of the total state adult population[5] as of 2018. Assuming the entire adult population of California was eligible to serve on juries, the average jury would have at least five jurors who voted on Proposition 66. Using common sense, a death qualified jury might reasonably be expected to include more jurors who voted for that proposition than those who voted against it. If we assume those voting on Proposition 66 had at least a rudimentary understanding of the point of that proposition, they would know that its entire point was fixing a death penalty apparatus previously incapable of actually executing the condemned. Advertising in the fight over 2016's Proposition 66 included significant publication of that issue. The official voter information guide included the following background statement in the Analysis by the Legislative Analyst: "***Legal Challenges Can Take a Couple of Decades***. Of the 930 individuals who have received a death sentence since 1978, 15 have been executed, 103 have died prior to being executed, 64 have had their sentences reduced by the courts, and 748 are in state prison with death sentences. The vast majority of the 748 condemned inmates are at various stages of the direct appeal or habeas corpus petition process."	

[3] https://en.wikipedia.org/wiki/Capital_punishment_in_California.
[4] https://elections.cdn.sos.ca.gov/sov/2016-general/ssov/ballot-measures-summary-by-county.pdf (final page) This 12.96 million voters included 88.7% of those voting in an election with just over 75% turnout of registered voters. (https://en.wikipedia.org/wiki/2016_California_Proposition_66.)
[5] This is based on the total 2018 State population of 38,745,900, including 9,324,800 minors and 29,421,100 adults as estimated by the Kaiser Family Foundation. (https://www.kff.org/other/stateindicator/distribution-by-age/?dataView=1&currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22california%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.) Note that this percentage likely undercounts Proposition 66 voters, as all voters are eligible to serve as jurors, but the entire adult population number includes non-citizens, state prisoners, and some others ineligible to serve as jurors.

Instruction	Commentator	Comment	Response
		(https://web.archive.org/web/20160924131440/http://voterguide.sos.ca.gov/en/propositions/66/analysis.htm [bold and italics in original].) Proposition 66 was a measure specifically aimed at speeding up enforcement of death verdicts (with no impact upon life verdicts); the clear argument for this proposition was that virtually no condemned prisoner in California was being executed under the system then in place, and this proposition would remedy that shortcoming. **C. Juror Awareness: Governor's Moratorium (2019)** On March 13, 2019, Governor Newsom implemented a well publicized[6] temporary moratorium on enforcement of death penalty in California. There has been no indication that he would commute any death penalty sentence and those facing execution continue to exhaust their appeals and other remedies. **D. Changed Circumstances: Proposition 66 (2016)** For a bit less than the last three years, the rules governing what happens to a condemned prisoner have changed, due to this ballot proposition specifically designed to increase prospects for actual execution of death row inmates. As that proposition has only been in effect for a very brief period, there truly is no reliable way to predict what ratio of new death row inmates will be killed by the State. **II. WHY EXPLICIT GUIDANCE IS NEEDED IN EVERY CAPITAL CASE IN CALIFORNIA** It is now implausible to suggest that any California capital jury does not need instruction to satisfy Eighth Amendment concerns per *Caldwell v. Mississippi* (1985) 472 U.S. 320. Jurors must be clearly instructed as to the gravity of their decision to	

[6] For a small sampling of the local, state-wide, industry specific and international/general–interest coverage, see e.g., https://www.npr.org/2019/03/12/702873258/gov-gavin-newsom-suspends-deathpenalty-in-california; https://www.reuters.com/article/us-usa-california-death-penaltyidUSKBN1QU099; https://abcnews.go.com/US/californias-suspension-death-penalty-trendexpert/story?id=61653865; https://www.sfchronicle.com/news/article/Gov-Newsom-orders-halt-to-California-s-death-13683693.php; https://sacramento.cbslocal.com/2019/03/13/gavin-newsom-death-penalty-execution-moratorium/; https://www.mercurynews.com/2019/03/13/newsom-death-penalty-moratorium-reaction/; https://www.desertsun.com/story/news/crime_courts/2020/03/02/death-penaltyquestion-riverside-county-and-gov-newsoms-execution-moratorium-california/2850096001/.

Instruction	Commentator	Comment	Response
		impose the taking of the life of the defendant. They must be dispossessed of any notion that their decision to approve a death warrant is something other than the final decision that will kill the defendant. The *Caldwell* rule has made clear that minimum constitutional compliance demands that no juror in a death penalty sentencing matter may be allowed to deflect any responsibility for his or her personal decision to authorize the killing of the defendant. In Caldwell, the violation of the Eighth Amendment occurred when the jury was told the truth: that the defendant would not be "strung up" behind the courthouse, but rather the verdict will be entitled to appellate review. This procedural fact conveyed to the Caldwell jury was entirely accurate, but that was not the issue. It watered down the solemnity of each juror's personal vote to take the life of a fellow human being, and that diluted solemnity had eroded a foundational premise of lawful execution in the United States: jurors deciding to impose death must each truly carry that awesome responsibility" on their own. This sense of responsibility adds crucial reliability to the process. The implication that a later process or decision of others might really make the final decision undermined that premise. As discussed above, the idea that condemned prisoners in California do not actually get executed is both pervasive and unreliable. Historic neglect of the legal apparatus reviewing death sentences and two temporary moratoria (2006 and 2019) have contributed to an extraordinary run of inaction in the State's execution chamber, and in 2016 a vigorous public debate and high participation rate vote fast tracked the exhaustion of appeals to expedite killing of death row inmates. For the last three years, rules governing the review process in death cases have changed, due to this ballot proposition specifically designed to increase rates of actual execution for death row inmates. As that proposition has only been in effect for a very brief period, there is no reliable way to predict what ratio of new death row inmates will be killed by the State. While it is unclear if and when California executions will restart, any individual juror would have to be entirely disconnected from California news for well over the last decade to remain unaware of post-verdict developments' likely impact on actual	

Instruction	Commentator	Comment	Response
		enforcement of any death verdict, much more than the *Caldwell* jurors who were simply advised of the truth that their decision would face an appeal. Explicit consideration of commutation (or similar post-sentencing relief) need not materialize to justify a *Caldwell* instruction. (*People v. Beames* (2007) 40 Cal.4th 907.) As discussed above, several jurors on any given capital jury will have read, considered and voted on legislation designed to address the poor enforcement record of California's death penalty over at least the last many years. No doubt, additional jurors will be aware that Governor Newsom halted all executions in California as of 2019 (actually pausing them, without slowing their march toward exhaustion of remedies for the condemned, and without commuting those sentences). **PROPOSAL 1: CLEAR AND DIRECT INSTRUCTION** We would propose an unbracketed phrase in CALCRIM 766 (or as a standalone CALCRIM 768) to be provided in every capital case to clearly inform the jury of the actual law and the actual nature of execution by this sovereign. Jurors will be much more likely to approach their capital sentencing task solemnly if instructed: **"It is extremely important that every juror take personal responsibility for their own decision and personally confront the truly awesome responsibility of decreeing death for a fellow human being. Similarly, it is extremely important that every juror respect the personal nature of that responsibility [and that no juror seek to impose their will upon the decision of any other juror. If you witness any juror pressure another juror to change their vote, or otherwise seek to undermine a juror's personal decision to vote for or against execution, you should immediately notify the bailiff.]** **In the penalty phase of this case, a jury approval of the death penalty is the final requirement to authorize the State of California [to restrain the defendant in a room designed for executions, without the presence of his friends, family or loved ones, and as he lies alone in that room,] to kill the defendant.** **Given recent changes in California law, there is no valid reason to assume that any prisoner sentenced to death will not be actually killed by the State in the near future.**	The committee declines to incorporate this suggested instruction because it is contrary to the holding in *Letner and Tobin* and, further, contains optional language that could create more error than it purports to cure.

Instruction	Commentator	Comment	Response
		Your decision will actually impose a sentence of either *life imprisonment without parole or death by execution*. Any thought or suggestion that your sentence might not be carried out for any reason would be pure speculation. You must not so speculate or allow any such speculation to enter into your deliberations or your decision in any way." Lawful imposition of the death penalty requires a jury that carries the mindset described above. Our jury instructions should proactively convey the responsibility of the jury, the accurate ramifications of their decision, and standards of behavior. **PROPOSAL 2 (ALTERNATIVE): REPLACE, NOT DELETE** The Judicial Council's proposal for CALCRIM 766 is short sighted, as it would entirely discard the core clause designed to address *Caldwell* concerns due to a problem of word choice. Jurors cannot lawfully give any thought to any possibility that their death sentence might not be carried out due to events after their sentence (*Caldwell*), yet some courts have found the subject clause was inaccurate and therefore improper because it told jurors to assume said death sentence will be carried out. This is a problem of diction, easily fixed. The Judicial Council should rather replace the problematic phrase with an equivalent but accurate phrase, thereby accurately addressing the current state California's death penalty apparatus, and focusing capital jurors on the awesome responsibility they face. The final paragraph above would go a long way to do just that: "Your decision will actually impose a sentence of either life imprisonment without parole or death by execution. Any thought or suggestion that your sentence might not be carried out for any reason would be pure speculation. You must not so speculate or allow any such speculation to enter into your deliberations or your decision in any way." **PROPOSAL 3: REVISE 767, RETAIN DEFENSE DEMAND** In the event that some or all of our proposed instruction is not given, CALCRIM 767 should be revised to reflect at least the actual language suggested by the Supreme Court in the case upon which it is based. The current instruction is even more vague than the original wording. Our proposed changes would be:	The committee disagrees with this proposal for the reasons stated earlier. The committee disagrees with this proposal. The language crafted in CALCRIM No. 767 incorporates the guiding

Instruction	Commentator	Comment	Response
		It is your responsibility to decide which penalty is appropriate for the defendant in this case. Base your decision only on the evidence you have heard in court, informed by ~~and on~~ the instructions that I have given you. ~~Do not speculate or consider anything other than the evidence and my instructions~~ You must not be influenced by speculation or by any considerations other than those upon which I have instructed you. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 206.) Though taken directly from published authority (as adjusted above), CALCRIM 767 is fatally vague, instructing the jury to consider only the evidence heard and instructions given while avoiding any specific admonition about the elephant in the room. The specific admonition (as discussed above) would be deleted in the Judicial Council's proposed revision of CALCRIM 766. These instructions, revised as proposed here, are utterly ineffectual to address the very specific and very serious concerns they purport to address. It is disingenuous to assert that they might sufficiently admonish the jury and effectively counter jurors' natural and impermissible tendency to consider possible barriers to actual imposition of death: commutations, pardons, and the effects of appeals. A critic might fairly examine the Judicial Council's willingness to address the People's concerns much more specifically in much less serious matters[7] and there is no reason to reduce instructions over parameters of death penalty imposition to hints at their bare bones. While this proposal may seem just another example of the pervasive prosecution bias	principle in *Letner and Tobin*. The commenter's proposed changes are unnecessary.

[7] For example, many jury instructions include specific disclaimers to point out that the People do *not* have to prove X, Y or Z; in each instance the *lack of* these elements would be implied in an instruction like CALCRIM 767 to stick to the facts heard and the instruction given. Yet more specific instructions to the benefit of the People are routine. Noted below are *unbracketed* portions of instructions given in every case where the related crime is charged. See e.g., CALCRIMs 820 [Assault causing death of child, "It is not required that he or she intend to break the law, hurt someone else, or gain any advantage"]; 841 [DV battery, "The slightest touching can be enough to commit a battery if it is done in rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind."], and 861-863, 875 [Aggravated assaults, "The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted. No one needs to actually have been injured by defendant's act. But *if someone was injured*, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault…" (emphasis added; note that this instruction omits any potential relevance of a scenario where *no injury* occurs); see next footnote].

Instruction	Commentator	Comment	Response
		in California jury instructions,[8] it is the core instruction that admonishes jurors to disregard certain improper topic areas when considering imposition of death. This instruction should plainly address the specific issues involved. **PROPOSAL 4: RETAIN DEFENSE DEMAND** Perhaps of greater concern is the deletion of use notes language regarding the longstanding recognition that this instruction must be given on request of the defense. The revised instructions would ignore the invidious effect of this issue unless expressly manifested in juror questions or comments. This defense demand concept finds longstanding support in California cases and the reason is obvious: improperly instructing the jury on this issue would only prejudice the defense. That is, this instruction should tell the jury to disregard any speculation that death might not be imposed, and this instruction could only do harm if it actually introduced the topic to a jurors that would not have considered that topic at all. Any improper/unnecessary use of this instruction would only disadvantage the defense. That said, the defense should be permitted to assess the public and reasonably conclude – as argued herein – that no capital jury in today's California will be entirely unaware of and immune to this issue. **A *targeted* non-speculation instruction should be given in every capital case where it is requested by the defense.** **CONCLUSION** The proposed modification of CALCRIM 766 would cut rather than repair a poorly worded admonition crucial to death penalty sentencing. This proposal would roll back recognition that an admonition on this topic must be given on demand of the defense; that roll back would be unjust and unsupported in law.	The committee disagrees with this proposal. *Letner and Tobin* makes clear that this instructional language is an option "if in a particular case the parties and the trial court decide that an instruction on this issue would be appropriate." 50 Cal.4th 99, 206.

[8] For example, many negative or otherwise disadvantageous jury instructions are specifically limited to the defendant in a case where they could be equally applicable in general concept to any other witness, albeit with slight adaptations (see, e.g., 357 [adoptive admissions], 361 [failure to explain or deny], 370 [motive], 371 [suppression or fabrication of evidence], 372 [flight]. Also, our jury instructions afford general witnesses more benefit of the doubt than the person facing trial; compare e.g., CALCRIM 362 [Defendant's false or misleading statements as consciousness of guilt] verses CALCRIMs 105, 226 ["Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently."]

CALCRIM-2020-01 Invitation to Comment
Revised CALCRIM Instructions
All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
		An updated prophylactic instruction is needed to address *Caldwell* issues. The public carry obvious and widespread perceptions of an ineffectual death penalty system, and this threatens capital defendants' legitimate right to a solemn and thoughtful jury. Aggressive advertising and media coverage have pushed a narrative of low rates of actual execution, and yet voters recently targeted and specifically addressed the root causes of that issue. This perception of low enforcement rates – entirely speculative – lessens the gravity required in capital sentencing decisions under the Eighth Amendment and should be addressed in a clear and direct manner in every capital case.	
766	Scott B. Garner, president, on behalf of the Orange County Bar Association	Disagree. This instruction removes the bracketed language of Calcrim 766 which states the following: "In making your decision about penalty, you must assume that the penalty you impose, death or life without the possibility of parole, will be carried out." It is a mistake to remove this bracketed clause, as this language is in place to ensure that jurors seriously weigh their potential death decision as the truly remarkable responsibility that it is. Jurors' individual beliefs and perceptions about the likelihood of a death sentence being carried out likely varies widely considering the recent passage of Proposition 66 and the various moratoria on the death penalty issued in other states, by federal judges in this state, and by California Governor Gavin Newsom. A similar issue was analyzed in the case of *Caldwell v. Mississippi* (1985) 472 U.S. 320, 329-330. In *Caldwell*, the jury was told that if they voted for death, the defendant would not be taken out behind the court that day and hanged but rather that he would have an automatic appeal to the state Supreme Court to correct any error. (*Ibid.*) In finding such comments to be error, the United States Supreme Court held that a constitutionally necessary premise of any capital sentencing scheme is "that jurors [are] confronted with the truly awesome responsibility of decreeing death for a fellow human [and that they] will act with due regard for the consequences of their decision." (*Id.*)	The committee disagrees with this comment, for the reasons stated above.
767	Scott B. Garner, president, on behalf of the Orange County Bar Association	Agree as Modified. This instruction amends the accompanying use notes to Calcrim 767. The amendment removes the portion of the use note which indicates that the court should give this instruction if the defendant requests it. It permits that a defendant may request this instruction be provided to the jurors.	The committee disagrees with this comment for the reasons stated above.

CALCRIM-2020-01 Invitation to Comment
Revised CALCRIM Instructions
All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
		The amendment appropriately indicates the instruction "must" be given in response to a jury question about commutation and removes the requirement that the instruction "only" be used for this purpose. However, the amendment goes too far in that it deletes the provision indicating that the instruction should be given at the request of the defendant and instead gives the court the discretion to give the instruction upon request. This instruction is neutral, it is a correct statement of the law, and it focuses jurors on the important aspects of their deliberations. As such, the original language that a court "should" give this instruction on the request of the defendant should remain.	
1071	Scott B. Garner, president, on behalf of the Orange County Bar Association	Agree as Modified. The amendment to this CALCRIM should include the citation to *Mendoza*, but parties would be better served if the Committee also included a citation to *Fontenot* and Penal Code 1159. Specifically, as *Fontenot* noted, "[a]ttempts may be lesser included offenses of the completed crime – and, at the very least, application of the elements test may not always be straightforward." (*Id.* at p. 70.)	The committee agrees with the suggestion to add *People v. Mendoza* and has made this change to the related issues section. The committee, however, declines to add *People v. Fontenot* and Penal Code, section 1159.
1080	Scott B. Garner, president, on behalf of the Orange County Bar Association	Agree as Modified. The amendment to this CALCRIM should include the citation to *Mendoza*, but parties would be better served if the Committee also included a citation to *Fontenot* and Penal Code 1159. Specifically, as *Fontenot* noted, "[a]ttempts may be lesser included offenses of the completed crime – and, at the very least, application of the elements test may not always be straightforward." (*Id.* at p. 70.)	The committee disagrees with the suggestion to add *People v. Fontenot* and Penal Code, section 1159 as additional authority.
1950 & 1952	Scott B. Garner, president, on behalf of the Orange County Bar Association	Agree as Modified. Adds appropriate instructional language pursuant to Penal Code section 490.2(a) (Prop. 47) for jury to determine whether value of access card was more than $950.00 upon a finding of guilt. Under Authority adds case citation to *Romanowski* in support of added instructional language. Citation given for *Romanowski* is incorrect. Correct citation is: *People v. Romanowski* (2017) 2 Cal. 5th 903, 908 [215 Cal. Rptr. 3d 758, 391 P.3d 633].	The committee agrees with this comment and has made the suggested change.

CALCRIM Proposed Changes:
Table of Contents

Instruction Number	Instruction Title
970	Shooting Firearm or BB Device in Grossly Negligent Manner
982 & 983	Brandishing Firearm or Deadly Weapon
1071	Unlawful Sexual Intercourse
1080	Oral Copulation With Person Under 14
1124	Contacting Minor With Intent to Commit Certain Felonies
1128	Engaging in Oral Copulation or Sexual Penetration With Child
1191B	Evidence of Charged Sex Offense
1201	Kidnapping
1202	Kidnapping: For Ransom, Reward, or Extortion
1300	Criminal Threat
1402	Gang-Related Firearm Enhancement
1501, 1530, 1551	Arson
1945	Filing False Document
1950 & 1952	Sale or Transfer of Access Card; Acquiring or Retaining Account Information
2501	Carrying Concealed Explosive or Dirk or Dagger
2503	Possession of Deadly Weapon With Intent to Assault
2514	Possession of Firearm by Person Prohibited by Statute: Self-Defense
2578	Explosion of Explosive or Destructive Device Causing Death, Mayhem, or Great Bodily Injury
2622 & 2623	Intimidating a Witness
2720 & 2721	Assault by Prisoner

Instruction Number	Instruction Title
2745, 2746, 2747	Possession of Weapon in Penal Institution
3100, 3101, 3102, 3103	Prior Convictions
3130, 3145, 3149, 3150	Personally Armed or Personally Used Deadly Weapon or Firearm
3160, 3161, 3162, 3163	Great Bodily Injury
3177	Sex Offenses: Sentencing Factors -- Torture
3456 & 3457	Initial Commitment and Extension of Commitment as MDO
3477	Presumption that Resident was Reasonably Afraid of Death or GBI
(N/A)	Introduction to Felony-Murder Series

105 Witnesses

You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience. You must judge the testimony of each witness by the same standards, setting aside any bias or prejudice you may have. You may believe all, part, or none of any witness's testimony. Consider the testimony of each witness and decide how much of it you believe.

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

- **How well could the witness see, hear, or otherwise perceive the things about which the witness testified?**
- **How well was the witness able to remember and describe what happened?**
- **What was the witness's behavior while testifying?**
- **Did the witness understand the questions and answer them directly?**
- **Was the witness's testimony influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided?**
- **What was the witness's attitude about the case or about testifying?**
- **Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?**
- **How reasonable is the testimony when you consider all the other evidence in the case?**
- **[Did other evidence prove or disprove any fact about which the witness testified?]**
- **[Did the witness admit to being untruthful?]**

- **[What is the witness's character for truthfulness?]**
- **[Has the witness been convicted of a felony?]**
- **[Has the witness engaged in [other] conduct that reflects on his or her believability?]**
- **[Was the witness promised immunity or leniency in exchange for his or her testimony?]**

Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently.

[If the evidence establishes that a witness's character for truthfulness has not been discussed among the people who know him or her, you may conclude from the lack of discussion that the witness's character for truthfulness is good.]

[If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.]

[If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.]

New January 2006; Revised June 2007, April 2008, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on factors relevant to a witness's credibility. (*People v. Rincon-Pineda* (1975) 14 Cal.3d 864, 883–884 [123 Cal.Rptr. 119, 538 P.2d 247].) Although there is no sua sponte duty to instruct on inconsistencies in testimony or a witness who lies, there is authority approving instruction on both topics. (*Dodds v. Stellar* (1946) 77 Cal.App.2d 411, 426 [175 P.2d 607]; *People v. Murillo* (1996) 47 Cal.App.4th 1104, 1107 [55 Cal.Rptr.2d 21].)

The court may strike any of the enumerated impermissible bases for bias that are clearly inapplicable in a given case.

Give all of the bracketed factors that are relevant based on the evidence. (Evid. Code, § 780(e), (i), and (k).)

Give any of the final three bracketed paragraphs if relevant based on the evidence.

AUTHORITY

- Factors. ▸ Evid. Code, § 780; *People v. Rincon-Pineda* (1975) 14 Cal.3d 864, 883–884 [123 Cal.Rptr. 119, 538 P.2d 247].
- Proof of Character For Truthfulness From ~~by Negative~~ Evidence of Lack of Discussion. ▸ *People v. Jimenez* (2016) 246 Cal.App.4th 726, 732 [201 Cal.Rptr.3d 76]; *People v. Adams* (1902) 137 Cal. 580, 582 [70 P. 662].
- Inconsistencies. ▸ *Dodds v. Stellar* (1946) 77 Cal.App.2d 411, 426 [175 P.2d 607].
- Witness Who Lies. ▸ *People v. Murillo* (1996) 47 Cal.App.4th 1104, 1107 [55 Cal.Rptr.2d 21]; *People v. Reyes* (1987) 195 Cal.App.3d 957, 965 [240 Cal.Rptr. 752]; *People v. Johnson* (1986) 190 Cal.App.3d 187, 192–194 [237 Cal.Rptr. 479].

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 725.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[2][b], [c], 85.03[2][b] (Matthew Bender).

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[If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.]

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Give all of the bracketed factors that are relevant based on the evidence. (Evid. Code, § 780(e), (i), and (k).)

Give any of the final three bracketed paragraphs if relevant based on the evidence.

If the court instructs on a prior felony conviction or prior misconduct admitted pursuant to *People v. Wheeler* (1992) 4 Cal.4th 284 [14 Cal.Rptr.2d 418, 841 P.2d 938], the court should consider whether to give CALCRIM No. 316, *Additional Instructions on Witness Credibility—Other Conduct*. (See Bench Notes to that instruction.)

AUTHORITY

- Factors. ▸ Evid. Code, § 780; *People v. Rincon-Pineda* (1975) 14 Cal.3d 864, 883–884 [123 Cal.Rptr. 119, 538 P.2d 247].
- Inconsistencies. ▸ *Dodds v. Stellar* (1946) 77 Cal.App.2d 411, 426 [175 P.2d 607].
- Witness Who Lies. ▸ *People v. Murillo* (1996) 47 Cal.App.4th 1104, 1107 [55 Cal.Rptr.2d 21].
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- This Instruction Upheld. ▸ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1187–1188 [67 Cal.Rptr.3d 871].

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 725.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[1A][b], [2][b], [c], 85.03[2][b] (Matthew Bender).

202 Note-Taking and Reading Back of Testimony

[You have been given notebooks and may have taken notes during the trial. You may use your notes during deliberations.] Your notes are for your own individual use to help you remember what happened during the trial. Please keep in mind that your notes may be inaccurate or incomplete.

If there is a disagreement about the testimony [and stipulations] at trial, you may ask that the (court reporter's record be read to/court's recording be played for) you. It is the record that must guide your deliberations, not your notes. You must accept the (court reporter's record /court's recording) as accurate. Do not ask the court reporter questions during the readback and do not discuss the case in the presence of the court reporter.

Please do not remove your notes from the jury room.

At the end of the trial, your notes will be (collected and destroyed/collected and retained by the court but not as a part of the case record/_____<*specify other disposition*>**).**

New January 2006; Revised June 2007, April 2008, August 2009, February 2012, March 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the members of the jury that they may take notes. California Rules of Court, Rule 2.1031.

The court may specify its preferred disposition of the notes after trial. No statute or rule of court requires any particular disposition.

AUTHORITY

- Jurors' Use of Notes. ▸ California Rules of Court, Rule 2.1031.
- Juror Deliberations Must Be Private and Confidential. ▸ *People v. Oliver* (1987) 196 Cal.App.3d 423, 429 [241 Cal.Rptr. 804].

SECONDARY SOURCES

6 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Judgment, § 21.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.05[1], Ch. 85, *Submission to Jury and Verdict*, § 85.05[2], [3], Ch. 87, *Death Penalty*, §§ 87.20, 87.24 (Matthew Bender).

358. Evidence of Defendant's Statements

You have heard evidence that the defendant made [an] [oral] [(and/or)] [a] [written] statement[s] (before the trial/while the court was not in session). You must decide whether the defendant made any (such/of these) statement[s], in whole or in part. If you decide that the defendant made such [a] statement[s], consider the statement[s], along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statement[s].

[Consider with caution any statement made by (the/a) defendant tending to show (his/her) guilt unless the statement was written or otherwise recorded.]

New January 2006; Revised June 2007, December 2008, February 2014, August 2015, September 2017, September 2020

BENCH NOTES

Instructional Duty

There is no sua sponte duty to give this instruction. *People v. Diaz* (2015) 60 Cal.4th 1176, 1190 [185 Cal.Rptr.3d 431, 345 P.3d 62].Give the bracketed cautionary instruction on request if there is evidence of an incriminating out-of-court oral statement made by the defendant. (*People v. Diaz* (2015) 60 Cal.4th 1176 [185 Cal.Rptr.3d 431, 345 P.3d 62].) In the penalty phase of a capital trial, the bracketed paragraph should be given only if the defense requests it. (*People v. Livaditis* (1992) 2 Cal.4th 759, 784 [9 Cal.Rptr.2d 72, 831 P.2d 297].)

The bracketed cautionary instruction is not required when the defendant's incriminating statements are written or tape-recorded. (*People v. Gardner* (1961) 195 Cal.App.2d 829, 833 [16 Cal.Rptr. 256]; *People v. Hines* (1964) 61 Cal.2d 164, 173 [37 Cal.Rptr. 622, 390 P.2d 398], disapproved on other grounds in *People v. Murtishaw* (1981) 29 Cal.3d 733, 774, fn. 40 [175 Cal.Rptr. 738, 631 P.2d 446]; *People v. Scherr* (1969) 272 Cal.App.2d 165, 172 [77 Cal.Rptr. 35]; *People v. Slaughter* (2002) 27 Cal.4th 1187, 1200 [120 Cal.Rptr.2d 477, 47 P.3d 262] [admonition to view non-recorded statements with caution applies only to a defendant's incriminating statements].) If the jury heard both inculpatory and exculpatory, or only inculpatory, statements attributed to the defendant, give the bracketed paragraph. If the jury heard only exculpatory statements by the defendant, do not give the bracketed paragraph.

If the defendant was a minor suspected of murder who made a statement in a custodial interview that did not comply with Penal Code section 859.5, give the following additional instruction:

Consider with caution any statement tending to show defendant's guilt made by (him/her) during _____<*insert description of interview, e.g., interview with Officer Smith of October 15, 2013*.>

When a defendant's statement is a verbal act, as in conspiracy cases, this instruction applies. (*People v. Bunyard* (1988) 45 Cal.3d 1189, 1224 [249 Cal.Rptr. 71, 756 P.2d 795]; *People v. Ramirez* (1974) 40 Cal.App.3d 347, 352 [114 Cal.Rptr. 916]; see also, e.g., *Peabody v. Phelps* (1858) 9 Cal. 213, 229 [similar, in civil cases.

When a defendant's statement is an element of the crime, as in conspiracy or criminal threats (Pen. Code, § 422), this instruction still applies. (*People v. Diaz* (2015) 60 Cal.4th 1176 [185 Cal.Rptr.3d 431, 345 P.3d 62], overruling *People v. Zichko* (2004) 118 Cal.App.4th 1055, 1057 [13 Cal.Rptr.3d 509].)

Related Instructions
If out-of-court oral statements made by the defendant are prominent pieces of evidence in the trial, then CALCRIM No. 359, *Corpus Delicti: Independent Evidence of a Charged Crime*, may also have to be given together with the bracketed cautionary instruction.

AUTHORITY

- Instructional Requirements ▸ *People v. Diaz* (2015) 60 Cal.4th 1176 [185 Cal.Rptr.3d 431, 345 P.3d 62]**;** *People v. Livaditis* (1992) 2 Cal.4th 759, 784 [9 Cal.Rptr.2d 72, 831 P.2d 297].
- Custodial Statements by Minors Suspected of Murder ▸ Pen. Code, § 859.5, effective 1/1/2014.

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial §§ 683-686, 723, 724, 733.

1 Witkin, California Evidence (5th ed. 2012) Hearsay § 52.

3 Witkin, California Evidence (5th ed. 2012) Presentation at Trial § 127.

2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 30, *Confessions and Admissions*, § 30.57 (Matthew Bender).

505 Justifiable Homicide: Self-Defense or Defense of Another

The defendant is not guilty of (murder/ [or] manslaughter/attempted murder/ [or] attempted voluntary manslaughter) if (he/she) was justified in (killing/attempting to kill) someone in (self-defense/ [or] defense of another). The defendant acted in lawful (self-defense/ [or] defense of another) if:

1. **The defendant reasonably believed that (he/she/ [or] someone else/ [or] _____ <*insert name or description of third party*>) was in imminent danger of being killed or suffering great bodily injury [or was in imminent danger of being (raped/maimed/robbed/ _____ <*insert other forcible and atrocious crime*>)];**

2. **The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger;**

AND

3. **The defendant used no more force than was reasonably necessary to defend against that danger.**

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to (himself/herself/ [or] someone else). Defendant's belief must have been reasonable and (he/she) must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the [attempted] killing was not justified.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

[The defendant's belief that (he/she/ [or] someone else) was threatened may be reasonable even if (he/she) relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true.]

[If you find that _____<*insert name of decedent/victim*> threatened or harmed the defendant [or others] in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.]

[If you find that the defendant knew that _____<*insert name of decedent/victim*> had threatened or harmed others in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.]

[Someone who has been threatened or harmed by a person in the past, is justified in acting more quickly or taking greater self-defense measures against that person.]

[If you find that the defendant received a threat from someone else that (he/she) reasonably associated with _____<*insert name of decedent/victim*>, you may consider that threat in deciding whether the defendant was justified in acting in (self-defense/ [or] defense of another).]

[A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of (death/great bodily injury/_____ <*insert forcible and atrocious crime*>) has passed. This is so even if safety could have been achieved by retreating.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

The People have the burden of proving beyond a reasonable doubt that the [attempted] killing was not justified. If the People have not met this burden, you must find the defendant not guilty of (murder/ [or] manslaughter/ attempted murder/ [or] attempted voluntary manslaughter).

New January 2006; Revised February 2012, August 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on self-defense when "it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case." (*People v. Breverman* (1998) 19 Cal.4th 142, 157 [77 Cal.Rtpr.2d 870, 960 P.2d 1094] [addressing duty to instruct on voluntary

manslaughter as lesser included offense, but also discussing duty to instruct on defenses generally]; see also *People v. Lemus* (1988) 203 Cal.App.3d 470, 478 [249 Cal.Rptr. 897] [if substantial evidence of self-defense exists, court must instruct sua sponte and let jury decide credibility of witnesses].)

If there is substantial evidence of self-defense that is inconsistent with the defendant's testimony, the court must ascertain whether the defendant wants an instruction on self-defense. (*People v. Breverman, supra,* 19 Cal.4th at p. 156.) The court is then required to give the instruction if the defendant so requests. (*People v. Elize* (1999) 71 Cal.App.4th 605, 611–615 [84 Cal.Rptr.2d 35].)

On defense request and when supported by sufficient evidence, the court must instruct that the jury may consider the effect of "antecedent threats and assaults against the defendant on the reasonableness of defendant's conduct." (*People v. Garvin* (2003) 110 Cal.App.4th 484, 488 [1 Cal.Rptr.3d 774].) The court must also instruct that the jury may consider previous threats or assaults by the aggressor against someone else or threats received by the defendant from a third party that the defendant reasonably associated with the aggressor. (See *People v. Pena* (1984) 151 Cal.App.3d 462, 475 [198 Cal.Rptr. 819]; *People v. Minifie* (1996) 13 Cal.4th 1055, 1065, 1068 [56 Cal.Rptr.2d 133, 920 P.2d 1337].)

Forcible and atrocious crimes are generally those crimes whose character and manner reasonably create a fear of death or serious bodily harm. (*People v. Ceballos* (1974) 12 Cal.3d 470, 479 [116 Cal.Rptr. 233, 526 P.2d 241].) The following crimes have been deemed forcible and atrocious as a matter of law: murder, mayhem, rape, and robbery. (*Id.* at p. 478.) If the defendant is asserting that he or she was resisting the commission of one of these felonies or another specific felony, the court should include the bracketed language at the end of element 1 and select "raped," "maimed," or "robbed," or insert another appropriate forcible and atrocious crime. In all other cases involving death or great bodily injury, the court should use element 1 without the bracketed language.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions
CALCRIM Nos. 506–511, Justifiable and Excusable Homicides.

CALCRIM Nos. 3470–3477, Defense Instructions: Defense of Self, Another, Property.

CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense Defense or Imperfect Defense of Another–Lesser Included Offense*.

AUTHORITY

- Justifiable Homicide. ▸ Pen. Code, §§ 197–199.
- Fear. ▸ Pen. Code, § 198.
- Lawful Resistance. ▸ Pen. Code, §§ 692–694.
- Burden of Proof. ▸ Pen. Code, § 189.5; *People v. Banks* (1976) 67 Cal.App.3d 379, 383–384 [137 Cal.Rptr. 652].
- Elements. ▸ *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082 [56 Cal.Rptr.2d 142, 921 P.2d 1].
- Forcible and Atrocious Crimes. ▸ *People v. Ceballos* (1974) 12 Cal.3d 470, 478–479 [116 Cal.Rptr. 233, 526 P.2d 241].
- Imminence. ▸ *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187 [264 Cal.Rptr. 167], overruled on other grounds in *People v. Humphrey* (1996) 13 Cal.4th 1073, 1089 [56 Cal.Rptr.2d 142].
- No Duty to Retreat. ▸ *People v. Hughes* (1951) 107 Cal.App.2d 487, 493 [237 P.2d 64]; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22 [132 P.2d 51].
- Reasonable Belief. ▸ *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082 [56 Cal.Rptr.2d 142, 921 P.2d 1]; *People v. Clark* (1982) 130 Cal.App.3d 371, 377 [181 Cal.Rptr. 682].
- Must Act Under Influence of Fear Alone. ▸ Pen. Code, § 198.
- This Instruction Upheld. ▸ *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1306 [132 Cal.Rptr.3d 248]; *People v. Genovese* (2008) 168 Cal.App.4th 817, 832 [85 Cal.Rptr.3d 664].

COMMENTARY

Penal Code section 197, subdivision 1 provides that self-defense may be used in response to threats of death or great bodily injury, or to resist the commission of a felony. (Pen. Code, § 197, subd. 1.) However, in *People v. Ceballos* (1974) 12 Cal.3d 470, 477–479 [116 Cal.Rptr. 233, 526 P.2d 241], the court held that although the latter part of section 197 appears to apply when a person resists the commission of any felony, it should be read in light of common law principles that

require the felony to be "some atrocious crime attempted to be committed by force." (*Id.* at p. 478.) This instruction is therefore written to provide that self-defense may be used in response to threats of great bodily injury or death or to resist the commission of forcible and atrocious crimes.

RELATED ISSUES

Imperfect Self-Defense

Most courts hold that an instruction on imperfect self-defense is required in every case in which a court instructs on perfect self-defense. If there is substantial evidence of a defendant's belief in the need for self-defense, there will *always* be substantial evidence to support an imperfect self-defense instruction because the reasonableness of that belief will always be at issue. (*People v. Ceja* (1994) 26 Cal.App.4th 78, 85–86 [31 Cal.Rptr.2d 475], overruled on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675]; *People v. De Leon* (1992) 10 Cal.App.4th 815, 824 [12 Cal.Rptr.2d 825].) The court in *People v. Rodriguez* disagreed, however, and found that an imperfect self-defense instruction was not required sua sponte on the facts of the case where defendant's version of the crime "could only lead to an acquittal based on justifiable homicide," and when the prosecutor's version could only lead to a conviction of first degree murder. (*People v. Rodriguez* (1992) 53 Cal.App.4th 1250, 1275 [62 Cal.Rptr.2d 345]; see also *People v. Williams* (1997) 4 Cal.4th 354, 362 [14 Cal.Rptr.2d 441, 841 P.2d 961] [in rape prosecution, no mistake-of-fact instruction was required when two sides gave wholly divergent accounts with no middle ground to support a mistake-of-fact instruction].)

No Defense for Initial Aggressor

An aggressor whose victim fights back in self-defense may not invoke the doctrine of self-defense against the victim's legally justified acts. (*In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1 [30 Cal.Rptr.2d 33, 872 P.2d 574].) If the aggressor attempts to break off the fight and communicates this to the victim, but the victim continues to attack, the aggressor may use self-defense against the victim to the same extent as if he or she had not been the initial aggressor. (Pen. Code, § 197, subd. 3; *People v. Trevino* (1988) 200 Cal.App.3d 874, 879 [246 Cal.Rptr. 357]; see CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.) In addition, if the victim responds with a sudden escalation of force, the aggressor may legally defend against the use of force. (*People v. Quach* (2004) 116 Cal.App.4th 294, 301–302 [10 Cal.Rptr.3d 196]; see CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.)

Transferred Intent Applies

"[T]he doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the

injury of an innocent bystander." (*People v. Mathews* (1979) 91 Cal.App.3d 1018, 1024 [154 Cal.Rptr. 628]; see also *People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 [37 Cal.Rptr.2d 304].) There is no sua sponte duty to instruct on this principle, although such an instruction must be given on request when substantial evidence supports it. (*People v. Mathews, supra,* 91 Cal.App.3d at p. 1025; see also CALCRIM No. 562, *Transferred Intent*.)

Definition of "Imminent"

In *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187 [264 Cal.Rptr. 167], overruled on other grounds in *People v. Humphrey* (1996) 13 Cal.4th 1073, 1089 [56 Cal.Rptr.2d 142, 921 P.2d 1], the jury requested clarification of the term "imminent." In response, the trial court instructed:

> "Imminent peril," as used in these instructions, means that the peril must have existed or appeared to the defendant to have existed at the very time the fatal shot was fired. In other words, the peril must appear to the defendant as immediate and present and not prospective or even in the near future. An imminent peril is one that, from appearances, must be instantly dealt with.

(Ibid.)

The Court of Appeal agreed with this definition of "imminent." (*Id.* at pp. 1187–1190 [citing *People* v. *Scoggins* (1869) 37 Cal. 676, 683–684].)

Reasonable Person Standard Not Modified by Evidence of Mental Impairment

In *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519 [14 Cal.Rptr.3d 473], the court rejected the argument that the reasonable person standard for self-defense should be the standard of a mentally ill person like the defendant. "The common law does not take account of a person's mental capacity when determining whether he has acted as the reasonable person would have acted. The law holds 'the mentally deranged or insane defendant accountable for his negligence as if the person were a normal, prudent person.' (Prosser & Keeton, Torts (5th ed. 1984) § 32, p. 177.)" (*Ibid.*; see also Rest.2d Torts, § 283B.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 67–85.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* §§ 73.11, 73.12 (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[1][b] (Matthew Bender).

508 Justifiable Homicide: Citizen Arrest (Non-Peace Officer)

The defendant is not guilty of (murder/ [or] manslaughter/attempted murder/ [or] attempted voluntary manslaughter) if (he/she) (killed/attempted to kill) someone while trying to arrest him or her for a violent felony. Such (a/an) [attempted] killing is justified, and therefore not unlawful, if:

1. **The defendant committed the [attempted] killing while lawfully trying to arrest or detain _____** *<insert name of decedent>* **for committing (the crime of _____***<insert forcible and atrocious crime, i.e., felony that threatened death or great bodily injury>*/**_____***<insert crime decedent was suspected of committing, e.g., burglary>***, and that crime threatened the defendant or others with death or great bodily injury);**

2. **_____** *<insert name of decedent>* **actually committed (the crime of _____***<insert forcible and atrocious crime, i.e., felony that threatened death or great bodily injury>*/_____*<insert crime decedent was suspected of committing, e.g., burglary>* **, and that crime threatened the defendant or others with death or great bodily injury);**

3. **The defendant *had reason to believe* that _____ <***insert name of decedent***> had committed (the crime of _____***<insert forcible and atrocious crime, i.e., felony that threatened death or great bodily injury>*/**_____***<insert crime decedent was suspected of committing, e.g.,* **burglary**> **, and that crime threatened the defendant or others with death or great bodily injury);**

[4. The defendant *had reason to believe* that _____ <*ins*ert name of decedent> posed a threat of death or great bodily injury, either to the defendant or to others];

AND

5. **The [attempted] killing was necessary to prevent _____*'s*** *<insert name of dece**dent***>** **escape.**

A person has *reason to believe* that someone [poses a threat of death or great bodily injury or] committed (the crime of _____*<insert forcible and atrocious crime, i.e., felony that threatened death or great bodily injury>*/**_____***<insert crime decedent was suspected of committing, e.g.,***

burglary> **, and that crime threatened the defendant or others with death or great bodily injury) when facts known to the person would persuade someone of reasonable caution to have (that/those) belief[s].**

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

The People have the burden of proving beyond a reasonable doubt that the [attempted] killing was not justified. If the People have not met this burden, you must find the defendant not guilty of [attempted] (murder/ [or] manslaughter).

New January 2006; Revised April 2011, February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on justifiable homicide when "it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case." (See *People v. Breverman* (1998) 19 Cal.4th 142, 156 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [addressing sua sponte duty to instruct on self-defense].)

It is unclear whether the defendant must always have probable cause to believe that the victim poses a threat of future harm or if it is sufficient if the defendant knows that the victim committed a forcible and atrocious crime. In *Tennessee v. Garner* (1985) 471 U.S. 1, 3, 11 [105 S.Ct. 1694, 85 L.Ed.2d 1], the Supreme Court held that, under the Fourth Amendment, deadly force may not be used by a law enforcement officer to prevent the escape of an apparently unarmed suspected felon unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. "*Garner* necessarily limits the scope of justification for homicide under section 197, subdivision 4, and other similar statutes from the date of that decision." (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124 [214 Cal.Rptr. 873].) In a footnote, *Garner*, *supra*, 471 U.S. 1, 16, fn. 15, noted that California law permits a killing in either situation, that is either when the suspect has committed an atrocious crime or when the suspect poses a threat of future harm. (See also *Long Beach Police Officers Assn v. City of Long Beach* (1976) 61 Cal.App.3d 364, 371–375 [132 Cal.Rptr. 348] [also stating the rule as "either" but quoting police regulations, which require that the officer always believe there is a risk of future harm].) The committee has provided both options. See *People v.*

Ceballos (1974) 12 Cal.3d 470, 478-479 [116 Cal.Rptr. 233, 526 P.2d 241]. The court should review relevant case law before giving bracketed element 4.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions

CALCRIM No. 507, *Justifiable Homicide: By Public Officer*.

CALCRIM No. 509, *Justifiable Homicide: Non-Peace Officer Preserving the Peace*.

AUTHORITY

- Justifiable Homicide to Preserve the Peace. ▸ Pen. Code, §§ 197, subd. 4, 199.
- Lawful Resistance to Commission of Offense. ▸ Pen. Code, §§ 692–694.
- Private Persons, Authority to Arrest. ▸ Pen. Code, § 837.
- Burden of Proof. ▸ Pen. Code, § 189.5; *People v. Frye* (1992) 7 Cal.App.4th 1148, 1154–1155 [10 Cal.Rptr.2d 217].
- Felony Must Threaten Death or Great Bodily Injury. ▸ *People v. Piorkowski* (1974) 41 Cal.App.3d 324, 328–329 [115 Cal.Rptr. 830].

RELATED ISSUES

Felony Must Actually Be Committed

A private citizen may use deadly force to apprehend a fleeing felon only if the suspect in fact committed the felony and the person using deadly force had reasonable cause to believe so. (*People v. Lillard* (1912) 18 Cal.App. 343, 345 [123 P. 221].)

Felony Committed Must Threaten Death or Great Bodily Injury

Deadly force is permissible to apprehend a felon if "the felony committed is one which threatens death or great bodily injury. . . ." (*People v. Piorkowski* (1974) 41 Cal.App.3d 324, 328–329 [115 Cal.Rptr. 830]).

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 90–96

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.15[1], [3] (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[1][b] (Matthew Bender).

511 Excusable Homicide: Accident in the Heat of Passion

The defendant is not guilty of (murder/ [or] manslaughter) if (he/she) killed someone by accident while acting in the heat of passion. Such a killing is excused, and therefore not unlawful, if, at the time of the killing:

1. **The defendant acted in the heat of passion;**

2. **The defendant was (suddenly provoked by _____**<*insert name of decedent*>**/ [or] suddenly drawn into combat by _____**<*insert name of decedent*>**);**

3. **The defendant did not take undue advantage of _____**<*insert name of decedent*>**;**

4. **The defendant did not use a dangerous weapon;**

5. **The defendant did not kill _____**<*insert name of decedent*> **in a cruel or unusual way;**

6. **The defendant did not intend to kill _____**<*insert name of decedent*> **and did not act with conscious disregard of the danger to human life;**

AND

7. **The defendant did not act with criminal negligence.**

A person acts *in the heat of passion* when he or she is provoked into doing a rash act under the influence of intense emotion that obscures his or her reasoning or judgment. The provocation must be sufficient to have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection.

In order for the killing to be excused on this basis, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote

provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

It is not enough that the defendant simply was provoked. The defendant is not allowed to set up (his/her) own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than judgment.

[A *dangerous weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

***Criminal negligence* involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with *criminal negligence* when:**

1. **He or she acts in a way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with criminal negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

The People have the burden of proving beyond a reasonable doubt that the killing was not excused. If the People have not met this burden, you must find the defendant not guilty of (murder/ [or] manslaughter).

New January 2006; Revised April 2011, September 2019, September 2020

BENCH NOTES

Instructional Duty

The trial court has a **sua sponte** duty to instruct on accident and heat of passion that excuses homicide when there is evidence supporting the defense. (*People v. Hampton* (1929) 96 Cal.App. 157, 159–160 [273 P. 854] [court erred in refusing defendant's requested instruction].)

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions

CALCRIM No. 510, *Excusable Homicide: Accident*.

CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.

CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion –Lesser Included Offense*.

AUTHORITY

- Excusable Homicide if Committed in Heat of Passion. ▸ Pen. Code, § 195, subd. 2.
- Burden of Proof. ▸ Pen. Code, § 189.5; *People v. Frye* (1992) 7 Cal.App.4th 1148, 1154–1155 [10 Cal.Rptr.2d 217].
- Deadly Weapon Defined. ▸ See *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

RELATED ISSUES

Distinguished From Voluntary Manslaughter

Under Penal Code section 195, subd. 2, a homicide is "excusable," "in the heat of passion" if done "by accident," or on "sudden . . . provocation . . . or . . . combat." (Pen. Code, § 195, subd. 2.) Thus, unlike voluntary manslaughter, the killing must have been committed without criminal intent, that is, accidentally. (See *People v. Cooley* (1962) 211 Cal.App.2d 173, 204 [27 Cal.Rptr. 543], disapproved on other grounds in *People v. Lew* (1968) 68 Cal.2d 774, 778, fn. 1 [69 Cal.Rptr. 102, 441 P.2d 942]; Pen. Code, § 195, subd. 1 [act must be without criminal intent]; Pen. Code, § 26, subd. 5 [accident requires absence of "evil design [or] intent"].) The killing must also be on "sudden" provocation, eliminating the possibility of provocation over time, which may be considered in cases of voluntary manslaughter. (See Bench Notes to CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion–Lesser Included Offense*.)

Distinguished From Involuntary Manslaughter

Involuntary manslaughter requires a finding of gross or criminal negligence. (See Bench Notes to CALCRIM No. 581, *Involuntary Manslaughter: Murder Not Charged*; Pen. Code, § 26, subd. 5 [accident requires no "culpable negligence"].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 274.

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 230.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.16 (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* §§ 142.01[1][b], [g], 142.02[2][a] (Matthew Bender).

524 Second Degree Murder: Peace Officer (Pen. Code, § 190(b), (c))

If you find the defendant guilty of second degree murder [as charged in Count __], you must then decide whether the People have proved the additional allegation that (he/she) murdered a peace officer.

To prove this allegation the People must prove that:

1. _____ *<insert officer's name, excluding title>* **was a peace officer lawfully performing (his/her) duties as a peace officer;**

[AND]

2. **When the defendant killed** _____ *<insert officer's name, excluding title>***, the defendant knew, or reasonably should have known, that** _____ *<insert officer's name, excluding title>* **was a peace officer who was performing (his/her) duties(;/.)**

<Give element 3 when defendant charged with Pen. Code, § 190(c)>
[AND

3. **The defendant (intended to kill the peace officer/ [or] intended to inflict great bodily injury on the peace officer/ [or] personally used a (deadly or dangerous weapon/ [or] firearm) in the commission of the offense).]**

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *deadly or dangerous weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[Someone *personally uses* a (deadly weapon/ [or] firearm) if he or she intentionally does any of the following:

1. **Displays the weapon in a menacing manner;**

2. **Hits someone with the weapon;**

OR

3. **Fires the weapon.]**

[The People allege that the defendant _____ *<insert all of the factors from element 3 when multiple factors are alleged>***. You may not find the defendant guilty unless you all agree that the People have proved at least one of these alleged facts and you all agree on which fact or facts were proved. You do not need to specify the fact or facts in your verdict.]**

[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a *peace officer*.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a *peace officer* if** _____*<insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer">***.]**

[The duties of (a/an) _____ *<insert title of peace officer>* **include** _____ *<insert job duties>***.]**

<When lawful performance is an issue, give the following paragraph and Instruction 2670, Lawful Performance: Peace Officer.>
[A peace officer is not lawfully performing his or her duties if he or she is (unlawfully arresting or detaining someone/ [or] using unreasonable or excessive force in his or her duties). Instruction 2670 explains (when an arrest or detention is unlawful/ [and] when force is unreasonable or excessive).]

New January 2006; Revised August 2009, February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of the sentencing enhancement. (See *People v. Marshall* (2000) 83 Cal.App.4th 186,

193–195 [99 Cal.Rptr.2d 441]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 475–476, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

If the defendant is charged under Penal Code section 190(b), give only elements 1 and 2. If the defendant is charged under Penal Code section 190(c), give all three elements, specifying the appropriate factors in element 3, and give the appropriate definitions, which follow in brackets. Give the bracketed unanimity instruction if the prosecution alleges more than one factor in element 3.

In order to be "engaged in the performance of his or her duties," a peace officer must be acting lawfully. (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217 [275 Cal.Rptr. 729, 800 P.2d 1159].) "[D]isputed facts bearing on the issue of legal cause must be submitted to the jury considering an engaged-in-duty element." *(Ibid.)* If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) On request, the court must instruct that the prosecution has the burden of proving the lawfulness of the arrest beyond a reasonable doubt. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651].) If lawful performance is an issue, give the bracketed paragraph on lawful performance and the appropriate portions of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

"Peace officer," as used in this statute, means "as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5." (Pen. Code, § 190(b) & (c).)

The court may give the bracketed sentence that begins, "The duties of a _____ <*insert title . . . .*> include," on request. The court may insert a description of the officer's duties such as "the correct service of a facially valid search warrant." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222 [275 Cal.Rptr.

729, 800 P.2d 1159].)

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Second Degree Murder of a Peace Officer. ▸ Pen. Code, § 190(b) & (c).
- Personally Used Deadly or Dangerous Weapon. ▸ Pen. Code, § 12022.
- Personally Used Firearm. ▸ Pen. Code, § 12022.5.
- Personal Use. ▸ Pen. Code, § 1203.06(b)(2).
- Inherently Deadly Defined. ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 186.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.15[2] (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty,* § 87.13[7] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[4][c] (Matthew Bender).

525 Second Degree Murder: Discharge From Motor Vehicle (Pen. Code, § 190(d))

If you find the defendant guilty of second degree murder [as charged in Count __], you must then decide whether the People have proved the additional allegation that the murder was committed by shooting a firearm from a motor vehicle.

To prove this allegation, the People must prove that:

1. **(The defendant/**_____ *<insert name or description of principal if not defendant>***) killed a person by shooting a firearm from a motor vehicle;**

2. **(The defendant/**_____ *<insert name or description of principal if not defendant>***) intentionally shot at a person who was outside the vehicle;**

AND

3. **When (the defendant/**_____ *<insert name or description of principal if not defendant>***) shot a firearm, (the defendant/**_____ *<insert name or description of principal if not defendant>***) intended to inflict great bodily injury on the person outside the vehicle.**

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *motor vehicle* includes (a/an) (passenger vehicle/motorcycle/motor scooter/bus/school bus/commercial vehicle/truck tractor and trailer/_____ *<insert other type of motor vehicle>***).]**

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[The term[s] (*great bodily injury[,]/ firearm[,]/* [and] *motor vehicle)* (is/are) defined in another instruction to which you should refer.]

[The People must prove that the defendant intended that the person shot at suffer great bodily injury when (he/she/_____ <*insert name or description of principal if not defendant*>) shot from the vehicle. However, the People do not have to prove that the defendant intended to injure the specific person who was actually killed.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the sentencing enhancement. (See *People v. Marshall* (2000) 83 Cal.App.4th 186, 193–195 [99 Cal.Rptr.2d 441]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 475–476, 490 [120 S.Ct. 2348, 147 L.Ed. 2d. 435].)

The statute does not specify whether the defendant must personally intend to inflict great bodily injury or whether accomplice liability may be based on a principal who intended to inflict great bodily injury even if the defendant did not. The instruction has been drafted to provide the court with both alternatives in element 3.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed paragraph that begins with "The People must prove that the defendant intended," if the evidence shows that the person killed was not the person the defendant intended to harm when shooting from the vehicle. (*People v. Sanchez* (2001) 26 Cal.4th 834, 851, fn. 10 [111 Cal.Rptr.2d 129, 29 P.3d 209].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Second Degree Murder, Discharge From Vehicle. ▸ Pen. Code, § 190(d).

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 186.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[1][a], [2][a][vii], [4][c] (Matthew Bender).

526–539. Reserved for Future Use

540B Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act (Pen. Code, § 189)

<Give the following introductory sentence when not giving CALCRIM No. 540A.>
[The defendant is charged [in Count __] with murder, under a theory of first degree felony murder.]

The defendant may [also] be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit)** _____ *<insert felony or felonies from Pen. Code, § 189>***;**

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit)** _____ *<insert felony or felonies from Pen. Code, § 189>***;**

3. **If the defendant did not personally commit [or attempt to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>***, then a perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), committed [or attempted to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>***;**

4. **While committing [or attempting to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>***, the perpetrator caused the death of another person;**

<Alternative for Pen. Code § 189(e)(2) and (e)(3) liability>
[5A. The defendant intended to kill;

AND

5B. The defendant (aided and abetted[,])/ [or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of first degree murder(./;)]

[OR]

[(5A/6A). The defendant was a major participant in the_____<*insert felony or felonies from Pen. Code § 189*>**;**

AND

(5B/6B). When the defendant participated in the _____<*insert felony or felonies from Pen. Code § 189*>**, (he/she) acted with reckless indifference to human life(./;)]**
[OR]

<*Alternative for Pen. Code § 189(f) liability*>
[(5A/6A/7A). _____<*insert officer's name, excluding title***> was a peace officer lawfully performing (his/her) duties as a peace officer;**

AND

(5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that <*insert officer's name, excluding title***> was a peace officer performing (his/her) duties.]**

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ <*insert felony or felonies from Pen. Code, § 189*>**, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.**

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____

<insert felony or felonies from Pen. Code, § 189> **before or at the time of the death.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

[You may not find the defendant guilty of felony murder unless all of you agree that the defendant or a perpetrator caused the death of another. You do not all need to agree, however, whether the defendant or a perpetrator caused that death.]

<*The following instructions can be given when reckless indifference and major participant under Pen. Code § 189(e)(3) applies>*
[A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[When you decide whether the defendant acted with *reckless indifference to human life*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- **[● Did the defendant know that [a] lethal weapon[s] would be present during the _____<***insert underlying felony***>?]**
- **[● Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]**
- **[● Did the defendant know that [a] lethal weapon[s] (was/were) used?]**
- **[● Did the defendant know the number of weapons involved?]**
- **[● Was the defendant near the person(s) killed when the killing occurred?]**
- **[● Did the defendant have an opportunity to stop the killing or to help the victim(s)?]**
- **[● How long did the crime last?]**
- **[● Was the defendant aware of anything that would make a coparticipant likely to kill?]**
- **[● Did the defendant try to minimize the possibility of violence?]**

[● _____**<***insert any other relevant factors***>]]**

[When you decide whether the defendant was a *major participant*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant. Among the factors you may consider are:

[● What was the defendant's role in planning the crime that led to the death[s]?]
[● What was the defendant's role in supplying or using lethal weapons?]
[● What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?]
[● Was the defendant in a position to facilitate or to prevent the death?]
[● Did the defendant's action or inaction play a role in the death?]
[● What did the defendant do after lethal force was used?]
[● ._____*<insert any other relevant factors.>***]]**

<Give the following instructions when Pen. Code § 189(f) applies>
[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a peace officer.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a peace officer if _____***<insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer">***.]**

[The duties of (a/an) _____ *<insert title of peace officer>* **include _____** *<insert job duties>***.]**

New January 2006; Revised April 2010, August 2013, February 2015, September 2019, April 2020, September 2020

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr.60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If the prosecution's theory is that the defendant, as well as the perpetrator, committed or attempted to commit the underlying felony or felonies, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select both "the defendant and the perpetrator." Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the defendant and the perpetrator each committed [the crime] if . . . ."

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one or both of these options in element 1 and the corresponding intent requirements in element 2. In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction

pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** _____ *<insert felony or felonies from Pen. Code, § 189>* **[or attempted** _____ *<insert felony or felonies from Pen. Code, § 189>***]. The connection between the cause of death and the** _____ *<insert felony or felonies from Pen. Code, § 189>* **[or attempted** _____ *<insert felony or felonies from Pen. Code, § 189>***] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id*. at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts "in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders." (*Id.* at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that a coparticipant in the felony committed the act causing the death.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 540C, *Felony Murder: First Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].)

Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court of Tulare County* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

Related Instructions
CALCRIM No. 400 et seq., *Aiding and Abetting: General Principles*.

CALCRIM No. 415 et seq., *Conspiracy*.

AUTHORITY

- Felony Murder: First Degree. ▸ Pen. Code, § 189.
- Specific Intent to Commit Felony Required. ▸ *People v. Gutierrez (*2002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. ▸ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. ▸ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Logical Nexus Between Felony and Killing. ▸ *People v. Dominguez* (2006) 39 Cal.4th 1141]; *People v. Cavitt* (2004) 33 Cal.4th 187, 197–206].
- Merger Doctrine Does Not Apply to First Degree Felony Murder. ▸ *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. ▸ *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; *People v. Banks* (2015) 61 Cal.4th 788, 807-811 [189 Cal.Rptr.3d 208, 351 P.3d 330]; *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▸ *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

RELATED ISSUES

~~***Conspiracy Liability—Natural and Probable Consequences***~~
~~In the context of nonhomicide crimes, a coconspirator is liable for any crime committed by a member of the conspiracy that was a natural and probable consequence of the conspiracy. (*People v. Superior Court (Shamis)* (1997) 58 Cal.App.4th 833, 842–843 [68 Cal.Rptr.2d 388].) This is analogous to the rule in~~

~~aiding and abetting that the defendant may be held liable for any unintended crime that was the natural and probable consequence of the intended crime. (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].) In the context of felony murder, the Supreme Court has explicitly held that the natural and probable consequences doctrine does not apply to a defendant charged with felony murder based on aiding and abetting the underlying felony. (See *People v. Anderson* (1991) 233 Cal.App.3d 1646, 1658 [285 Cal.Rptr. 523].) The court has not explicitly addressed whether the natural and probable consequences doctrine continues to limit liability for felony murder where the defendant's liability is based solely on being a member of a conspiracy. In *People v. Pulido* (1997) 15 Cal.4th 713, 724 [63 Cal.Rptr.2d 625, 936 P.2d 1235], the court stated in dicta, "[f]or purposes of complicity in a cofelon's homicidal act, the conspirator and the abettor stand in the same position." [Citation; quotation marks omitted.]~~

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 98, 109.

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 151–168, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

563 Conspiracy to Commit Murder (Pen. Code, § 182)

(The defendant[s]/Defendant[s] _____ *<insert name[s]>*) **(is/are) charged [in Count __] with conspiracy to commit first degree murder [in violation of Penal Code section 182].**

To prove that (the/a) defendant is guilty of this crime, the People must prove that:

1. **The defendant intended to agree and did agree with [one or more of] (the other defendant[s]/ [or] _____** *<insert name[s] or description[s] of coparticipant[s]>*) **to intentionally and unlawfully kill;**

2. **At the time of the agreement, the defendant and [one or more of] the other alleged member[s] of the conspiracy intended that one or more of them would intentionally and unlawfully kill;**

3. **(The/One of the) defendant[s][,] [or _____** *<insert name[s] or description[s] of coparticipant[s]>*][,] **[or (both/all) of them] committed [at least one of] the following overt act[s] alleged to accomplish the killing: _____ <***insert the alleged overt acts***>;**

AND

4. **[At least one of these/This] overt act[s] was committed in California.**

To decide whether (the/a) defendant committed (this/these) overt act[s], consider all of the evidence presented about the overt act[s].

To decide whether (the/a) defendant and [one or more of] the other alleged member[s] of the conspiracy intended to commit *murder* *in the first degree*, please refer to Instructions 520 (*First or Second Degree Murder With Malice Aforethought*) and 521 (*First Degree Murder*)—, which define that crime.

When deciding whether (the/a) defendant and [one or more of] the other alleged member[s] of the conspiracy intended to commit *murder in the first degree*, do not consider implied malice. Conspiracy to commit murder requires an intent to kill.

The People must prove that the members of the alleged conspiracy had an agreement and intent to commit murder. The People do not have to prove that any of the members of the alleged conspiracy actually met or came to a detailed or formal agreement to commit that crime. An agreement may be inferred from conduct if you conclude that members of the alleged conspiracy acted with a common purpose to commit the crime.

An *overt act* is an act by one or more of the members of the conspiracy that is done to help accomplish the agreed upon crime. The overt act must happen after the defendant has agreed to commit the crime. The overt act must be more than the act of agreeing or planning to commit the crime, but it does not have to be a criminal act itself.

[You must all agree that at least one alleged overt act was committed in California by at least one alleged member of the conspiracy, but you do not have to all agree on which specific overt act or acts were committed or who committed the overt act or acts.]

[You must make a separate decision as to whether each defendant was a member of the alleged conspiracy.]

[A member of a conspiracy does not have to personally know the identity or roles of all the other members.]

[Someone who merely accompanies or associates with members of a conspiracy but who does not intend to commit the crime is not a member of the conspiracy.]

[Evidence that a person did an act or made a statement that helped accomplish the goal of the conspiracy is not enough, by itself, to prove that the person was a member of the conspiracy.]

New January 2006; Revised August 2006; Revised April 2010, February 2014, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime when the defendant is charged with conspiracy. (See *People v. Morante* (1999) 20 Cal.4th 403, 416 [84 Cal.Rptr.2d 665, 975 P.2d 1071].) Use this instruction only if the defendant is charged with conspiracy to commit murder. If the defendant is charged with conspiracy to commit another crime, give

CALCRIM No. 415, *Conspiracy*. If the defendant is not charged with conspiracy but evidence of a conspiracy has been admitted for another purpose, do not give either instruction. Give CALCRIM No. 416, *Evidence of Uncharged Conspiracy*.

The court has a **sua sponte** duty to instruct on the elements of the offense alleged to be the target of the conspiracy. (*People v. Cortez* (1998) 18 Cal.4th 1223, 1238–1239 [77 Cal.Rptr.2d 733, 960 P.2d 537]; *People v. Fenenbock* (1996) 46 Cal.App.4th 1688, 1706 [54 Cal.Rptr.2d 608].) Give all appropriate instructions defining the elements of murder.

In elements 1 and 3, insert the names or descriptions of alleged coconspirators if they are not defendants in the trial. (See *People v. Liu* (1996) 46 Cal.App.4th 1119, 1131 [54 Cal.Rptr.2d 578].) See also the Commentary section below.

Give the bracketed sentence that begins with "You must all agree that at least one overt act alleged" if multiple overt acts are alleged in connection with a single conspiracy. (See *People v. Russo* (2001) 25 Cal.4th 1124, 1135–1136 [108 Cal.Rptr.2d 436, 25 P.3d 641].)

Give the bracketed sentence that begins with "You must make a separate decision" if more than one defendant is charged with conspiracy. (See *People v. Fulton* (1984) 155 Cal.App.3d 91, 101 [201 Cal.Rptr. 879]; *People v. Crain* (1951) 102 Cal.App.2d 566, 581–582 [228 P.2d 307].)

Do not cross-reference the murder instructions unless they have been modified to delete references to implied malice. Otherwise, a reference to implied malice could confuse jurors, because conspiracy to commit murder may not be based on a theory of implied malice. (*People v. Swain* (1996) 12 Cal.4th 593, 602-603, 607 [49 Cal.Rptr.2d 390, 909 P.2d 994].)

Give the bracketed sentence that begins with "A member of a conspiracy does not have to personally know," on request if there is evidence that the defendant did not personally know all the alleged coconspirators. (See *People v. Van Eyk* (1961) 56 Cal.2d 471, 479 [15 Cal.Rptr. 150, 364 P.2d 326].)

Give the two final bracketed sentences on request. (See *People v. Toledo-Corro* (1959) 174 Cal.App.2d 812, 820 [345 P.2d 529].)

Defenses—Instructional Duty

If there is sufficient evidence that the defendant withdrew from the alleged conspiracy, the court has a **sua sponte** duty to give CALCRIM No. 420, *Withdrawal From Conspiracy*.

If the case involves an issue regarding the statute of limitations or evidence of withdrawal by the defendant, a unanimity instruction may be required. (*People v. Russo* (2001) 25 Cal.4th 1124, 1136, fn. 2 [108 Cal.Rptr.2d 436, 25 P.3d 641]; see also Related Issues section to CALCRIM No. 415, *Conspiracy*, and CALCRIM 3500, *Unanimity*.)

Related Instructions
CALCRIM No. 415, *Conspiracy*.
CALCRIM No. 520, *Murder With Malice Aforethought*.
CALCRIM No. 521, *First Degree Murder*

AUTHORITY

- Elements. ▸ Pen. Code, §§ 182(a), 183; *People v. Morante* (1999) 20 Cal.4th 403, 416 [84 Cal.Rptr.2d 665, 975 P.2d 1071]; *People v. Swain* (1996) 12 Cal.4th 593, 600 [49 Cal.Rptr.2d 390, 909 P.2d 994]; *People v. Liu* (1996) 46 Cal.App.4th 1119, 1128 [54 Cal.Rptr.2d 578].
- Overt Act Defined. ▸ Pen. Code, § 184; *People v. Saugstad* (1962) 203 Cal.App.2d 536, 549–550 [21 Cal.Rptr. 740]; *People v. Zamora* (1976) 18 Cal.3d 538, 549, fn. 8 [134 Cal.Rptr. 784, 557 P.2d 75].
- Elements of Underlying Offense. ▸ *People v. Fenenbock* (1996) 46 Cal.App.4th 1688, 1706 [54 Cal.Rptr.2d 608]; *People v. Cortez* (1998) 18 Cal.4th 1223, 1238–1239 [77 Cal.Rptr.2d 733, 960 P.2d 537].
- Express Malice Murder. ▸ *People v. Swain* (1996) 12 Cal.4th 593, 602-603, 607 [49 Cal.Rptr.2d 390, 909 P.2d 994].
- Premeditated First Degree Murder. ▸ *People v. Cortez* (1998) 18 Cal.4th 1223, 1232 [77 Cal.Rptr.2d 733, 960 P.2d 537].
- ~~Two Specific Intents for Conspiracy. ▸ *People v. Miller* (1996) 46 Cal.App.4th 412, 423–426 [53 Cal.Rptr.2d 773], disapproved by *People v. Cortez* (1998) 18 Cal.4th 1223 [77 Cal.Rptr.2d 733, 960 P.2d 537] to the extent it suggests instructions on premeditation and deliberation must be given in every conspiracy to murder case .~~
- Unanimity on Specific Overt Act Not Required. ▸ *People v. Russo* (2001) 25 Cal.4th 1124, 1133–1135 [108 Cal.Rptr.2d 436, 25 P.3d 641].
- No Conspiracy to Commit Second Degree Murder. ▸ *People v. Beck and Cruz* (2019) 8 Cal.5th 548, 641 [256 Cal.Rptr.3d 1, 453 P.3d 1038].)

COMMENTARY

It is sufficient to refer to coconspirators in the accusatory pleading as "persons unknown." (*People v. Sacramento Butchers' Protective Association* (1910) 12 Cal.App. 471, 483 [107 P. 712]; *People v. Roy* (1967) 251 Cal.App.2d 459, 463 [59 Cal.Rptr. 636]; see 1 Witkin & Epstein, California Criminal Law (4th~~3d~~ ed. 2012~~00~~) Elements, § 82.) Nevertheless, this instruction assumes the prosecution has named at least two members of the alleged conspiracy, whether charged or not.

Conspiracy to commit murder cannot be based on a theory of implied malice. (*People v. Swain* (1996) 12 Cal.4th 593, 602-603, 607 [49 Cal.Rptr.2d 390, 909 P.2d 994].) All conspiracy to commit murder is necessarily conspiracy to commit premeditated first degree murder. (*People v. Cortez* (1998) 18 Cal.4th 1223, 1232 [77 Cal.Rptr. 2d 733, 960 P.2d 537].)

LESSER INCLUDED OFFENSES

There is no crime of conspiracy to commit attempted murder. (*People v. Iniguez* (2002) 96 Cal.App.4th 75, 79 [116 Cal.Rptr.2d 634].)

The court has a **sua sponte** duty to instruct the jury on a lesser included target offense if there is substantial evidence from which the jury could find a conspiracy to commit that offense. (*People v. Horn* (1974) 12 Cal.3d 290, 297 [115 Cal.Rptr. 516, 524 P.2d 1300], disapproved on other ground in *People v. Cortez* (1998) 18 Cal.4th 1223, 1237–1238 [77 Cal.Rptr.2d 733, 960 P.2d 537]; *People v. Cook* (2001) 91 Cal.App.4th 910, 918 [111 Cal.Rptr.2d 204]; *People v. Kelley* (1990) 220 Cal.App.3d 1358, 1365–1366, 1370 [269 Cal.Rptr. 900].

There is a split of authority whether a court may look to the overt acts in the accusatory pleadings to determine if it has a duty to instruct on any lesser included offenses to the charged conspiracy. (*People v. Cook, supra,* 91 Cal.App.4th at pp. 919–920, 922 [court may look to overt acts pleaded in charge of conspiracy to determine whether charged offense includes a lesser included offense]; contra, *People v. Fenenbock, supra,* 46 Cal.App.4th at pp. 1708–1709 [court should examine description of agreement in pleading, not description of overt acts, to decide whether lesser offense was necessarily the target of the conspiracy].)

RELATED ISSUES

Multiple Conspiracies
Separately planned murders are punishable as separate conspiracies, even if the separate murders are incidental to a single objective. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1133 [54 Cal.Rptr.2d 578].)

See the Related Issues section to CALCRIM No. 415, *Conspiracy*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 82-83.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt,* §§ 141.01[2], 141.02[3], [4][b], [5][c], Ch. 142, *Crimes Against the Person,* § 142.01[2][e] (Matthew Bender).

564–569. Reserved for Future Use

571 Voluntary Manslaughter: Imperfect Self-Defense or Imperfect Defense of Another—Lesser Included Offense (Pen. Code, § 192)

A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person because (he/she) acted in (imperfect self-defense/ [or] imperfect defense of another).

If you conclude the defendant acted in complete (self-defense/ [or] defense of another), (his/her) action was lawful and you must find (him/her) not guilty of any crime. The difference between complete (self-defense/ [or] defense of another) and (imperfect self-defense/ [or] imperfect defense of another) depends on whether the defendant's belief in the need to use deadly force was reasonable.

The defendant acted in (imperfect self-defense/ [or] imperfect defense of another) if:

1. **The defendant actually believed that (he/she/ [or] someone else/_____ <*insert name of third party*>) was in imminent danger of being killed or suffering great bodily injury;**

   AND

2. **The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger;**

   BUT

3. **At least one of those beliefs was unreasonable.**

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be.

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

<*The following definition may be given if requested*>
[A danger is *imminent* if, when the fatal wound occurred, the danger actually existed or the defendant believed it existed. The danger must seem immediate

and present, so that it must be instantly dealt with. It may not be merely prospective or in the near future.]

[Imperfect self-defense does not apply when the defendant, through (his/her) own wrongful conduct, has created circumstances that justify (his/her) adversary's use of force.]

[If you find that _____<*insert name of decedent/victim*>** threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]**

[If you find that the defendant knew that _____<*insert name of decedent/victim*>** had threatened or harmed others in the past, you may consider that information in evaluating the defendant's beliefs.]**

[If you find that the defendant received a threat from someone else that (he/she) associated with _____<*insert name of decedent/victim*>**, you may consider that threat in evaluating the defendant's beliefs.]**

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

The People have the burden of proving beyond a reasonable doubt that the defendant was not acting in (imperfect self-defense/ [or] imperfect defense of another). If the People have not met this burden, you must find the defendant not guilty of murder.

New January 2006; Revised August 2012, February 2015, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on voluntary manslaughter on either theory, heat of passion or imperfect self-defense, when evidence of either is "substantial enough to merit consideration" by the jury. (*People v. Breverman* (1998) 19 Cal.4th 142, 153–163 [77 Cal.Rptr.2d 870, 960 P.2d 1094]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531].)

See discussion of imperfect self-defense in related issues section of CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than

minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions

CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

CALCRIM No. 3470, *Right to Self-Defense or Defense of Another (Non-Homicide)*.

CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.

CALCRIM No. 3472, *Right to Self-Defense: May Not Be Contrived*.

AUTHORITY

- Elements. ▸ Pen. Code, § 192(a).
- Imperfect Self-Defense Defined. ▸ *People v. Flannel* (1979) 25 Cal.3d 668, 680–683 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531]; *In re Christian S.* (1994) 7 Cal.4th 768, 773 [30 Cal.Rptr.2d 33, 872 P.2d 574]; see *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197–198 [272 Cal.Rptr. 693] [insufficient evidence to support defense of another person].
- Imperfect Defense of Others. ▸ *People v. Randle* (2005) 35 Cal.4th 987, 995-1000 [28 Cal.Rptr.3d 725, 111 P.3d 987], overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172 [91 Cal.Rptr.3d 106, 203 P.3d 425].
- Imperfect Self-Defense May be Available When Defendant Set in Motion Chain of Events Leading to Victim's Attack, but Not When Victim was Legally Justified in Resorting to Self-Defense. ▸ *People v. Enraca* (2012) 53 Cal.4th 735, 761 [137 Cal.Rptr.3d 117, 269 P.3d 543]; *People v. Vasquez* (2006) 136 Cal.App.4th 1176, 1179–1180 [39 Cal.Rptr.3d 433].
- Imperfect Self-Defense Does Not Apply When Defendant's Belief in Need for Self-Defense is Entirely Delusional. ▸ *People v. Elmore* (2014) 59 Cal.4th 121, 145 [172 Cal.Rptr.3d 413, 325 P.3d 951].
- This Instruction Upheld. ▸ *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1306 [132 Cal.Rptr.3d 248]; *People v. Genovese* (2008) 168 Cal.App.4th 817, 832 [85 Cal.Rptr.3d 664].

- Defendant Relying on Imperfect Self-Defense Must Actually, Although Not Reasonably, Associate Threat With Victim. ‣ *People v. Minifie* (1996) 13 Cal.4th 1055, 1069 [56 Cal.Rptr.2d 133, 920 P.2d 1337] [in dicta].

LESSER INCLUDED OFFENSES

- Attempted Voluntary Manslaughter. ‣ *People v. Van Ronk* (1985) 171 Cal.App.3d 818, 822 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].

Involuntary manslaughter is *not* a lesser included offense of voluntary manslaughter. (*People v. Orr* (1994) 22 Cal.App.4th 780, 784 [27 Cal.Rptr.2d 553].)

RELATED ISSUES

Battered Woman's Syndrome

Evidence relating to battered woman's syndrome may be considered by the jury when deciding if the defendant actually feared the batterer and if that fear was reasonable. (See *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082–1089 [56 Cal.Rptr.2d 142, 921 P.2d 1].)

Blakeley *Not Retroactive*

The decision in *Blakeley*—that one who, acting with conscious disregard for life, unintentionally kills in imperfect self-defense is guilty of voluntary manslaughter—may not be applied to defendants whose offense occurred prior to *Blakeley*'s June 2, 2000, date of decision. (*People v. Blakeley* (2000) 23 Cal.4th 82, 91–93 [96 Cal.Rptr.2d 451, 999 P.2d 675].) If a defendant asserts a killing was done in an honest but mistaken belief in the need to act in self-defense and the offense occurred prior to June 2, 2000, the jury must be instructed that an unintentional killing in imperfect self-defense is involuntary manslaughter. (*People v. Johnson* (2002) 98 Cal.App.4th 566, 576–577 [119 Cal.Rptr.2d 802]; *People v. Blakeley, supra,* 23 Cal.4th at p. 93.)

Inapplicable to Felony Murder

Imperfect self-defense does not apply to felony murder. "Because malice is irrelevant in first and second degree felony murder prosecutions, a claim of imperfect self-defense, offered to negate malice, is likewise irrelevant." (See *People v. Tabios* (1998) 67 Cal.App.4th 1, 6–9 [78 Cal.Rptr.2d 753]; see also *People v. Anderson* (1991) 233 Cal.App.3d 1646, 1666 [285 Cal.Rptr. 523]; *People v. Loustaunau* (1986) 181 Cal.App.3d 163, 170 [226 Cal.Rptr. 216].)

Fetus
Manslaughter does not apply to the death of a fetus. (*People v. Carlson* (1974) 37 Cal.App.3d 349, 355 [112 Cal.Rptr. 321].) While the Legislature has included the killing of a fetus, as well as a human being, within the definition of murder under Penal Code section 187, it has "left untouched the provisions of section 192, defining manslaughter [as] the 'unlawful killing of a human being.'" (*Ibid*.)

See also the Related Issues Section to CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

Reasonable Person Standard Not Modified by Evidence of Mental Impairment
In *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519 [14 Cal.Rptr.3d 473], the court rejected the argument that the reasonable person standard for self-defense should be the standard of a mentally ill person like the defendant. "The common law does not take account of a person's mental capacity when determining whether he has acted as the reasonable person would have acted. The law holds 'the mentally deranged or insane defendant accountable for his negligence as if the person were a normal, prudent person.' (Prosser & Keeton, Torts (5th ed. 1984) § 32, p. 177.)" (*Ibid.*; see also Rest.2d Torts, § 283B.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 242–244.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.11[1][c], [2][a] (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* §§ 85.03[2][g], 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* §§ 142.01[3][d.1], [e], 142.02[1][a], [e], [f], [2][a], [3][c] (Matthew Bender).

580 Involuntary Manslaughter: Lesser Included Offense (Pen. Code, § 192(b))

When a person commits an unlawful killing but does not intend to kill and does not act with conscious disregard for human life, then the crime is involuntary manslaughter.

The difference between other homicide offenses and involuntary manslaughter depends on whether the person was aware of the risk to life that his or her actions created and consciously disregarded that risk. An unlawful killing caused by a willful act done with full knowledge and awareness that the person is endangering the life of another, and done in conscious disregard of that risk, is voluntary manslaughter or murder. An unlawful killing resulting from a willful act committed without intent to kill and without conscious disregard of the risk to human life is involuntary manslaughter.

The defendant committed involuntary manslaughter if:

1. **The defendant committed (a crime/ [or] a lawful act in an unlawful manner);**
2. **The defendant committed the (crime/ [or] act) with criminal negligence;**

AND

3. **The defendant's acts unlawfully caused the death of another person.**

[The People allege that the defendant committed the following crime[s]: _____ *<insert misdemeanor[s]/infraction[s])/noninherently dangerous (felony/felonies)>***.**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ *<insert misdemeanor[s]/infraction[s])/ noninherently dangerous (felony/felonies)>***.]**

[The People [also] allege that the defendant committed the following lawful act[s] with criminal negligence: _____ *<insert act[s] alleged>***.]**

***Criminal negligence* involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[The People allege that the defendant committed the following (crime[s]/ [and] lawful act[s] with criminal negligence): _____ *<insert alleged predicate acts when multiple acts alleged>***. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one of these alleged acts and you all agree that the same act or acts were proved.]**

In order to prove murder or voluntary manslaughter, the People have the burden of proving beyond a reasonable doubt that the defendant acted with intent to kill or with conscious disregard for human life. If the People have not met either of these burdens, you must find the defendant not guilty of murder and not guilty of voluntary manslaughter.

New January 2006; Revised April 2011, February 2013, September 2018, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on involuntary manslaughter as a lesser included offense of murder when there is sufficient evidence that the defendant lacked malice. (*People v. Glenn* (1991) 229 Cal.App.3d 1461, 1465–1467 [280 Cal.Rptr. 609], overruled in part in *People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675].)

When instructing on involuntary manslaughter as a lesser offense, the court has a **sua sponte** duty to instruct on both theories of involuntary manslaughter (misdemeanor/infraction/noninherently dangerous felony and lawful act committed without due caution and circumspection) if both theories are supported by the evidence. (*People v. Lee* (1999) 20 Cal.4th 47, 61 [82 Cal.Rptr.2d 625, 971 P.2d 1001].) In element 2, instruct on either or both of theories of involuntary manslaughter as appropriate.

The court has a **sua sponte** duty to specify the predicate misdemeanor, infraction or noninherently dangerous felony alleged and to instruct on the elements of the predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409]; *People v. Burroughs* (1984) 35 Cal.3d 824, 835 [201 Cal.Rptr. 319, 678 P.2d 894], disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89 [96 Cal.Rptr.2d 451].)

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].) See also CALCRIM No. 620, *Causation: Special Issues*.

In cases involving vehicular manslaughter (Pen. Code, § 192(c)), there is a split in authority on whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v.*

Durkin (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].) A unanimity instruction is included in a bracketed paragraph, should the court determine that such an instruction is appropriate.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Involuntary Manslaughter Defined. ▸ Pen. Code, § 192(b).
- Due Caution and Circumspection. ▸ *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Criminal Negligence Requirement; This Instruction Upheld. ▸ *People v. Butler* (2010) 187 Cal.App.4th 998, 1014 [114 Cal.Rptr.3d 696].
- Unlawful Act Not Amounting to a Felony. ▸ *People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].
- Unlawful Act Must Be Dangerous Under the Circumstances of Its Commission. ▸ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374]; *People v. Cox* (2000) 23 Cal.4th 665, 674 [97 Cal.Rptr.2d 647, 2 P.3d 1189].
- Proximate Cause. ▸ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Lack of Due Caution and Circumspection Contrasted With Conscious Disregard of Life. ▸ *People v. Watson* (1981) 30 Cal.3d 290, 296–297 [179 Cal.Rptr. 43, 637 P.2d 279]; *People v. Evers* (1992) 10 Cal.App.4th 588, 596 [12 Cal.Rptr.2d 637].
- Inherently Dangerous Assaultive Felonies ▸ *People v. Bryant* (2013) 56 Cal.4th 959, 964 [157 Cal.Rptr.3d 522, 301 P.3d 1136]; *People v. Brothers* (2015) 236 Cal.App.4th 24, 33-34 [186 Cal.Rptr.3d 98].

LESSER INCLUDED OFFENSES

Involuntary manslaughter is a lesser included offense of both degrees of murder, but it is not a lesser included offense of voluntary manslaughter. (*People v. Orr* (1994) 22 Cal.App.4th 780, 784 [27 Cal.Rptr.2d 553].)

There is no crime of attempted involuntary manslaughter. (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798]; *People v. Broussard* (1977) 76 Cal.App.3d 193, 197 [142 Cal.Rptr. 664].)

Aggravated assault is not a lesser included offense of involuntary manslaughter. (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1140 [84 Cal.Rptr.3d 676].)

RELATED ISSUES

Imperfect Self-Defense and Involuntary Manslaughter

Imperfect self-defense is a "mitigating circumstance" that "reduce[s] an intentional, unlawful killing from murder to voluntary manslaughter by *negating the element of malice* that otherwise inheres in such a homicide." (*People v. Rios* (2000) 23 Cal.4th 450, 461 [97 Cal.Rptr.2d 512, 2 P.3d 1066] [citations omitted, emphasis in original].) However, evidence of imperfect self-defense may support a finding of *involuntary* manslaughter, where the evidence demonstrates *the absence of* (as opposed to *the negation of*) the elements of malice. (*People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675] [discussing dissenting opinion of Mosk, J.].) Nevertheless, a court should not instruct on involuntary manslaughter unless there is evidence supporting the statutory elements of that crime.

See also the Related Issues section to CALCRIM No. 581, *Involuntary Manslaughter: Murder Not Charged*.

SECONDARY SOURCES

4 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 246–260.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.02[4], 140.04, Ch. 142, *Crimes Against the Person,* §§ 142.01[3][d.1], [e], 142.02[1][a], [b], [e], [f], [2][b], [3][c] (Matthew Bender).

581 Involuntary Manslaughter: Murder Not Charged (Pen. Code, § 192(b))

The defendant is charged [in Count ____] with involuntary manslaughter [in violation of Penal Code section 192(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant committed (a crime/ [or] a lawful act in an unlawful manner);**
2. **The defendant committed the (crime/ [or] act) with criminal negligence;**

AND

3. **The defendant's acts caused the death of another person.**

[The People allege that the defendant committed the following crime[s]: _____ *<insert misdemeanor[s]/infraction[s])/noninherently dangerous (felony/felonies)>***.**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ *<insert misdemeanor[s]/infraction[s])/ noninherently dangerous (felony/felonies)>***.]**

[The People [also] allege that the defendant committed the following lawful act[s] with criminal negligence: _____ *<insert act[s] alleged>***.]**

Criminal negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[The People allege that the defendant committed the following (crime[s]/ [and] lawful act[s] with criminal negligence): _____ <*insert alleged predicate acts when multiple acts alleged*>**. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one of these alleged acts and you all agree on which act (he/she) committed.]**

New January 2006; Revised April 2011, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the offense.

The court has a **sua sponte** duty to instruct on both theories of involuntary manslaughter (misdemeanor/infraction/noninherently dangerous felony and lawful act committed without due caution and circumspection) if both theories are supported by the evidence. (*People v. Lee* (1999) 20 Cal.4th 47, 61 [82 Cal.Rptr.2d 625, 971 P.2d 1001].) In element 1, instruct on either or both theories of involuntary manslaughter as appropriate.

The court has a **sua sponte** duty to specify the predicate misdemeanor, infraction or noninherently dangerous felony alleged and to instruct on the elements of the

predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409]; *People v. Burroughs* (1984) 35 Cal.3d 824, 835 [201 Cal.Rptr. 319, 678 P.2d 894], disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89 [96 Cal.Rptr.2d 451, 999 P.2d 675].)

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

In cases involving vehicular manslaughter (Pen. Code, § 192(c)), there is a split in authority on whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].) A unanimity instruction is included in a bracketed paragraph for the court to use at its discretion.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Involuntary Manslaughter Defined. ▸ Pen. Code, § 192(b).
- Due Caution and Circumspection. ▸ *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Unlawful Act Not Amounting to a Felony. ▸ *People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].

- Criminal Negligence Requirement ‣ *People v. Butler* (2010) 187 Cal.App.4th 998, 1014 [114 Cal.Rptr.3d 696].
- Unlawful Act Must Be Dangerous Under the Circumstances of Its Commission. ‣ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374]; *People v. Cox* (2000) 23 Cal.4th 665, 674 [97 Cal.Rptr.2d 647, 2 P.3d 1189].
- Proximate Cause. ‣ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Lack of Due Caution and Circumspection Contrasted With Conscious Disregard of Life. ‣ *People v. Watson* (1981) 30 Cal.3d 290, 296–297 [179 Cal.Rptr. 43, 637 P.2d 279]; *People v. Evers* (1992) 10 Cal.App.4th 588, 596 [12 Cal.Rptr.2d 637].

LESSER INCLUDED OFFENSES

There is no crime of attempted involuntary manslaughter. (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798].)

Aggravated assault is not a lesser included offense of involuntary manslaughter. (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1140 [84 Cal.Rptr.3d 676].)

RELATED ISSUES

Due Caution and Circumspection

"The words lack of 'due caution and circumspection' have been heretofore held to be the equivalent of 'criminal negligence.' " (*People v. Penny* (1955) 44 Cal.2d 861, 879[285 P.2d 926].)

Felonies as Predicate "Unlawful Act"

"[T]he only logically permissible construction of section 192 is that an unintentional homicide committed in the course of a noninherently dangerous felony may properly support a conviction of involuntary manslaughter, if that felony is committed without due caution and circumspection." (*People v. Burroughs* (1984) 35 Cal.3d 824, 835 [201 Cal.Rptr. 319, 678 P.2d 894], disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89 [96 Cal.Rptr.2d 451, 999 P.2d 675] [practicing medicine without a license cannot be predicate offense for second degree murder because not inherently dangerous but can be for involuntary manslaughter even though Penal Code section 192 specifies

an "unlawful act, not amounting to a felony"].)

No Inherently Dangerous Requirement for Predicate Misdemeanor/Infraction
"[T]he offense which constitutes the 'unlawful act' need not be an inherently dangerous misdemeanor or infraction. Rather, to be an 'unlawful act' within the meaning of section 192(c)(1), the offense must be dangerous under the circumstances of its commission. An unlawful act committed with gross negligence would necessarily be so." (*People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].)

Fetus
Manslaughter does not apply to the death of a fetus. (*People v. Carlson* (1974) 37 Cal.App.3d 349, 355 [112 Cal.Rptr. 321].) While the Legislature has included the killing of a fetus, as well as a human being, within the definition of murder under Penal Code section 187, it has "left untouched the provisions of section 192, defining manslaughter [as] the 'unlawful killing of a human being.'" (*Ibid*.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 225, 246–260.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.02[4], 140.04, Ch. 142, *Crimes Against the Person,* § 142.02[1][a], [b], [e], [f], [2][b], [3][c] (Matthew Bender).

582 Involuntary Manslaughter: Failure to Perform Legal Duty—Murder Not Charged (Pen. Code, § 192(b))

The defendant is charged [in Count ____] with involuntary manslaughter [in violation of Penal Code section 192(b)] based on failure to perform a legal duty.

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant had a legal duty to _____** *<insert name of decedent>***;**

2. **The defendant failed to perform that legal duty;**

3. **The defendant's failure was criminally negligent;**

   AND

4. **The defendant's failure caused the death of _____** *<insert name of decedent>***.**

(A/An) _____ *<insert description of person owing duty>* **has a legal duty to (help/care for/rescue/warn/maintain the property of/_____** *<insert other required action[s]>***) _____** *<insert description of decedent, not name>***.**

Criminal negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

   AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with criminal negligence when the way he or she acts is so different from how an ordinarily careful person would act in the

same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death, only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Legal Duty

The existence of a legal duty is a matter of law to be decided by the judge. (*Kentucky Fried Chicken v. Superior Court* (1997) 14 Cal.4th 814, 819 [59 Cal.Rtpr.2d 756, 927 P.2d 1260]; *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 124 [211 Cal.Rptr. 356, 695 P.2d 653].) The court should instruct the jury if a legal duty exists. (See *People v. Burden* (1977) 72 Cal.App.3d 603, 614 [140 Cal.Rptr. 282] [proper instruction that parent has legal duty to furnish necessary clothing, food, and medical attention for his or her minor child].) In the

instruction on legal duty, the court should use generic terms to describe the relationship and duty owed. For example:

> A parent has a legal duty to care for a child.
>
> A paid caretaker has a legal duty to care for the person he or she was hired to care for.
>
> A person who has assumed responsibility for another person has a legal duty to care for that other person.

The court should not state "the defendant had a legal duty to the decedent." (See *People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135] [correct to state "a Garden Grove Regular Police Officer [is a] peace officer"; would be error to state "Officer Reed was a peace officer"].)

However, in a small number of cases where the legal duty to act is based on the defendant having created or increased risk to the victim, the existence of the legal duty may depend on facts in dispute. (See *People v. Oliver* (1989) 210 Cal.App.3d 138, 149 [258 Cal.Rptr. 138].) If there is a conflict in testimony over the facts necessary to establish that the defendant owed a legal duty to the victim, then the issue must be submitted to the jury. In such cases, the court should insert a section similar to the following:

> **The People must prove that the defendant had a legal duty to (help/rescue/warn/**_____ *<insert other required action[s]>***)** _____ *<insert name of decedent>***.**
>
> **In order to prove that the defendant had this legal duty, the People must prove that the defendant** _____ *<insert facts that establish legal duty>***.**
>
> **If you decide that the People have proved that the defendant** _____ *<insert facts that establish legal duty>***, then the defendant had a legal duty to (help/rescue/warn/**_____ *<insert other required action[s]>***)** _____ *<insert name of decedent>***.**
>
> **If you have a reasonable doubt whether the defendant** _____ *<insert facts that establish legal duty>***, then you must find (him/her) not guilty.**

AUTHORITY

- Elements. ▸ Pen. Code, § 192(b); *People v. Oliver* (1989) 210 Cal.App.3d 138, 146 [258 Cal.Rptr. 138].
- Criminal Negligence. ▸ *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Legal Duty. ▸ *People v. Heitzman* (1994) 9 Cal.4th 189, 198–199 [37 Cal.Rptr.2d 236, 886 P.2d 1229]; *People v. Oliver* (1989) 210 Cal.App.3d 138, 149 [258 Cal.Rptr. 138].
- Causation. ▸ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274].

LESSER INCLUDED OFFENSES

Aggravated assault is not a lesser included offense of involuntary manslaughter. (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1140 [84 Cal.Rptr.3d 676].)

RELATED ISSUES

Legal Duty to Aid

In *People v. Oliver* (1989) 210 Cal.App.3d 138, 147 [258 Cal.Rptr. 138], the court explained the requirement of a legal duty to act as follows:

> A necessary element of negligence, whether criminal or civil, is a duty owed to the person injured and a breach of that duty. . . . Generally, one has no legal duty to rescue or render aid to another in peril, even if the other is in danger of losing his or her life, absent a special relationship which gives rise to such duty. . . . In California civil cases, courts have found a special relationship giving rise to an affirmative duty to act where some act or omission on the part of the defendant either created or increased the risk of injury to the plaintiff, or created a dependency relationship inducing reliance or preventing assistance from others. . . . Where, however, the defendant took no affirmative action which contributed to, increased, or changed the risk which would otherwise have existed, and did not voluntarily assume any responsibility to protect the person or induce a false sense of security, courts have refused to find a special relationship giving rise to a duty to act.

Duty Based on Dependency/Voluntary Assumption of Responsibility
A legal duty to act exists when the defendant is a caretaker or has voluntarily assumed responsibility for the victim. (*Walker v. Superior Court* (1988) 47 Cal.3d 112,134–138 [253 Cal.Rptr. 1, 763 P.2d 852] [parent to child]; *People v. Montecino* (1944) 66 Cal.App.2d 85, 100 [152 P.2d 5] [contracted caretaker to dependent].)

Duty Based on Conduct Creating or Increasing Risk
A legal duty to act may also exist where the defendant's behavior created or substantially increased the risk of harm to the victim, either by creating the dangerous situation or by preventing others from rendering aid. (*People v. Oliver* (1989) 210 Cal.App.3d 138, 147–148 [258 Cal.Rptr. 138] [defendant had duty to act where she drove victim to her home knowing he was drunk, knowingly allowed him to use her bathroom to ingest additional drugs, and watched him collapse on the floor]; *Sea Horse Ranch, Inc. v. Superior Court* (1994) 24 Cal.App.4th 446, 456 [30 Cal.Rptr. 2d 681] [defendant had duty to prevent horses from running onto adjacent freeway creating risk].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 258–260.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.03, 140.04, Ch. 142, *Crimes Against the Person,* § 142.02[2][b] (Matthew Bender).

583–589. Reserved for Future Use

590 Gross Vehicular Manslaughter While Intoxicated (Pen. Code, § 191.5(a))

The defendant is charged [in Count __] with gross vehicular manslaughter while intoxicated [in violation of Penal Code section 191.5(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug]/drove while having a blood alcohol level of 0.08 or higher/drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] when under the age of 21/drove while having a blood alcohol level of 0.05 or higher when under the age of 21);**

2. **While driving that vehicle under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug], the defendant also committed (a/an) (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death);**

3. **The defendant committed the (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) with gross negligence;**

AND

4. **The defendant's grossly negligent conduct caused the death of another person.**

[The People allege that the defendant committed the following (misdemeanor[s]/ [and] infraction[s]): _____ *<insert misdemeanor[s] /infraction[s]>***.**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ *<insert misdemeanor[s]/infraction[s]>***.]**

[The People [also] allege that the defendant committed the following otherwise lawful act(s) that might cause death: _____ *<insert act[s] alleged>***.]**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant (drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug]/drove while having a blood alcohol level of 0.08 or higher/drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] when under the age of 21/drove while having a blood alcohol level of 0.05 or higher when under the age of 21).

Gross negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with gross negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

The combination of driving a vehicle while under the influence of (an alcoholic beverage/ [and/or] a drug) and violating a traffic law is not enough by itself to establish gross negligence. In evaluating whether the defendant acted with gross negligence, consider the level of the defendant's intoxication, if any; the way the defendant drove; and any other relevant aspects of the defendant's conduct.

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A person facing a sudden and unexpected emergency situation not caused by

that person's own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation, even if it appears later that a different course of action would have been safer.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[The People allege that the defendant committed the following (misdemeanor[s][,]/ [and] infraction[s][,]/ [and] otherwise lawful act[s] that might cause death): _____ *<insert alleged predicate acts when multiple acts alleged>***. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one of these alleged (misdemeanors[,]/ [or] infractions[,]/ [or] otherwise lawful acts that might cause death) and you all agree on which (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) the defendant committed.]**

[The People have the burden of proving beyond a reasonable doubt that the defendant committed gross vehicular manslaughter while intoxicated. If the People have not met this burden, you must find the defendant not guilty of that crime. You must consider whether the defendant is guilty of the lesser crime[s] of _____ *<insert lesser offense[s]>***.]**

New January 2006; Revised June 2007, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to specify the predicate misdemeanor(s) or infraction(s) alleged and to instruct on the elements of the predicate offense(s).

(*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].) In element 1, instruct on the particular "under the influence" offense charged. In element 2, instruct on either theory of vehicular manslaughter (misdemeanor/infraction or lawful act committed with negligence) as appropriate. The court **must** also give the appropriate instruction on the elements of the driving under the influence offense and the predicate misdemeanor or infraction.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, harmless error if was required].) A unanimity instruction is included in a bracketed paragraph for the court to use at its discretion.

If there is sufficient evidence and the defendant requests it, the court should instruct on the imminent peril/sudden emergency doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) Give the bracketed sentence that begins with "A person facing a sudden and unexpected emergency."

If the defendant is charged with one or more prior conviction (see Pen. Code, § 191.5(d)), the court should also give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, unless the defendant has stipulated to the prior conviction or the court has granted a bifurcated trial. (See Bench Notes to CALCRIM No. 3100.)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than

minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Gross Vehicular Manslaughter While Intoxicated. ▸ Pen. Code, § 191.5(a).
- Unlawful Act Dangerous Under the Circumstances of Its Commission. ▸ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].
- Specifying Predicate Unlawful Act. ▸ *People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688].
- Elements of the Predicate Unlawful Act. ▸ *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481[76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587[249 Cal.Rptr. 906].
- Gross Negligence. ▸ *People v. Penny*, (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Gross Negligence—Overall Circumstances. ▸ *People v. Bennett* (1992) 54 Cal.3d 1032, 1039 [2 Cal.Rptr.2d 8, 819 P.2d 849].
- Causation. ▸ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Imminent Peril/Sudden Emergency Doctrine. ▸ *People v. Boulware* (1940) 41 Cal.App.2d 268, 269 [106 P.2d 436].
- This Instruction Upheld. ▸ *People v. Hovda* (2009) 176 Cal.App.4th 1355, 1358 [98 Cal.Rptr.3d 499].

LESSER INCLUDED OFFENSES

- Vehicular Manslaughter With Gross Negligence Without Intoxication. ▸ Pen.

Code, § 192(c)(1); *People v. Miranda* (1994) 21 Cal.App.4th 1464, 1466–1467 [26 Cal.Rptr.2d 610].

- Vehicular Manslaughter With Ordinary Negligence While Intoxicated. ▸ Pen. Code, § 191.5(b); *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1165–1166 [123 Cal.Rptr.2d 322].
- Vehicular Manslaughter With Ordinary Negligence Without Intoxication. ▸ Pen. Code, § 192(c)(2); *People v. Rodgers* (1949) 94 Cal.App.2d 166, 166 [210 P.2d 71].
- Injury to Someone While Driving Under the Influence of Alcohol or Drugs. ▸ Veh. Code, § 23153; *People v. Miranda* (1994) 21 Cal.App.4th 1464, 1466–1467 [26 Cal.Rptr.2d 610].

Gross vehicular manslaughter while intoxicated is *not* a lesser included offense of murder. (*People v. Sanchez* (2001) 24 Cal.4th 983, 992 [103 Cal.Rptr.2d 698, 16 P.3d 118].)

RELATED ISSUES

DUI Cannot Serve as Predicate Unlawful Act

The Vehicle Code driving-under-the-influence offense of the first element cannot do double duty as the predicate unlawful act for the second element. (*People v. Soledad* (1987) 190 Cal.App.3d 74, 81 [235 Cal.Rptr. 208].) "[T]he trial court erroneously omitted the 'unlawful act' element of vehicular manslaughter when instructing in . . . [the elements] by referring to Vehicle Code section 23152 rather than another 'unlawful act' as required by the statute." (*Id.* at p. 82.)

Predicate Act Need Not Be Inherently Dangerous

"[T]he offense which constitutes the 'unlawful act' need not be an inherently dangerous misdemeanor or infraction. Rather, to be an 'unlawful act' within the meaning of section 192(c)(1), the offense must be dangerous under the circumstances of its commission. An unlawful act committed with gross negligence would necessarily be so." (*People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].)

Lawful Act in an Unlawful Manner: Negligence

The statute uses the phrase "lawful act which might produce death, in an unlawful manner." (Pen. Code, § 191.5.) "[C]ommitting a lawful act in an unlawful manner simply means to commit a lawful act with negligence, that is, without reasonable caution and care." (*People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].) Because the instruction lists the negligence requirement as element 3, the phrase "in an unlawful manner" is omitted from element 2 as

repetitive.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 263–272.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04, Ch. 142, *Crimes Against the Person,* § 142.02[2][c], [4], Ch. 145, *Narcotics and Alcohol Offenses,* §§ 145.02[4][c], 145.03[1][a] (Matthew Bender).

592 Gross Vehicular Manslaughter (Pen. Code § 192(c)(1))

<If gross vehicular manslaughter is a charged offense, give alternative A; if this instruction is being given as a lesser included offense, give alternative B.>

<Introductory Sentence: Alternative A—Charged Offense>
[The defendant is charged [in Count __] with gross vehicular manslaughter [in violation of Penal Code section 192(c)(1)].]

<Introductory Sentence: Alternative B—Lesser Included Offense>
[Gross vehicular manslaughter is a lesser crime than gross vehicular manslaughter while intoxicated.]

To prove that the defendant is guilty of gross vehicular manslaughter, the People must prove that:

1. **The defendant (drove a vehicle/operated a vessel);**

2. **While (driving that vehicle/operating that vessel), the defendant committed (a/an) (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death);**

3. **The defendant committed the (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) with gross negligence;**

AND

4. **The defendant's grossly negligent conduct caused the death of another person.**

Gross negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with gross negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A person facing a sudden and unexpected emergency situation not caused by that person's own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation, even if it appears later that a different course of action would have been safer.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[The People allege that the defendant committed the following (misdemeanor[s]/ [and] infraction[s]): _____ *<insert misdemeanor[s]/ infraction[s]>***.**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ *<insert misdemeanor[s]/infraction[s]>***.]**

[The People [also] allege that the defendant committed the following otherwise lawful act(s) that might cause death: _____ *<insert act[s] alleged>***.]**

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one alleged

(misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) and you all agree on which (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) the defendant committed.]

[The People have the burden of proving beyond a reasonable doubt that the defendant committed gross vehicular manslaughter. If the People have not met this burden, you must find the defendant not guilty of that crime. You must consider whether the defendant is guilty of the lesser crime[s] of _____ *<insert lesser offense[s]>*.**]**

New January 2006; Revised February 2015, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to specify the predicate misdemeanor(s) or infraction(s) alleged and to instruct on the elements of the predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].) In element 2, instruct on either theory of vehicular manslaughter (misdemeanor/infraction or lawful act committed with negligence) as appropriate. The court **must** also give the appropriate instruction on the elements of the the predicate misdemeanor or infraction.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but

preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, harmless error if was required].) A unanimity instruction is included in a bracketed paragraph for the court to use at its discretion.

If there is sufficient evidence and the defendant requests it, the court should instruct on the imminent peril/sudden emergency doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) Give the bracketed sentence that begins with "A person facing a sudden and unexpected emergency."

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Gross Vehicular Manslaughter. ▸ Pen. Code, § 192(c)(1).
- Gross Vehicular Manslaughter During Operation of a Vessel. ▸ Pen. Code, § 192.5(a).
- Unlawful Act Dangerous Under the Circumstances of Its Commission. ▸ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].
- Specifying Predicate Unlawful Act. ▸ *People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688].
- Elements of Predicate Unlawful Act. ▸ *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481[76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].
- Gross Negligence. ▸ *People v. Bennett* (1992) 54 Cal.3d 1032, 1036 [2 Cal.Rptr.2d 8, 819 P.2d 849].

- Causation. ‣ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Imminent Peril/Sudden Emergency Doctrine. ‣ *People v. Boulware* (1940) 41 Cal.App.2d 268, 269 [106 P.2d 436].

LESSER INCLUDED OFFENSES

- Vehicular Manslaughter With Ordinary Negligence. ‣ Pen. Code, § 192(c)(2); see *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1165–1166 [123 Cal.Rptr.2d 322].
- Manslaughter During Operation of a Vessel Without Gross Negligence. ‣ Pen. Code, § 192.5(b).

RELATED ISSUES

Predicate Act Need Not Be Inherently Dangerous

"[T]he offense which constitutes the 'unlawful act' need not be an inherently dangerous misdemeanor or infraction. Rather, to be an 'unlawful act' within the meaning of section 192(c)(1), the offense must be dangerous under the circumstances of its commission. An unlawful act committed with gross negligence would necessarily be so." (*People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rtpr.2d 699, 911 P.2d 1374].)

Lawful Act in an Unlawful Manner: Negligence

The statute uses the phrase "lawful act which might produce death, in an unlawful manner." (Pen. Code, § 192(c)(1).) "[C]ommitting a lawful act in an unlawful manner simply means to commit a lawful act with negligence, that is, without reasonable caution and care." (*People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].) Because the instruction lists the negligence requirement as element 3, the phrase "in an unlawful manner" is omitted from element 2 as repetitive.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 262–268.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04, Ch. 142, *Crimes Against the Person,* § 142.02[1][a], [2][c], [4] (Matthew Bender).

604 Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense (Pen. Code, §§ 21a, 192, 664)

An attempted killing that would otherwise be attempted murder is reduced to attempted voluntary manslaughter if the defendant attempted to kill a person because (he/she) acted in imperfect (self-defense/ [or] defense of another).

If you conclude the defendant acted in complete (self-defense/ [or] defense of another), (his/her) action was lawful and you must find (him/her) not guilty of any crime. The difference between complete (self-defense/ [or] defense of another) and imperfect (self-defense/ [or] defense of another) depends on whether the defendant's belief in the need to use deadly force was reasonable.

The defendant acted in imperfect (self-defense/ [or] defense of another) if:

1. **The defendant took at least one direct but ineffective step toward killing a person.**

2. **The defendant intended to kill when (he/she) acted.**

3. **The defendant believed that (he/she/ [or] someone else/_____ <*insert name of third party*>) was in imminent danger of being killed or suffering great bodily injury.**

AND

4. **The defendant believed that the immediate use of deadly force was necessary to defend against the danger.**

BUT

5. **At least one of the defendant's beliefs was unreasonable.**

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have actually believed there was imminent danger of death or great bodily injury to (himself/herself/ [or] someone else).

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

[If you find that _____<*insert name or description of alleged victim*>**threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]**

[If you find that the defendant knew that _____<*insert name or description of alleged victim*> **had threatened or harmed others in the past, you may consider that information in evaluating the defendant's beliefs.]**

[If you find that the defendant received a threat from someone else that (he/she) reasonably associated with _____<*insert name or description of alleged victim*>**, you may consider that threat in evaluating the defendant's beliefs.]**

The People have the burden of proving beyond a reasonable doubt that the defendant was not acting in imperfect self-defense. If the People have not met this burden, you must find the defendant not guilty of attempted murder.

New January 2006; Revised August 2009, October 2010, February 2012, February 2013, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on attempted voluntary manslaughter on either theory, heat of passion or imperfect self-defense, when evidence of either is "substantial enough to merit consideration" by the jury. (See *People v. Breverman* (1998) 19 Cal.4th 142, 153–163 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing charge of completed murder]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531] [same].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Perfect Self-Defense

Most courts hold that an instruction on imperfect self-defense **is required** in every case in which a court instructs on perfect self-defense. If there is substantial evidence of a defendant's belief in the need for self-defense, there will *always* be substantial evidence to support an imperfect self-defense instruction because the reasonableness of that belief will always be at issue. (See *People v. Ceja* (1994) 26 Cal.App.4th 78, 85–86 [31 Cal.Rptr.2d 475], overruled in part in *People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675]; see also *People v. De Leon* (1992) 10 Cal.App.4th 815, 824 [12 Cal.Rptr.2d 825].) The court in *People v. Rodriguez* disagreed, however, and found that an imperfect self-defense instruction was not required sua sponte on the facts of the case where the defendant's version of the crime "could only lead to an acquittal based on justifiable homicide," and when the prosecutor's version of the crime could only lead to a conviction of first degree murder. (*People v. Rodriguez* (1997) 53 Cal.App.4th 1250, 1275 [62 Cal.Rptr.2d 345]; see also *People v. Williams* (1992) 4 Cal.4th 354, 362 [14 Cal.Rptr.2d 441, 841 P.2d 961] [in a rape prosecution, the court was not required to give a mistake-of-fact instruction where the two sides gave wholly divergent accounts with no middle ground to support a mistake-of-fact instruction].)

In evaluating whether the defendant actually believed in the need for self-defense, the jury may consider the effect of antecedent threats and assaults against the defendant, including threats received by the defendant from a third party that the defendant reasonably associated with the aggressor. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065, 1069 [56 Cal.Rptr.2d 133, 920 P.2d 1337].) If there is sufficient evidence, the court should give the bracketed paragraphs on prior threats or assaults on request.

Related Instructions

CALCRIM Nos. 3470–3477, *Defense Instructions*.

CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

AUTHORITY

- Attempt Defined. ▸ Pen. Code, §§ 21a, 664.
- Manslaughter Defined. ▸ Pen. Code, § 192.
- Attempted Voluntary Manslaughter. ▸ *People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].

- Imperfect Self-Defense Defined. ▸ *People v. Flannel* (1979) 25 Cal.3d 668, 680–683 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531]; *In re Christian S.* (1994) 7 Cal.4th 768, 773 [30 Cal.Rptr.2d 33, 872 P.2d 574]; see *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197–198 [272 Cal.Rptr. 693] [insufficient evidence to support defense of another person].
- This Instruction Upheld. ▸ *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1307 [132 Cal.Rptr.3d 248].

RELATED ISSUES

See the Related Issues section to CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense* and CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 224.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.11 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt,* §§ 141.20[2], 141.21; Ch. 142, *Crimes Against the Person,* §§ 142.01[3][e], 142.02[2][a] (Matthew Bender).

605–619. Reserved for Future Use

766 Death Penalty: Weighing Process

You have sole responsibility to decide which penalty (the/each) defendant will receive.

You must consider the arguments of counsel and all the evidence presented [during (both/all) phases of the trial] [except for the items of evidence I specifically instructed you not to consider].

In reaching your decision, you must consider, take into account, and be guided by the aggravating and mitigating circumstances. Each of you is free to assign whatever moral or sympathetic value you find appropriate to each individual factor and to all of them together. Do not simply count the number of aggravating and mitigating factors and decide based on the higher number alone. Consider the relative or combined weight of the factors and evaluate them in terms of their relative convincing force on the question of punishment.

Each of you must decide for yourself whether aggravating or mitigating factors exist. You do not all need to agree whether such factors exist. If any juror individually concludes that a factor exists, that juror may give the factor whatever weight he or she believes is appropriate.

Determine which penalty is appropriate and justified by considering all the evidence and the totality of any aggravating and mitigating circumstances. Even without mitigating circumstances, you may decide that the aggravating circumstances are not substantial enough to warrant death. To return a judgment of death, each of you must be persuaded that the aggravating circumstances both outweigh the mitigating circumstances and are also so substantial in comparison to the mitigating circumstances that a sentence of death is appropriate and justified.

~~**[In making your decision about penalty, you must assume that the penalty you impose, death or life without the possibility of parole, will be carried out.]**~~

To return a verdict of either death or life without the possibility of parole, all 12 of you must agree on that verdict.

[You must separately consider which sentence to impose on each defendant. If you cannot agree on the sentence[s] for one [or more] defendant[s] but you do

agree on the sentence[s] for the other defendant[s], then you must return a verdict for (the/each) defendant on whose sentence you do agree.]

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the weighing process in a capital case. (*People v. Brown* (1985) 40 Cal.3d 512, 544 [230 Cal.Rptr. 834, 726 P.2d 516]; *People v. Benson* (1990) 52 Cal.3d 754, 799 [276 Cal.Rptr. 827, 802 P.2d 330].)

Following this instruction, the court **must give** CALCRIM No. 3550, *Pre-Deliberation Instructions*, explaining how to proceed in deliberations.

~~On request, give the bracketed sentence that begins with "In making your decision about penalty." (*People v. Kipp* (1988) 18 Cal.4th 349, 378–379 [75 Cal.Rptr.2d 716, 956 P.2d 1169].)~~

~~Give CALCRIM No. 767, *Response to Juror Inquiry During Deliberations About Commutation of Sentence in Death Penalty Case*, if there is an inquiry from jurors or at the request of the defendant.~~

AUTHORITY

- Death Penalty Statute. ▸ Pen. Code, § 190.3.
- Error to Instruct "Shall Impose Death." ▸ *People v. Brown* (1985) 40 Cal.3d 512, 544 [230 Cal.Rptr. 834, 726 P.2d 516].
- Must Instruct on Weighing Process. ▸ *People v. Brown* (1985) 40 Cal.3d 512, 544 [230 Cal.Rptr. 834, 726 P.2d 516]; *People v. Benson* (1990) 52 Cal.3d 754, 799 [276 Cal.Rptr. 827, 802 P.2d 330]; *People v. Duncan* (1991) 53 Cal.3d 955, 977–979 [281 Cal.Rptr. 273, 810 P.2d 131].
- Aggravating Factors "So Substantial in Comparison to" Mitigating. ▸ *People v. Duncan* (1991) 53 Cal.3d 955, 977–979 [281 Cal.Rptr. 273, 810 P.2d 131].
- ~~Error to Instruct on Commutation. ▸ *People v. Ramos* (1982) 37 Cal.3d 136, 159 [207 Cal.Rptr. 800, 689 P.2d 430].~~
- This Instruction Approved in Dicta. ▸ *People v. Murtishaw* (2011) 51 Cal.4th 574, 588–589 [121 Cal.Rptr.3d 586, 247 P.3d 941].

- Responding to Juror Inquiry re Commutation of Sentence. ▸ *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 204-207 [112 Cal.Rptr.3d 746, 235 P.3d 62].

RELATED ISSUES

No Presumption of Life and No Reasonable Doubt Standard
The court is not required to instruct the jury that there is a presumption in favor of a life sentence; that the aggravating factors (other than prior crimes) must be found beyond a reasonable doubt; or that the jury must find beyond a reasonable doubt that the aggravating factors substantially outweigh the mitigating factors. (*People v. Benson* (1990) 52 Cal.3d 754, 800 [276 Cal.Rptr. 827, 802 P.2d 330]; *People v. Miranda* (1987) 44 Cal.3d 57, 107 [241 Cal.Rptr. 594, 744 P.2d 1127]; *People v. Rodriguez* (1986) 42 Cal.3d 730, 777–779 [230 Cal.Rptr. 667, 726 P.2d 113].)

Unanimity on Factors Not Required
The court is not required to instruct the jury that they must unanimously agree on any aggravating circumstance. (*People v. Rodriguez* (1986) 42 Cal.3d 730, 777–779 [230 Cal.Rtpr. 667, 726 P.2d 113].)

Commutation Power
The court must not state or imply to the jury that the ultimate authority for selecting the sentence to be imposed lies elsewhere. (*Caldwell v. Mississippi* (1985) 472 U.S. 320, 328–329 [105 S.Ct. 2633, 86 L.Ed.2d 231].)

Deadlock—No Duty to Inform Jury Not Required to Return Verdict
"[W]here, as here, there is no jury deadlock, a court is not required to instruct the jury that it has the choice not to deliver any verdict." (*People v. Miranda* (1987) 44 Cal.3d 57, 105 [241 Cal.Rptr. 594, 744 P.2d 1127].)

Deadlock—Questions From the Jury About What Will Happen
If the jury inquires about what will happen in the event of a deadlock, the court should instruct jurors: "[T]hat subject is not for the jury to consider or to concern itself with. You must make every effort to reach [a] unanimous decision if at all possible." (*People v. Virgil* (2011) 51 Cal.4th 1210, 1281, 126 Cal.Rptr.3d 465, 253 P.3d 553, citing *People v. Thomas* (1992) 2 Cal.4th 489, 7 Cal.Rptr.2d 199, 828 P.2d 101.)

No Duty to Instruct Not to Consider Deterrence or Costs
"Questions of deterrence or cost in carrying out a capital sentence are for the Legislature, not for the jury considering a particular case." (*People v. Benson* (1990) 52 Cal.3d 754, 807 [276 Cal.Rptr. 827, 802 P.2d 330] [citation and internal

quotation marks omitted].) Where "[t]he issue of deterrence or cost [is] not raised at trial, either expressly or by implication," the court need not instruct the jury to disregard these matters. *(Ibid.)*

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 549–550, 584–587, 589–591.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty,* §§ 87.23[2], 87.24[1] (Matthew Bender).

767 ~~Response to Juror Inquiry During Deliberations About~~ Jurors' Responsibility During Deliberation ~~Commutation of Sentence~~ in Death Penalty Case

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It is your responsibility to decide which penalty is appropriate for the defendant in this case. Base your decision only on the evidence you have heard in court and on the instructions that I have given you. Do not speculate or consider anything other than the evidence and my instructions.

New April 2010; Revised April 2011, September 2020

BENCH NOTES

Instructional Duty

This instruction may be given on request and must ~~should~~ be given ~~only~~ in response to a jury question about commutation of sentence ~~or at the request of the defendant~~. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 204-207 [112 Cal.Rptr.3d 746, 235 P.3d 62]; *People v. Ramos* (1984) 37 Cal.3d 136, 159, fn. 12 [207 Cal.Rptr. 800, 689 P.2d 430]). "The key in *Ramos* is whether the jury raises the commutation issue so that it 'cannot be avoided.'" (*People v. Bramit* (2009) 46 Cal.4th 1221, 1251 [96 Cal.Rptr.3d 574, 210 P.3d 1171] (conc. opn. of Moreno, J.)) Commutation instructions are proper, however, when the jury implicitly raises the issue of commutation. No direct question is necessary. (*People v. Beames* (2007) 40 Cal.4th 907, 932 [55 Cal.Rptr.3d 865, 153 P.3d 955].)

AUTHORITY

Instructional Requirements ▸ Pen. Code, § 190.3; *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 204-207 [112 Cal.Rptr.3d 746, 235 P.3d 62]; *People v. Ramos* (1984) 37 Cal.3d 136, 159, fn. 12 [207 Cal.Rptr. 800, 689 P.2d 430]).

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, § 589.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty*, § 87.02 (Matthew Bender).

768–774. Reserved for Future Use

810. Torture (Pen. Code, § 206)

The defendant is charged [in Count ____] with torture [in violation of Penal Code section 206].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant inflicted great bodily injury on someone else;**

AND

2. **When inflicting the injury, the defendant intended to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose.**

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[It is not required that a victim actually suffer pain.]

[Someone acts for the purpose of *extortion* if he or she intends to (1) obtain a person's property with the person's consent and (2) obtain the person's consent through the use of force or fear.]

[Someone acts for the purpose of *extortion* if he or she (1) intends to get a public official to do an official act and (2) uses force or fear to make the official do the act. An *official act* is an act that an officer does in his or her official capacity using the authority of his or her public office.]

[Someone acts with a *sadistic purpose* if he or she intends to inflict pain on someone else in order to experience pleasure himself or herself.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Unlike murder by torture, the crime of torture does not require that the intent to cause pain be premeditated or that any cruel or extreme pain be prolonged. (*People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739]; *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204–1205 [68 Cal.Rptr.2d 619]; *People v. Vital* (1996) 45 Cal.App.4th 441, 444 [52 Cal.Rptr.2d 676].) Torture as defined in section 206 of the Penal Code focuses on the mental state of the perpetrator and not the actual pain inflicted. (*People v. Hale* (1999) 75 Cal.App.4th 94, 108 [88 Cal.Rptr.2d 904].) Give the first bracketed paragraph on request if there is no proof that the alleged victim actually suffered pain. (See Pen. Code, § 206.)

"Extortion" need not be defined for purposes of torture. (*People v. Barrera* (1993) 14 Cal.App.4th 1555, 1564 [18 Cal.Rptr.2d 395]; but see *People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628] [term should be defined for kidnapping under Pen. Code, § 209].) Nevertheless, either of the bracketed definitions of extortion, and the related definition of "official act," may be given on request if any of these issues are raised in the case. (See Pen. Code, § 518 [defining "extortion"]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141] [defining "official act"].) Extortion may also be committed by using "the color of official right" to make an official do an act. (Pen. Code, § 518; see *Evans v. United States* (1992) 504 U.S. 255, 258 [112 S.Ct. 1881, 119 L.Ed.2d 57]; *McCormick v. United States* (1990) 500 U.S. 257, 273 [111 S.Ct. 1807, 114 L.Ed.2d 307] [both discussing common law definition of the term].) It appears that this type of extortion would rarely occur in the context of torture, so it is excluded from this instruction.

"Sadistic purpose" may be defined on request. (See *People v. Barrera, supra,* 14 Cal.App.4th at p. 1564; *People v. Raley* (1992) 2 Cal.4th 870, 899–901 [8 Cal.Rptr.2d 678, 830 P.2d 712] [approving use of phrase in torture-murder and special circumstances torture-murder instructions].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions

First degree murder by torture defines torture differently for the purposes of murder. See CALCRIM No. 521, *Murder: Degrees*.

AUTHORITY

- Elements ▸ Pen. Code, § 206.
- Extortion Defined ▸ Pen. Code, § 518.
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); see, e.g., *People v. Hale* (1999) 75 Cal.App.4th 94, 108 [88 Cal.Rptr.2d 904] [broken and smashed teeth, split lip, and facial cut sufficient evidence of great bodily injury].
- Cruel Pain Equivalent to Extreme or Severe Pain ▸ *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202 [68 Cal.Rptr.2d 619].
- Intent ▸ *People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739]; *People v. Hale* (1999) 75 Cal.App.4th 94, 106–107 [88 Cal.Rptr.2d 904]; *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042–1043 [84 Cal.Rptr.2d 5]; see *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204–1206 [68 Cal.Rptr.2d 619] [neither premeditation nor intent to inflict prolonged pain are elements of torture].
- Sadistic Purpose Defined ▸ *People v. Raley* (1992) 2 Cal.4th 870, 899–901 [8 Cal.Rptr.2d 678, 830 P.2d 712]; *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202–1204 [68 Cal.Rptr.2d 619]; see *People v. Healy* (1993) 14 Cal.App.4th 1137, 1142 [18 Cal.Rptr.2d 274] [sexual element not required].

LESSER INCLUDED OFFENSES

In *People v. Martinez* (2005) 125 Cal.App.4th 1035, 1042–1046 [23 Cal.Rptr.3d 508], the court held that none of the following offenses were lesser included offenses to torture: assault with a deadly weapon (Pen. Code, § 245(a)(1)); corporal injury on a cohabitant (Pen. Code, § 273.5); forcible rape (Pen. Code, § 261(a)(2)); forcible oral copulation (Pen. Code, § 287(c)); criminal threats (Pen. Code, § 422); dissuading a witness by force or threats (Pen. Code, § 136.1(c)(1)); false imprisonment by violence. (Pen. Code, § 236.)

The court did not decide whether assault with force likely to cause great bodily injury is a lesser included offense to torture. (*Id.* at p. 1043–1044.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 92–95.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.15 (Matthew Bender).

811–819. Reserved for Future Use

820. Assault Causing Death of Child (Pen. Code, § 273ab(a))

The defendant is charged [in Count __] with killing a child under the age of 8 by assaulting the child with force likely to produce great bodily injury [in violation of Penal Code section 273ab(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant had care or custody of a child who was under the age of 8;**

2. **The defendant did an act that by its nature would directly and probably result in the application of force to the child;**

3. **The defendant did that act willfully;**

4. **The force used was likely to produce great bodily injury;**

5. **When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in great bodily injury to the child;**

6. **When the defendant acted, (he/she) had the present ability to apply force likely to produce great bodily injury to the child;**

[AND]

7. **The defendant's act caused the child's death(;/.)**

<Give element 8 when instructing on parental right to discipline>
[AND

8. **When the defendant acted, (he/she) was not reasonably disciplining a child.]**

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

An act *causes death* if:

1. **The death was the natural and probable consequence of the act;**

2. **The act was a direct and substantial factor in causing the death;**

AND

3. **The death would not have happened without the act.**

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that caused the death.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised February 2014, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence, the court has a **sua sponte** duty to instruct on the defense of disciplining a child. (*People v. Whitehurst* (1992) 9 Cal.App.4th 1045, 1049 [12 Cal.Rptr.2d 33].) Give bracketed element 8 and CALCRIM No. 3405, Parental Right to Punish a Child.

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than

minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions
CALCRIM No. 875, *Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury*.

AUTHORITY

- Elements ▸ Pen. Code, § 273ab(a); see *People v. Malfavon* (2002) 102 Cal.App.4th 727, 735 [125 Cal.Rptr.2d 618] [sometimes called "child abuse homicide"].
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); *People v. Albritton* (1998) 67 Cal.App.4th 647, 658 [79 Cal.Rptr.2d 169].
- Willful Defined ▸ Pen. Code, § 7, subd. 1; see *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Force Likely to Produce Great Bodily Injury ▸ *People v. Preller* (1997) 54 Cal.App.4th 93, 97–98 [62 Cal.Rptr.2d 507] [need not prove that reasonable person would believe force would be likely to result in child's death].
- General Intent Crime ▸ *People v. Albritton* (1998) 67 Cal.App.4th 647, 658–659 [79 Cal.Rptr.2d 169].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].

LESSER INCLUDED OFFENSES

- Attempted Assault on Child With Force Likely to Produce Great Bodily Injury ▸ Pen. Code, §§ 664, 273ab(b).
- Assault ▸ Pen. Code, § 240.
- Assault With Force Likely to Produce Great Bodily Injury ▸ Pen. Code, § 245(a)(1); *People v. Basuta* (2001) 94 Cal.App.4th 370, 392 [114 Cal.Rptr.2d 285].

Involuntary manslaughter is not a lesser included offense of Penal Code section 273ab. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 796 [91 Cal.Rptr.2d 888]; *Orlina v. Superior Court* (1999) 73 Cal.App.4th 258, 261–262 [86 Cal.Rptr.2d 384].)

Neither murder nor child abuse homicide is a necessarily included offense within the other. (*People v. Malfavon* (2002) 102 Cal.App.4th 727, 743–744 [125 Cal.Rptr.2d 618].)

RELATED ISSUES

Care or Custody

"The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832 [73 Cal.Rptr.2d 257].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.13[2A], 142.23[7] (Matthew Bender).

860. Assault on Firefighter or Peace Officer With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245(c) & (d))

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) on a (firefighter/peace officer) [in violation of Penal Code section 245].

To prove that the defendant is guilty of this crime, the People must prove [either] that:

<Alternative 1A—force with weapon>

[1A. The defendant did an act with (a deadly weapon/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) that by its nature would directly and probably result in the application of force to a person;]

[OR]

<Alternative 1B—force without weapon>

[1Bi. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1Bii. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon/with a firearm/with a semiautomatic firearm/with a machine gun/with an assault weapon/with a .50 BMG rifle) to a person;

5. When the defendant acted, the person assaulted was lawfully performing (his/her) duties as a (firefighter/peace officer);

[AND]

6. **When the defendant acted, (he/she) knew, or reasonably should have known, that the person assaulted was a (firefighter/peace officer) who was performing (his/her) duties(;/.)**

<Give element 7 when instructing on self-defense or defense of another.>
[AND

7. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it is designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *semiautomatic firearm* extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.]

[A *machine gun* is any weapon that (shoots/is designed to shoot/ [or] can readily be restored to shoot) automatically more than one shot by a single function of the trigger and without manual reloading.]

[An *assault weapon* includes _____ *<insert names of appropriate designated assault weapons listed in Pen. Code, § 30510 and further defined by Pen. Code § 30515>***.]**

[A *.50 BMG rifle* is a center fire rifle that can fire a .50 BMG cartridge [and that is not an assault weapon or a machine gun]. A *.50 BMG cartridge* is a cartridge that is designed and intended to be fired from a center fire rifle and that has all three of the following characteristics:

1. **The overall length is 5.54 inches from the base of the cartridge to the tip of the bullet;**

2. **The bullet diameter for the cartridge is from .510 to, and including, .511 inch;**

AND

3. **The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.]**

[The term[s] (*great bodily injury[,]/ deadly weapon[,]/ firearm[,]/ machine gun[,]/assault weapon[,]/* [and] *.50 BMG rifle)* (is/are) defined in another instruction to which you should refer.]

[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a *peace officer*.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a *peace officer* if** _____ *<insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer">*.]**

[The duties of a _____ *<insert title of officer>* **include** _____ *<insert job duties>*.]**

[A *firefighter* includes anyone who is an officer, employee, or member of a (governmentally operated (fire department/fire protection or firefighting agency) in this state/federal fire department/federal fire protection or firefighting agency), whether or not he or she is paid for his or her services.]

New January 2006; Revised April 2011, February 2012, February 2013, September 2019, March 2020, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In addition, the court has a **sua sponte** duty to instruct on defendant's reliance on self-defense as it relates to the use of excessive force. (*People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].) If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) On request, the court must instruct that the prosecution has the burden of proving the lawfulness of the arrest beyond a reasonable doubt. (*People v. Castain* (1981) 122

Cal.App.3d 138, 145 [175 Cal.Rptr. 651].) If lawful performance is an issue, give the appropriate portions of CALCRIM No. 2670, *Lawful Performance: Peace Officer*. In addition, give CALCRIM No. 2672, *Lawful Performance: Resisting Unlawful Arrest With Force*, if requested.

Give element 1A if it is alleged the assault was committed with a deadly weapon, a firearm, a semiautomatic firearm, a machine gun, an assault weapon, or .50 BMG rifle. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245(c) & (d).)

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

The court may give the bracketed sentence that begins, "The duties of a _____ <*insert title . . . .*> include," on request. The court may insert a description of the officer's duties such as "the correct service of a facially valid

search warrant." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222 [275 Cal.Rptr. 729, 800 P.2d 1159].)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245(c) & (d)(1)–(3).
- Assault Weapon Defined ▸ Pen. Code, §§ 30510, 30515.
- Firearm Defined ▸ Pen. Code, § 16520.
- Machine Gun Defined ▸ Pen. Code, § 16880.
- Semiautomatic Pistol Defined ▸ Pen. Code, § 17140.
- .50 BMG Rifle Defined ▸ Pen. Code, § 30530.
- Peace Officer Defined ▸ Pen. Code, § 830 et seq.
- Firefighter Defined ▸ Pen. Code, § 245.1.
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].

- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ▸ Pen. Code, § 240.
- Assault With a Deadly Weapon ▸ Pen. Code, § 245.
- Assault on a Peace Officer ▸ Pen. Code, § 241(b).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

Dual Convictions Prohibited

Penal Code § 245(c) describes a single offense. (*In re C.D.* (2017) 18 Cal.App.5th 1021, 1029 [227 Cal.Rptr.3d 360] ["Aggravated assault against a peace officer under section 245, subdivision (c), remains a single offense, and multiple violations of the statute cannot be found when they are based on the same act or course of conduct."] See CALCRIM No. 3516, *Multiple Counts: Alternative Charges For One Event—Dual Conviction Prohibited*.

If both theories of assault are included in the case, the jury must unanimously agree which theory or theories are the basis for the verdict.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 69.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

862. Assault on Custodial Officer With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245, 245.3)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) on a custodial officer [in violation of Penal Code section 245.3].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—force with weapon>

[1. The defendant willfully did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

5. When the defendant acted, the person assaulted was lawfully performing (his/her) duties as a custodial officer;

[AND]

6. When the defendant acted, (he/she) knew, or reasonably should have known, both that the person assaulted was a custodial officer and that (he/she) was performing (his/her) duties as a custodial officer(;/.)

<Give element 7 when instructing on self-defense or defense of another.>
[AND

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[The term[s] (*great bodily injury/ [and] deadly weapon)* (is/are) defined in another instruction to which you should refer.]

A *custodial officer* is someone who works for a law enforcement agency of a city or county, is responsible for maintaining custody of prisoners, and helps operate a local detention facility. [A (county jail/city jail/_____ <*insert other detention facility*>) is a local detention facility.] [A custodial officer is not a peace officer.]

New January 2006; Revised April 2011, February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In addition, the court has a **sua sponte** duty to instruct on defendant's reliance on self-defense as it relates to the use of excessive force. (*People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].) If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) If lawful performance is an issue, give the appropriate portions of CALCRIM No. 2671, *Lawful Performance: Custodial Officer*.

Give element 1A if it is alleged the assault was committed with a deadly weapon. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245.3.)

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

In the bracketed definition of "local detention facility," do not insert the name of a specific detention facility. Instead, insert a description of the type of detention facility at issue in the case. (See *People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869] [jury must determine if alleged victim is a peace officer]; see Penal Code section 6031.4 [defining local detention facility].)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245, 245.3.
- Custodial Officer Defined ▸ Pen. Code, § 831.
- Local Detention Facility Defined ▸ Pen. Code, § 6031.4.

- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 72-74.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

863. Assault on Transportation Personnel or Passenger With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245, 245.2)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) on (a/an) (operator/driver/station agent/ticket agent/passenger) of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>* **[in violation of Penal Code section 245.2].**

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—force with weapon>

[1. The defendant willfully did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

<Alternative 5A—transportation personnel>

[5. When the defendant acted, the person assaulted was performing (his/her) duties as (a/an) (operator/driver/station agent/ticket agent) of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>***;]**

<Alternative 5B—passenger>

[5. The person assaulted was a passenger of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>***;]**

[AND]

6. When the defendant acted, (he/she) knew, or reasonably should have known, [both] that the person assaulted was (a/an) (operator/driver/station agent/ticket agent/passenger) of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>* **[and that (he/she) was performing (his/her) duties](;/.)**

<Give element 7 when instructing on self-defense or defense of another.>

[AND

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[The term[s] (*great bodily injury*/ [and] *deadly weapon*) (is/are) defined in another instruction to which you should refer.]

New January 2006; Revised February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give element 1A if it is alleged the assault was committed with a deadly weapon. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245.2.)

If the victim was an operator, driver, station agent, or ticket agent of an identified vehicle or transportation entity, give element 5A and the bracketed language in element 6. If the victim was a passenger, give element 5B and omit the bracketed language in element 6.

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245, 245.2.
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].

- Least Touching ‣ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ‣ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ‣ Pen. Code, § 240.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 79.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11[3]; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

864–874. Reserved for Future Use

875. Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245(a)(1)–(4), (b))

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon other than a firearm/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) [in violation of Penal Code section 245].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—force with weapon>

[1. The defendant did an act with (a deadly weapon other than a firearm/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

[AND]

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon other than a firearm/with a firearm/with a semiautomatic firearm/with a machine gun/with an assault weapon/with a .50 BMG rifle) to a person(;/.)

<Give element 5 when instructing on self-defense or defense of another.>

[AND

5. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *deadly weapon other than a firearm* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *semiautomatic pistol* extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.]

[A *machine gun* is any weapon that (shoots/is designed to shoot/ [or] can readily be restored to shoot) automatically more than one shot by a single function of the trigger and without manual reloading.]

[An *assault weapon* includes _____ *<insert names of appropriate designated assault weapons listed in Pen. Code, § 30510 or as defined by Pen. Code, § 30515>***.]**

[A *.50 BMG rifle* is a center fire rifle that can fire a .50 BMG cartridge [and that is not an assault weapon or a machine gun]. A *.50 BMG cartridge* is a cartridge that is designed and intended to be fired from a center fire rifle and that has all three of the following characteristics:

1. **The overall length is 5.54 inches from the base of the cartridge to the tip of the bullet;**

2. **The bullet diameter for the cartridge is from .510 to, and including, .511 inch;**

AND

3. **The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.]**

[The term[s] (*great bodily injury[,]/ deadly weapon other than a firearm[,]/ firearm[,]/ machine gun[,]/assault weapon[,]/* [and] *.50 BMG rifle)* (is/are) defined in another instruction to which you should refer.]

New January 2006; Revised June 2007, August 2009, October 2010, February 2012, February 2013, August 2013, September 2019; September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 4 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give element 1A if it is alleged the assault was committed with a deadly weapon other than a firearm, firearm, semiautomatic firearm, machine gun, an assault weapon, or .50 BMG rifle. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245(a).)

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a deadly weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519 [108 Cal.Rptr. 89, 510 P.2d 33].)

If the charging document names more than one victim, modification of this instruction may be necessary to clarify that each victim must have been subject to the application of force. (*People v. Velasquez* (2012) 211 Cal.App.4th 1170, 1176–1177 [150 Cal.Rptr.3d 612].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245(a)(1)–(3) & (b).
- To Have Present Ability to Inflict Injury, Gun Must Be Loaded Unless Used as Club or Bludgeon ▸ *People v. Rodriguez* (1999) 20 Cal.4th 1, 11, fn. 3 [82 Cal.Rptr.2d 413, 971 P.2d 618].
- This Instruction Affirmed ▸ *People v. Golde* (2008) 163 Cal.App.4th 101, 122-123 [77 Cal.Rptr.3d 120].
- Assault Weapon Defined ▸ Pen. Code, §§ 30510, 30515.
- Semiautomatic Pistol Defined ▸ Pen. Code, § 17140.
- Firearm Defined ▸ Pen. Code, § 16520.
- Machine Gun Defined ▸ Pen. Code, § 16880.
- .50 BMG Rifle Defined ▸ Pen. Code, § 30530.
- Willful Defined ▸ Pen. Code, § 7, subd. 1; *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ▸ Pen. Code, § 240.

Assault with a firearm is a lesser included offense of assault with a semiautomatic firearm. (*People v. Martinez* (2012) 208 Cal.App.4th 197, 199 [145 Cal.Rptr.3d 141].)

A misdemeanor brandishing of a weapon or firearm under Penal Code section 417 is not a lesser and necessarily included offense of assault with a deadly weapon. (*People v. Escarcega* (1974) 43 Cal.App.3d 391, 398 [117 Cal.Rptr. 595]; *People v. Steele* (2000) 83 Cal.App.4th 212, 218, 221 [99 Cal.Rptr.2d 458].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 41.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11[3] (Matthew Bender).

970. Shooting Firearm or BB Device in Grossly Negligent Manner (Pen. Code, § 246.3)

The defendant is charged [in Count __] with shooting a (firearm/BB Device) in a grossly negligent manner [in violation of Penal Code section 246.3].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant intentionally shot a (firearm/BB device);**

2. **The defendant did the shooting with gross negligence;**

[AND]

3. **The shooting could have resulted in the injury or death of a person(;/.)**

<Give element 4 when instructing on self-defense or defense of another.>
[AND

4. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

Gross negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury.**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with gross negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *BB device* is any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.]

[The term[s] (*great bodily injury*/ [and] *firearm)* (is/are) defined in another instruction to which you should refer.]

New January 2006; Revised June 2007, February 2012, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 4 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 246.3.
- Discharge Must be Intentional ▸ *People v. Robertson* (2004) 34 Cal.4th 156, 167 [17 Cal.Rptr.3d 604, 95 P.3d 872]; *In re Jerry R.* (1994) 29 Cal.App.4th

1432, 1438 [35 Cal.Rptr.2d 155]; *People v. Alonzo* (1993) 13 Cal.App.4th 535, 538 [16 Cal.Rptr.2d 656].

- Firearm Defined ▸ Pen. Code, § 16520.
- BB Device Defined ▸ Pen. Code, § 246.3(c).
- Willful Defined ▸ Pen. Code, § 7(1).
- Gross Negligence Defined ▸ *People v. Alonzo* (1993) 13 Cal.App.4th 535, 540 [16 Cal.Rptr.2d 656]; see *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926].
- Actual Belief Weapon Not Loaded Negates Mental State ▸ *People v. Robertson* (2004) 34 Cal.4th 156, 167 [17 Cal.Rptr.3d 604, 95 P.3d 872]; *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438–1439, 1440 [35 Cal.Rptr.2d 155].

LESSER INCLUDED OFFENSES

Unlawful possession by a minor of a firearm capable of being concealed on the person (see Pen. Code, § 29610) is not a necessarily included offense of unlawfully discharging a firearm with gross negligence. (*In re Giovani M.* (2000) 81 Cal.App.4th 1061, 1066 [97 Cal.Rptr.2d 319].)

RELATED ISSUES

Actual Belief Weapon Not Loaded Negates Mental State

"A defendant who believed that the firearm he or she discharged was unloaded . . . would not be guilty of a violation of section 246.3." (*People v. Robertson* (2004) 34 Cal.4th 156, 167 [17 Cal.Rptr.3d 604, 95 P.3d 872] [citing *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438–1439, 1440 [35 Cal.Rptr.2d 155]].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 48.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][i] (Matthew Bender).

971–979. Reserved for Future Use

982. Brandishing Firearm or Deadly Weapon to Resist Arrest (Pen. Code, § 417.8)

The defendant is charged [in Count __] with brandishing a (firearm/deadly weapon) to resist arrest or detention [in violation of Penal Code section 417.8].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant drew or exhibited a (firearm/deadly weapon);**

   AND

2. **When the defendant drew or exhibited the (firearm/deadly weapon), (he/she) intended to resist arrest or to prevent a peace officer from arresting or detaining (him/her/someone else).**

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[The term[s] (*firearm*[,]/ *deadly weapon*[,]/ [and] *great bodily injury*) (is/are) defined in another instruction to which you should refer.]

[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a *peace officer*.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a *peace officer* if** _____ *<insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer">***.]**

New January 2006; Revised February 2012, February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed paragraph about the lack of any requirement that the firearm be loaded on request.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions
CALCRIM No. 983, *Brandishing Firearm or Deadly Weapon: Misdemeanor*.
CALCRIM No. 981, *Brandishing Firearm in Presence of Peace Officer*.
CALCRIM No. 2653, *Taking Firearm or Weapon While Resisting Peace Officer or Public Officer*.

AUTHORITY

- Elements ▸ Pen. Code, § 417.8.
- Firearm Defined ▸ Pen. Code, § 16520; see *In re Jose A.* (1992) 5 Cal.App.4th 697, 702 [7 Cal.Rptr.2d 44] [pellet gun not a "firearm" within meaning of Pen. Code, § 417(a)].
- Peace Officer Defined ▸ Pen. Code, § 830 et seq.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204] [hands and feet not deadly weapons]; see, e.g., *People v. Simons* (1996) 42 Cal.App.4th 1100, 1107 [50 Cal.Rptr.2d 351] [screwdriver was capable of being used as a deadly weapon and defendant intended to use it as one if need be]; *People v. Henderson* (1999) 76 Cal.App.4th 453, 469–470 [90 Cal.Rptr.2d 450] [pit bulls were deadly weapons under the circumstances].
- Lawful Performance of Duties Not an Element ▸ *People v. Simons* (1996) 42 Cal.App.4th 1100, 1109–1110 [50 Cal.Rptr.2d 351].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

Resisting arrest by a peace officer engaged in the performance of his or her duties in violation of Penal Code section 148(a) is not a lesser included offense of Penal

Code section 417.8. (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1108–1110 [50 Cal.Rptr.2d 351].) Brandishing a deadly weapon in a rude, angry, or threatening manner in violation of Penal Code section 417(a)(1) is also not a lesser included offense of section 417.8. (*People v. Pruett* (1997) 57 Cal.App.4th 77, 88 [66 Cal.Rptr.2d 750].)

RELATED ISSUES

See the Related Issues section to CALCRIM No. 981, *Brandishing Firearm in Presence of Peace Officer*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 8-10.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][e] (Matthew Bender).

983. Brandishing Firearm or Deadly Weapon: Misdemeanor (Pen. Code, § 417(a)(1) & (2))

The defendant is charged [in Count __] with brandishing a (firearm/deadly weapon) [in violation of Penal Code section 417(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant drew or exhibited a (firearm/deadly weapon) in the presence of someone else;**

[AND]

<Alternative 2A—displayed in rude, angry, or threatening manner>
[2. The defendant did so in a rude, angry, or threatening manner(;/.)]

<Alternative 2B—used in fight>
[2. The defendant [unlawfully] used the (firearm/deadly weapon) in a fight or quarrel(;/.)]

<Give element 3 when instructing on self-defense or defense of another.>
[AND

3. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[The term[s] (*firearm[,]/ deadly weapon[,]/* [and] *great bodily injury*) (is/are) defined in another instruction to which you should refer.]

[It is not required that the firearm be loaded.]

New January 2006; Revised October 2010, February 2012, February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 3 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

If the prosecution alleges that the defendant displayed the weapon in a rude, angry, or threatening manner, give alternative 2A. If the prosecution alleges that the defendant used the weapon in a fight, give alternative 2B.

If the defendant is charged under Penal Code section 417(a)(2)(A), the court **must** also give CALCRIM No. 984, *Brandishing Firearm: Misdemeanor—Public Place*.

Give the bracketed definition of "firearm" or "deadly weapon" unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.
On request, give the bracketed sentence stating that the firearm need not be loaded.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 417(a)(1) & (2).
- Firearm Defined ▸ Pen. Code, § 16520.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Victim's Awareness of Firearm Not a Required Element ▸ *People v. McKinzie* (1986) 179 Cal.App.3d 789, 794 [224 Cal.Rptr. 891].
- Weapon Need Not Be Pointed Directly at Victim ▸ *People v. Sanders* (1995) 11 Cal.4th 475, 542 [46 Cal.Rptr.2d 751, 905 P.2d 420].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 4-7.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][e] (Matthew Bender).

1071 Unlawful Sexual Intercourse: Minor More Than Three Years Younger (Pen. Code, § 261.5(a) & (c))

The defendant is charged [in Count __] with unlawful sexual intercourse with a minor who was more than three years younger than the defendant [in violation of Penal Code section 261.5(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant had sexual intercourse with another person;**

2. **The defendant and the other person were not married to each other at the time of the intercourse;**

AND

3. **At the time of the intercourse, the other person was under the age of 18 and more than three years younger than the defendant.**

Sexual intercourse **means any penetration, no matter how slight, of the vagina or genitalia by the penis. [Ejaculation is not required.]**

[It is not a defense that the other person may have consented to the intercourse.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rprtr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty

If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

AUTHORITY

- Elements. ▸ Pen. Code, § 261.5(a) & (c).
- Minor's Consent Not a Defense. ▸ *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].
- Mistake of Fact Regarding Age. ▸ *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; see *People v. Zeihm* (1974) 40 Cal.App.3d 1085, 1089 [115 Cal.Rptr. 528] [belief about age is a defense], disapproved on other grounds in *People v. Freeman* (1988) 46 Cal.3d 419, 428, fn. 6 [250 Cal.Rptr. 598, 758 P.2d 1128].
- Penetration Defined. ▸ Pen. Code, § 263; *People v. Karsai* (1982) 131 Cal.App.3d 224, 233–234 [182 Cal.Rptr. 406], disapproved on other grounds by *People v. Jones* (1988) 46 Cal.3d 585, 600 [250 Cal.Rptr. 635, 758 P.2d 1165].

LESSER INCLUDED OFFENSES

- ~~Attempted Unlawful Sexual Intercourse. ▸ Pen. Code, §§ 664, 261.5; see, e.g., *People v. Nicholson* (1979) 98 Cal.App.3d 617, 622–624 [159 Cal.Rptr. 766].~~

Contributing to the delinquency of a minor (Pen. Code, § 272) is not a lesser included offense of unlawful sexual intercourse. (*People v. Bobb* (1989) 207 Cal.App.3d 88, 93–96 [254 Cal.Rptr. 707], disapproved on another ground in *People v. Barton* (1995) 12 Cal.4th 186, 198, fn. 7 [47 Cal.Rptr.2d 569, 906 P.2d 531].)

RELATED ISSUES

Minor Perpetrator

The fact that a minor may be a victim does not exclude a minor from being charged as a perpetrator. (*In re T.A.J.* (1998) 62 Cal.App.4th 1350, 1364 [73 Cal.Rptr.2d 331] [construing Pen. Code, § 261.5(b)].) There is no privacy right among minors to engage in consensual sexual intercourse. (*Id.* at p. 1361.) However, a minor victim of unlawful sexual intercourse cannot be held liable as an aider and abettor, a coconspirator, or an accomplice. (*In re Meagan R.* (1996) 42 Cal.App.4th 17, 25 [49 Cal.Rptr.2d 325].)

Attempted Sexual Intercourse is Not a Lesser Included Offense

People v. Mendoza (2015) 240 Cal.App.4th 72, 83 [191 Cal.Rptr.3d 905].

See the Related Issues section under CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 53–54.

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 22–26, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[3][a] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1080 Oral Copulation With Person Under 14 (Pen. Code, § 287(c)(1))

The defendant is charged [in Count __] with oral copulation of a person who was under the age of 14 and at least 10 years younger than the defendant [in violation of Penal Code section 287(c)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant participated in an act of oral copulation with another person;**

AND

2. **At the time of the act, the other person was under the age of 14 and was at least 10 years younger than the defendant.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements. ▸ Pen. Code, § 287(c)(1).
- Oral Copulation Defined. ▸ Pen. Code, § 287(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884] [in context of lewd acts with children].
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].

LESSER INCLUDED OFFENSES

- ~~Attempted Oral Copulation With Minor Under 14 ▸ Pen. Code, §§ 664, 287 (c)(1).~~
- Oral Copulation With Minor Under 18 ▸ *People v. Culbertson* (1985) 171 Cal.App.3d 508, 516 [217 Cal.Rptr. 347]; *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1097–1098 [207 Cal.Rptr. 199].

RELATED ISSUES

Mistake of Fact Defense Not Available
In *People v. Olsen* (1984) 36 Cal.3d 638, 649 [205 Cal.Rptr. 492, 685 P.2d 52], the court held that the defendant's mistaken belief that the victim was over 14 was no defense to a charge of lewd and lascivious acts with a child under 14.

Attempted Oral Copulation is Not a Lesser Included Offense
People v. Mendoza (2015) 240 Cal.App.4th 72, 84 [191 Cal.Rptr.3d 905].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 35–37, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [3][b] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1124 Contacting Minor With Intent to Commit Certain Felonies (Pen. Code, § 288.3(a))

The defendant is charged [in Count __] with (contacting/[or] attempting to contact) a minor with the intent to commit _____<*insert enumerated offense from statute*>**[in violation of Penal Code section 288.3(a)].**

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (contacted or communicated with/ [or] attempted to contact or communicate with) a minor;**

2. **When the defendant did so, (he/she) intended to commit _____**<*insert enumerated offense from statute*> **involving that minor;**

AND

3. **([The defendant knew or reasonably should have known that the person was a minor(;/.)]**

   /[OR]

   [(T/t)he defendant believed that the person was a minor.])

A *minor* is a person under the age of 18.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

***Contacting or communicating* with a minor includes direct and indirect contact or communication. [That contact or communication may take place personally or by using (an agent or agency/ [or] any print medium/ [or] any postal service/ [or] a common carrier/ [or] communication common carrier/ [or] any electronic communications system/ [or] any telecommunications/ [or] wire/ [or] computer/ [or] radio communications [device or system]).]**

To decide whether the defendant intended to commit <*specify sex offense[s] listed in Pen. Code, § 288.3(a)*>**, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].**

New August 2009; Revised March 2017, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to define the elements of the underlying/target sex offense. (See *People v. Hughes* (2002) 27 Cal.4th 287, 349 [116 Cal.Rptr.2d 401, 39 P.3d 432 and *People v. May* (1989) 213 Cal.App.3d 118, 129 [261 Cal.Rptr. 502].)

~~The court has a sua sponte duty to instruct on the good faith belief that the victim was not a minor as a defense for certain sex crimes with minors, including statutory rape, when that defense is supported by evidence. Until courts of review clarify whether this defense is available in prosecutions for violations of Pen. Code, § 288.3(a), the court will have to exercise its own discretion. Suitable language for such an instruction is found in CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.~~

AUTHORITY

- Elements and Enumerated Offenses. ▸ Pen. Code, § 288.3(a).
- Calculating Age. ▸ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 373, 855 P.2d 391].
- Attempted Contact or Communication Does Not Require Minor Victim. ▸ *People v. Korwin* (2019) 36 Cal.App.5th 682, 688 [248 Cal.Rptr.3d 763].

LESSER INCLUDED OFFENSES

Attempted oral copulation is not a necessarily included offense of Penal Code section 288.3 under the statutory elements test, because luring can be committed without a direct act. (*People v. Medelez* (2016) 2 Cal.App.5th 659, 663, 206 Cal.Rptr.3d 402].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 67, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.21 (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:17, 12:18 (The Rutter Group).

1128 Engaging in Oral Copulation or Sexual Penetration With Child 10 Years of Age or Younger (Pen. Code, § 288.7(b))

The defendant is charged [in Count __] with engaging in (oral copulation/ [or] sexual penetration) with a child 10 years of age or younger [in violation of Penal Code section 288.7(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant engaged in an act of (oral copulation/ [or] sexual penetration) with _____** *<insert name of complaining witness>***;**

2. **When the defendant did so, _____** *<insert name of complaining witness>* **-was 10 years of age or younger;**

3. **At the time of the act, the defendant was at least 18 years old.**

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.]

[*Sexual penetration* means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) by any foreign object, substance, instrument, device, or any unknown object for the purpose of sexual abuse, arousal, or gratification.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.]

New August 2009; Revised April 2010, February 2013, February 2015, September 2017, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When sexual penetration is charged under Penal Code section 288.7(b), instruct that the defendant must have specific intent. *People v. Saavedra* (2018) 24 Cal.App.5th 605, 613-615 [234 Cal.Rptr.3d 544].

A conviction for Penal Code section 288.7(b) under an aiding and abetting theory requires that the direct perpetrator be at least 18 years old. *People v. Vital* (2019) 40 Cal.App.5th 925, 930 [254 Cal.Rptr.3d 22]. If the defendant is charged under an aiding and abetting theory, substitute the word "perpetrator" instead of "defendant" in elements 1, 2, and 3.

AUTHORITY

- Elements. Pen. Code, § 288.7(b).
- Sexual Penetration Defined. Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not vagina].
- Unknown Object Defined. Pen. Code, § 289(k)(3).
- Foreign Object, Substance, Instrument, or Device Defined. Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [finger is "foreign object"].
- Oral Copulation Defined. *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- Calculating Age. Fam. Code, § 6500; *People v. Cornett* (2012) 53 Cal.4th 1261, 1264, 1275 [139 Cal.Rptr.3d 837, 274 P.3d 456] ["10 years of age or younger" means "under 11 years of age"]; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 373, 855 P.2d 391].

- Sexual Abuse Defined. ▸ *People v. White* (1986) 179 Cal.App.3d 193, 205-206 [224 Cal.Rptr. 467].
- This Instruction Upheld. ▸ *People v. Saavedra* (2018) 24 Cal.App.5th 605, 615 [234 Cal.Rptr.3d 544].

LESSER INCLUDED OFFENSE

- Attempted Sexual Penetration. *People v. Ngo* (2014) 225 Cal.App.4th 126, 158-161 [170 Cal.Rptr.3d 90].
- Attempt to commit oral copulation with a child 10 years of age or younger is **not** a lesser included offense. *People v. Mendoza* (2015) 240 Cal.App.4th 72, 83 [191 Cal.Rptr.3d 905].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 58.

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[7] (Matthew Bender).

1191B Evidence of Charged Sex Offense

The People presented evidence that the defendant committed the crime[s] of _____<*insert description of offense[s]*> charged in Count[s]____ <*insert count[s] of sex offense[s] charged in this case* >.

If the People have proved beyond a reasonable doubt that the defendant committed one or more of these crimes, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit [and did commit] the other sex offense[s] charged in this case.

If you find that the defendant committed one or more of these crimes, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of another crime. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.

New March 2017; Revised September 2020

BENCH NOTES

Instructional Duty

The court must give this instruction on request if the People rely on charged offenses as evidence of predisposition to commit similar crimes charged in the same case, Evid. Code section 355.

Related Instructions

CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense.*

CALCRIM No. 852A, *Evidence of Uncharged Domestic Violence.*

CALCRIM No. 852B, *Evidence of Charged Domestic Violence.*
CALCRIM No. 853A, *Evidence of Uncharged Abuse of Elder or Dependent Person*.

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

AUTHORITY

- Charged Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity. ▸ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186, 206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].
- This Instruction Upheld. ▸ *People v. Meneses* (2019) 41 Cal.App.5th 63, 68 [253 Cal.Rptr.3d 859]

SECONDARY SOURCES

1 Witkin, California Evidence (5th ed. 2012) Circumstantial Evidence, §§ 98–100.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.23[3][e][ii], [4] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure § 12:9 (The Rutter Group).

1201 Kidnapping: Child or Person Incapable of Consent (Pen. Code, § 207(a), (e))

The defendant is charged [in Count __] with kidnapping (a child/ [or] a person with a mental impairment who was not capable of giving legal consent to the movement) [in violation of Penal Code section 207].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant used (physical force/deception) to take and carry away an unresisting (child/ [or] person with a mental impairment);**

2. **The defendant moved the (child/ [or] person with a mental impairment) a substantial distance(;/.)**

[AND]

<Section 207(e)>
[3. The defendant moved the child with an illegal intent or for an illegal purpose(;/.)]

[AND]

<Alternative 4A—alleged victim under 14 years.>
[4. The child was under 14 years old at the time of the movement(;/.)]

<Alternative 4B—alleged victim has mental impairment.>
[(3/4). _____ *<Insert name of complaining witness>* **suffered from a mental impairment that made (him/her) incapable of giving legal consent to the movement.]**

Substantial distance **means more than a slight or trivial distance. In deciding whether the distance was substantial, consider all the circumstances relating to the movement. [Thus, in addition to considering the actual distance moved, you may also consider other factors such as whether the movement increased the risk of [physical or psychological] harm, increased the danger of a foreseeable escape attempt, gave the attacker a greater opportunity to commit additional crimes, or decreased the likelihood of detection.]**

A person is incapable of giving legal consent if he or she is unable to understand the act, its nature, and possible consequences.

[*Deception* includes tricking the (child/mentally impaired person) into accompanying him or her a substantial distance for an illegal purpose.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised April 2008, April 2020, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give alternative 4A if the defendant is charged with kidnapping a person under 14 years of age. (Pen. Code, § 208(b).) Do not use this bracketed language if a biological parent, a natural father, an adoptive parent, or someone with access to the child by a court order takes the child. (*Ibid.*) Give alternative 4B if the alleged victim has a mental impairment.

In the paragraph defining "substantial distance," give the bracketed sentence listing factors that the jury may consider, when evidence permits, in evaluating the totality of the circumstances. (*People v. Martinez* (1999) 20 Cal.4th 225, 237 [83 Cal.Rptr.2d 533, 973 P.2d 512].) However, in the case of simple kidnapping, if the movement was for a substantial distance, the jury does not need to consider any other factors. (*People v. Martinez, supra*, 20 Cal.4th at p. 237; see *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058].)

Give this instruction when the defendant is charged under Penal Code section 207(a) with using force to kidnap an unresisting infant or child, or person with a mental impairment, who was incapable of consenting to the movement. (See, e.g., *In re Michele D.* (2002) 29 Cal.4th 600, 610 [128 Cal.Rptr.2d 92, 59 P.3d 164]; see also 2003 Amendments to Pen. Code, § 207(e) [codifying holding of *In re Michele D.*].) Give CALCRIM No. 1200, *Kidnapping: For Child Molestation*, when the defendant is charged under Penal Code section 207(b) with kidnapping a child without the use of force for the purpose of committing a lewd or lascivious act.

Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Related Instructions

A defendant may be prosecuted for both the crimes of child abduction and kidnapping. Child abduction or stealing is a crime against the parents, while kidnapping is a crime against the child. (*In re Michele D.* (2002) 29 Cal.4th 600, 614 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Campos* (1982) 131 Cal.App.3d 894, 899 [182 Cal.Rptr. 698].) See CALCRIM No. 1250, *Child Abduction: No Right to Custody*.

For instructions relating to defenses to kidnapping, see CALCRIM No. 1225, *Defense to Kidnapping: Protecting Child From Imminent Harm.*

AUTHORITY

- Elements. ▸ Pen. Code, § 207(a), (e).
- Punishment If Victim Under 14 Years of Age. ▸ Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206] [ignorance of victim's age not defense].
- Asportation Requirement. ▸ See *People v. Martinez* (1999) 20 Cal.4th 225, 235–237 [83 Cal.Rptr.2d 533, 973 P.2d 512] [adopting modified two-pronged asportation test from *People v. Rayford* (1994) 9 Cal.4th 1, 12–14 [36 Cal.Rptr.2d 317, 884 P.2d 1369] and *People v. Daniels* (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225]].
- Force Required to Kidnap Unresisting Infant or Child. ▸ *In re Michele D.* (2002) 29 Cal.4th 600, 610 [128 Cal.Rptr.2d 92, 59 P.3d 164]; Pen. Code, § 207(e).
- Force Required to Kidnap Unconscious and Intoxicated Adult. ▸ *People v. Daniels* (2009) 176 Cal.App.4th 304, 333 [97 Cal.Rptr.3d 659].
- Movement Must Be for Illegal Purpose or Intent if Victim Incapable of Consent. ▸ *In re Michele D.* (2002) 29 Cal.4th 600, 610–611 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Oliver* (1961) 55 Cal.2d 761, 768 [12 Cal.Rptr. 865, 361 P.2d 593].
- Substantial Distance Requirement. ▸ *People v. Daniels* (1993) 18 Cal.App.4th 1046, 1053 [22 Cal.Rptr.2d 877]; *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058] [since movement must be more than slight or trivial, it must be substantial in character].

- Deceit May Substitute for Force. ‣ *People v. Dalerio* (2006) 144 Cal.App.4th 775, 783 [50 Cal.Rptr.3d 724] [taking requirement satisfied when defendant relies on deception to obtain child's consent and through verbal directions and his constant physical presence takes the child substantial distance].
- This Instruction Upheld. ‣ *People v. Singh* (2019) 42 Cal.App.5th 175, 181-183 [254 Cal.Rptr.3d 871] [no sua sponte duty to define "illegal intent" or "illegal purpose"].

COMMENTARY

Penal Code section 207(a) uses the term "steals" in defining kidnapping not in the sense of a theft, but in the sense of taking away or forcible carrying away. (*People v. McCullough* (1979) 100 Cal.App.3d 169, 176 [160 Cal.Rptr. 831].) The instruction uses "take and carry away" as the more inclusive terms, but the statutory terms "steal," "hold," "detain" and "arrest" may be used if any of these more closely matches the evidence.

LESSER INCLUDED OFFENSES

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

RELATED ISSUES

Victim Must Be Alive

A victim must be alive when kidnapped. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 498 [117 Cal.Rptr.2d 45, 40 P.3d 754].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 286-289.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.38[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person* § 142.14[1], [2][a] (Matthew Bender).

1202 Kidnapping: For Ransom, Reward, or Extortion (Pen. Code, § 209(a))

The defendant is charged [in Count __] with kidnapping for the purpose of (ransom[,]/ [or] reward[,]/ [or] extortion) [that resulted in (death[,]/ [or] bodily harm[,]/ [or] exposure to a substantial likelihood of death)] [in violation of Penal Code section 209(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed) a~~nother~~ person;**

<Alternative 2A—held or detained>

[2. The defendant held or detained that ~~the other~~ person;]

<Alternative 2B—intended to hold or detain that person>

[2. When the defendant acted, (he/she) intended to hold or detain that ~~the other~~ person;]

3. **The defendant did so (for ransom[,]/ [or] for reward[,]/ [or] to commit extortion[,]/ [or] to get from a different person money or something valuable);**

   [AND]

4. **The ~~other~~ person did not consent to being (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed)(;/.)**

<Give element 5 if instructing on reasonable belief in consent>

[AND

5. **The defendant did not actually and reasonably believe that the ~~other~~ person consented to being (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed).**

[It is not necessary that the person be moved for any distance.]

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

<Defense: Good Faith Belief in Consent>
[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the ~~other~~ person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that the ~~other~~ person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Consent Given>
[The defendant is not guilty of kidnapping if the ~~other~~ person consented to go with the defendant. The ~~other~~ person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient mental capacity to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the ~~other~~ person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.]

[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the ~~other~~ person withdrew consent, the defendant committed the crime as I have defined it.]

[Someone intends to commit *extortion* if he or she intends to: (1) obtain a person's property with the person's consent and (2) obtain the person's consent through the use of force or fear.]

[Someone intends to commit *extortion* if he or she: (1) intends to get a public official to do an official act and (2) uses force or fear to make the official do the act.] [An *official act* is an act that a person does in his or her official capacity using the authority of his or her public office.]

<Sentencing Factor>
[If you find the defendant guilty of kidnapping for (ransom [,]/ [or] reward[,]/ [or] extortion), you must then decide whether the People have proved the additional allegation that the defendant (caused the kidnapped person to

(die/suffer bodily harm)/ [or] intentionally confined the kidnapped person in a way that created a substantial likelihood of death).

[*Bodily harm* means any substantial physical injury resulting from the use of force that is more than the force necessary to commit kidnapping.]

[The defendant caused _____'s <*insert name of allegedly kidnapped person*> **(death/bodily harm) if:**

1. **A reasonable person in the defendant's position would have foreseen that the defendant's use of force or fear could begin a chain of events likely to result in _____'s** <*insert name of allegedly kidnapped person*> **(death/bodily harm);**

2. **The defendant's use of force or fear was a direct and substantial factor in causing _____'s** <*insert name of allegedly kidnapped person*> **(death/bodily harm);**

AND

3. **_____'s** <*insert name of allegedly kidnapped person*> **(death/bodily harm) would not have happened if the defendant had not used force or fear to hold or detain _____** <*insert name of allegedly kidnapped person*>**.**

A *substantial factor* is more than a trivial or remote factor. However, it need not have been the only factor that caused _____'s <*insert name of allegedly kidnapped person*> **(death/bodily harm).]**

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]

New January 2006; Revised April 2011, February 2015, March 2017, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges that the kidnapping resulted in death or bodily harm, or exposed the victim to a substantial likelihood of death (see Pen. Code, § 209(a)),

the court has a **sua sponte** duty to instruct on the sentencing factor. (See *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686 [168 Cal.Rptr. 762] [bodily harm defined]); see also *People v. Ryan* (1999) 76 Cal.App.4th 1304, 1318 [76 Cal.Rptr.2d 160] [court must instruct on general principles of law relevant to issues raised by the evidence].) The court must also give the jury a verdict form on which the jury can indicate whether this allegation has been proved. If causation is an issue, the court has a **sua sponte** duty to give the bracketed section that begins "The defendant caused." (See Pen. Code, § 209(a); *People v. Monk* (1961) 56 Cal.2d 288, 296 [14 Cal.Rptr. 633, 363 P.2d 865]; *People v. Reed* (1969) 270 Cal.App.2d 37, 48–49 [75 Cal.Rptr. 430].)

Give the bracketed definition of "consent" on request.

Give alternative 2A if the evidence supports the conclusion that the defendant actually held or detained the alleged victim. Otherwise, give alternative 2B. (See Pen. Code, § 209(a).)

"Extortion" is defined in Penal Code section 518. If the kidnapping was for purposes of extortion, give one of the bracketed definitions of extortion on request. Give the second definition if the defendant is charged with intending to extort an official act. (*People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628]; see *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1229–1230 [277 Cal.Rptr. 382]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141] [defining "official act"].) Extortion may also be committed by using "the color of official right" to make an official do an act. (Pen. Code, § 518; see *Evans v. United States* (1992) 504 U.S. 255, 258 [112 S.Ct. 1881, 119 L.Ed.2d 57]; *McCormick v. United States* (1990) 500 U.S. 257, 273 [111 S.Ct. 1807, 114 L.Ed.2d 307] [both discussing common law definition].) It appears that this type of extortion rarely occurs in the context of kidnapping, so it is excluded from this instruction.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) Give the bracketed paragraph on the defense of consent. On request, if supported by the evidence, also give the bracketed paragraph that begins with "Consent may be withdrawn." (See *People v. Camden* (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The defendant's reasonable and actual belief in the victim's consent to go with the defendant may be a defense. (See *People v. Greenberger* (1997) 58 Cal.App.4th 298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].)

Related Instructions

For the elements of extortion, see CALCRIM No. 1830, *Extortion by Threat or Force*.

AUTHORITY

- Elements. ▸ Pen. Code, § 209(a).
- Requirement of Lack of Consent. ▸ *People v. Eid* (2010) 187 Cal.App.4th 859, 878 [114 Cal.Rptr.3d 520].
- Extortion. ▸ Pen. Code, § 518; *People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628]; see *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1229–1230 [277 Cal.Rptr. 382].
- Amount of Physical Force Required. ▸ *People v. Chacon* (1995) 37 Cal.App.4th 52, 59 [43 Cal.Rptr.2d 434]; *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686 [168 Cal.Rptr. 762].
- Bodily Injury Defined. ▸ *People v. Chacon* (1995) 37 Cal.App.4th 52, 59; *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686; see *People v. Reed* (1969) 270 Cal.App.2d 37, 48–50 [75 Cal.Rptr. 430] [injury reasonably foreseeable from defendant's act].
- Control Over Victim When Intent Formed. ▸ *People v. Martinez* (1984) 150 Cal.App.3d 579, 600–602 [198 Cal.Rptr. 565] [disapproved on other ground in *People v. Hayes* (1990) 52 Cal.3d 577, 627–628, fn. 10 [276 Cal.Rptr. 874, 802 P.2d 376].]
- No Asportation Required. ▸ *People v. Macinnes* (1973) 30 Cal.App.3d 838, 844 [106 Cal.Rptr. 589]; see *People v. Rayford* (1994) 9 Cal.4th 1, 11–12, fn. 8 [36 Cal.Rptr.2d 317, 884 P.2d 1369]; *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1227 [277 Cal.Rptr. 382].
- Official Act Defined. ▸ *People v. Mayfield* (1997) 14 Cal.4th 668, 769–773 [60 Cal.Rptr.2d 1, 928 P.2d 485]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141].
- Kidnapping To Extract From Another Person Any Money or Valuable Thing Requires That The Other Person Not Be The Person Kidnapped. ▸ *People v.*

Harper (2020) 44 Cal.App.5th 172, 192-193 [257 Cal.Rptr.3d 440]; *People v. Stringer* (2019) 41 Cal.App.5th 974, 983 [254 Cal.Rptr.3d 678].

COMMENTARY

A trial court may refuse to define "reward." There is no need to instruct a jury on the meaning of terms in common usage. Reward means something given in return for good or evil done or received, and especially something that is offered or given for some service or attainment. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 367–368 [68 Cal.Rptr.2d 61].) In the absence of a request, there is also no duty to define "ransom." The word has no statutory definition and is commonly understood by those familiar with the English language. (*People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628].)

LESSER INCLUDED OFFENSES

- False Imprisonment ▸ Pen. Code, §§ 236, 237; *People v. Chacon* (1995) 37 Cal.App.4th 52, 65 [43 Cal.Rptr.2d 434]; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866].
- Extortion ▸ Pen. Code, § 518.
- Attempted Extortion ▸ Pen. Code, §§ 664, 518.
- Multiple Convictions of Lesser Included Offenses of Pen. Code, § 209(a) Possible ▸ *People v. Eid* (2014) 59 Cal.4th 650, 655–658 [174 Cal.Rptr.3d 82, 328 P.3d 69].

If the prosecution alleges that the kidnapping resulted in death or bodily harm, or exposed the victim to a substantial likelihood of death (see Pen. Code, § 209(a)), then kidnapping for ransom without death or bodily harm is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the allegation has been proved.

Simple kidnapping under section 207 of the Penal Code is not a lesser and necessarily included offense of kidnapping for ransom, reward, or extortion. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 368, fn. 56 [68 Cal.Rptr.2d. 61] [kidnapping for ransom can be accomplished without asportation while simple kidnapping cannot]; see *People v. Macinnes* (1973) 30 Cal.App.3d 838, 843–844 [106 Cal.Rptr. 589]; *People v. Bigelow* (1984) 37 Cal.3d 731, 755, fn. 14 [209 Cal.Rptr. 328, 691 P.2d 994].)

RELATED ISSUES

Extortion Target

The kidnapped victim may also be the person from whom the defendant wishes to extort something. (*People v. Ibrahim* (1993) 19 Cal.App.4th 1692, 1696–1698 [24 Cal.Rptr.2d 269.)

No Good-Faith Exception

A good faith exception to extortion or kidnapping for ransom does not exist. Even actual debts cannot be collected by the reprehensible and dangerous means of abducting and holding a person to be ransomed by payment of the debt. (*People v. Serrano* (1992) 11 Cal.App.4th 1672, 1677–1678 [15 Cal.Rptr.2d 305].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 301–302.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

1300. Criminal Threat (Pen. Code, § 422)

The defendant is charged [in Count __] with having made a criminal threat [in violation of Penal Code section 422].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant willfully threatened to unlawfully kill or unlawfully cause great bodily injury to _____**<*insert name of complaining witness or member[s] of complaining witness's immediate family*>**;**

2. **The defendant made the threat (orally/in writing/by electronic communication device);**

3. **The defendant intended that (his/her) statement be understood as a threat [and intended that it be communicated to _____**<*insert name of complaining witness*>**];**

4. **The threat was so clear, immediate, unconditional, and specific that it communicated to _____**<*insert name of complaining witness*> **a serious intention and the immediate prospect that the threat would be carried out;**

5. **The threat actually caused _____**<*insert name of complaining witness*>**to be in sustained fear for (his/her) own safety [or for the safety of (his/her) immediate family];**

AND

6. **_____'s**<*insert name of complaining witness*> **fear was reasonable under the circumstances.**

Someone commits an act *willfully* when he or she does it willingly or on purpose.

In deciding whether a threat was sufficiently clear, immediate, unconditional, and specific, consider the words themselves, as well as the surrounding circumstances.

Someone who intends that a statement be understood as a threat does not have to actually intend to carry out the threatened act [or intend to have someone else do so].

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

Sustained fear **means fear for a period of time that is more than momentary, fleeting, or transitory.**

[An immediate ability to carry out the threat is not required.]

[An *electronic communication device* includes, but is not limited to: a telephone, cellular telephone, pager, computer, video recorder, or fax machine.]

[*Immediate family* means (a) any spouse, parents, and children; (b) any grandchildren, grandparents, brothers and sisters related by blood or marriage; or (c) any person who regularly lives in the other person's household [or who regularly lived there within the prior six months].]

New January 2006; Revised August 2006, June 2007, February 2015, February 2016, March 2018, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

A specific crime or the elements of any specific Penal Code violation that might be subsumed within the actual words of any threat need not be identified for the jury. (See *People v. Butler* (2000) 85 Cal.App.4th 745, 758 [102 Cal.Rptr.2d 269].) The threatened acts or crimes may be described on request depending on the nature of the threats or the need to explain the threats to the jury. (*Id.* at p. 760.)

When the threat is conveyed through a third party, give the appropriate bracketed language in element three. (*People v. Felix* (2001) 92 Cal.App.4th 905, 913 [112 Cal.Rptr.2d 311]; *In re Ryan D.* (2002) 100 Cal.App.4th 854, 861–862 [123 Cal.Rptr.2d 193] [insufficient evidence minor intended to convey threat to victim].)

Give the bracketed definition of "electronic communication" on request. (Pen. Code, § 422; 18 U.S.C., § 2510(12).)

If there is evidence that the threatened person feared for the safety of members of his or her immediate family, the bracketed phrase in element 5 and the final bracketed paragraph defining "immediate family" should be given on request. (See Pen. Code, § 422; Fam. Code, § 6205; Prob. Code, §§ 6401, 6402.)

If instructing on attempted criminal threat, give the third element in the bench notes of CALCRIM No. 460, *Attempt Other Than Attempted Murder*. (*People v. Chandler* (2014) 60 Cal.4th 508, 525 [176 Cal.Rptr.3d 548, 332 P.3d 538].

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 422; *In re George T.* (2004) 33 Cal.4th 620, 630 [16 Cal.Rptr.3d 61, 93 P.3d 1007]; *People v. Melhado* (1998) 60 Cal.App.4th 1529, 1536 [70 Cal.Rptr.2d 878].
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f).
- Sufficiency of Threat Based on All Surrounding Circumstances ▸ *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340 [69 Cal.Rptr.2d 728]; *People v. Butler* (2000) 85 Cal.App.4th 745, 752–753 [102 Cal.Rptr.2d 269]; *People v. Martinez* (1997) 53 Cal.App.4th 1212, 1218–1221 [62 Cal.Rptr.2d 303]; *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137–1138 [105 Cal.Rptr.2d 165]; *People v. Solis* (2001) 90 Cal.App.4th 1002, 1013–1014 [109 Cal.Rptr.2d 464]; see *People v. Garrett* (1994) 30 Cal.App.4th 962, 966–967 [36 Cal.Rptr.2d 33].
- Crime that Will Result in Great Bodily Injury Judged on Objective Standard ▸ *People v. Maciel* (2003) 113 Cal.App.4th 679, 685 [6 Cal.Rptr.3d 628].
- Threatening Hand Gestures Not Verbal Threats Under Penal Code Section 422 ▸ *People v. Gonzalez* (2017) 2 Cal.5th 1138, 1147 [218 Cal.Rptr.3d 150, 394 P.3d 1074].
- Threat Not Required to Be Unconditional ▸ *People v. Bolin* (1998) 18 Cal.4th 297, 339–340 [75 Cal.Rptr.2d 412, 956 P.2d 374], disapproving *People v.*

Brown (1993) 20 Cal.App.4th 1251, 1256 [25 Cal.Rptr.2d 76]; *People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1162 [38 Cal.Rptr.2d 328].

- Conditional Threat May Be True Threat, Depending on Context ▸ *People v. Melhado* (1998) 60 Cal.App.4th 1529, 1540 [70 Cal.Rptr.2d 878].
- Immediate Ability to Carry Out Threat Not Required ▸ *People v. Lopez* (1999) 74 Cal.App.4th 675, 679 [88 Cal.Rptr.2d 252].
- Sustained Fear ▸ *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1139–1140 [105 Cal.Rptr.2d 165]; *People v. Solis* (2001) 90 Cal.App.4th 1002, 1024 [109 Cal.Rptr.2d 464]; *People v. Allen* (1995) 33 Cal.App.4th 1149, 1155–1156 [40 Cal.Rptr.2d 7].
- Verbal Statement, Not Mere Conduct, Is Required ▸ *People v. Franz* (2001) 88 Cal.App.4th 1426, 1441–1442 [106 Cal.Rptr.2d 773].
- Statute Not Unconstitutionally Vague ▸ *People v. Maciel* (2003) 113 Cal.App.4th 679, 684–686 [6 Cal.Rptr.3d 628].
- Attempted Criminal Threats ▸ *People v. Chandler* (2014) 60 Cal.4th 508, 525 [176 Cal.Rptr.3d 548, 332 P.3d 538].
- Statute Authorizes Only One Conviction and One Punishment Per Victim, Per Threatening Encounter ▸ *People v. Wilson* (2015) 234 Cal.App.4th 193, 202 [183 Cal.Rptr.3d 541].

COMMENTARY

This instruction uses the current nomenclature "criminal threat," as recommended by the Supreme Court in *People v. Toledo* (2001) 26 Cal.4th 221, 224, fn. 1 [109 Cal.Rptr.2d 315, 26 P.3d 1051] [previously called "terrorist threat"]. (See also Stats. 2000, ch. 1001, § 4.)

LESSER INCLUDED OFFENSES

- Attempted Criminal Threat ▸ See Pen. Code, § 422; *People v. Toledo* (2001) 26 Cal.4th 221, 230–231 [109 Cal.Rptr.2d 315, 26 P.3d 1051].

- Threatening a public officer of an educational institution in violation of Penal Code section 71 may be a lesser included offense of a section 422 criminal threat under the accusatory pleadings test. (*In re Marcus T.* (2001) 89 Cal.App.4th 468, 472–473 [107 Cal.Rptr.2d 451].) But see *People v. Chaney* (2005) 131 Cal.App.4th 253, 257–258 [31 Cal.Rptr.3d 714], finding that a violation of section 71 is not a lesser included offense of section 422 under the accusatory pleading test when the pleading does not specifically allege the

intent to cause (or attempt to cause) a public officer to do (or refrain from doing) an act in the performance of official duty.

RELATED ISSUES

Ambiguous and Equivocal Poem Insufficient to Establish Criminal Threat
In *In re George T.* (2004) 33 Cal.4th 620, 628–629 [16 Cal.Rptr.3d 61, 93 P.3d 1007], a minor gave two classmates a poem containing language that referenced school shootings. The court held that "the text of the poem, understood in light of the surrounding circumstances, was not 'as unequivocal, unconditional, immediate, and specific as to convey to [the two students] a gravity of purpose and an immediate prospect of execution of the threat.' " (*Id.* at p. 638.)

Related Statutes
Other statutes prohibit similar threatening conduct against specified individuals. (See, e.g., Pen. Code, §§ 76 [threatening elected public official, judge, etc., or staff or immediate family], 95.1 [threatening jurors after verdict], 139 [threatening witness or victim after conviction of violent offense], 140 [threatening witness, victim, or informant].)

Unanimity Instruction
If the evidence discloses a greater number of threats than those charged, the prosecutor must make an election of the events relied on in the charges. When no election is made, the jury must be given a unanimity instruction. (*People v. Butler* (2000) 85 Cal.App.4th 745, 755, fn. 4 [102 Cal.Rptr.2d 269]; *People v. Melhado* (1998) 60 Cal.App.4th 1529, 1534, 1539 [70 Cal.Rptr.2d 878].)

Whether Threat Actually Received
If a threat is intended to and does induce a sustained fear, the person making the threat need not know whether the threat was actually received. (*People v. Teal* (1998) 61 Cal.App.4th 277, 281 [71 Cal.Rptr.2d 644].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 24–30.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11A[1] (Matthew Bender).

1402. Gang-Related Firearm Enhancement (Pen. Code, § 12022.53)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]] [or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>] and you find that the defendant committed (that/those) crime[s] for the benefit of, at the direction of, or in association with a criminal street gang with the intent to promote, further, or assist in any criminal conduct by gang members, you must then decide whether[, for each crime,] the People have proved the additional allegation that one of the principals (personally used/personally and intentionally discharged) a firearm during that crime [and caused (great bodily injury/ [or] death)]. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation, the People must prove that:

[1.] Someone who was a principal in the crime personally (used/discharged) a firearm during the commission [or attempted commission] of the _____<*insert appropriate crime listed in Penal Code section 12022.53(a)*>**(./;)**

[AND]

[2. That person intended to discharge the firearm(./;)]

[AND

3. That person's act caused (great bodily injury to/ [or] the death of) another person [who was not an accomplice to the crime].]

A person is a *principal* in a crime if he or she directly commits [or attempts to commit] the crime or if he or she aids and abets someone else who commits [or attempts to commit] the crime.

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[The term *firearm* is defined in another instruction.]

[A firearm does not need to be in working order if it was designed to shoot and appears capable of shooting.] [A firearm does not need to be loaded.]

[A principal *personally uses* a firearm if he or she intentionally does any of the following:

1. **Displays the firearm in a menacing manner.**

2. **Hits someone with the firearm.**

OR

3. **Fires the firearm].**

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An act causes (great bodily injury/ [or] death) if the (injury/ [or] death) is the direct, natural, and probable consequence of the act and the (injury/ [or] death) would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

[There may be more than one cause of (great bodily injury/ [or] death). An act causes (injury/ [or] death) only if it is a substantial factor in causing the (injury/ [or] death). A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the (injury/ [or] death).]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. A person is subject to prosecution if he or she committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant used the firearm "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised June 2007, April 2010, February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the enhancement. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

In order for the defendant to receive an enhancement under Penal Code section 12022.53(e), the jury must find both that the defendant committed a felony for the benefit of a street gang and that a principal used or intentionally discharged a firearm in the offense. Thus, the court **must give** CALCRIM No. 1401, *Felony or Misdemeanor Committed for Benefit of Criminal Street Gang*, with this instruction and the jury must find both allegations have been proved before the enhancement may be applied.

In this instruction, the court **must** select the appropriate options based on whether the prosecution alleges that the principal used the firearm, intentionally discharged the firearm, and/or intentionally discharged the firearm causing great bodily injury or death. The court should review CALCRIM Nos. 3146, 3148, and 3149 for guidance. Give the bracketed definition of "personally used" only if the prosecution specifically alleges that the principal "personally used" the firearm. Do not give the bracketed definition of "personally used" if the prosecution alleges intentional discharge or intentional discharge causing great bodily injury or death.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause (*People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 335 [121 Cal.Rptr.2d 546, 48 P.3d 1107]); give the bracketed paragraph that begins with "An act causes . . . ." If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins with "There may be more than one cause . . . ." (*Id.* at pp. 335–338.)

The court should give the bracketed definition of "firearm" unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

If the case involves an issue of whether the principal used the weapon "during the commission of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25

Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

If, in the elements, the court gives the bracketed phrase "who was not an accomplice to the crime," the court should also give the bracketed definition of "accomplice." (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of "accomplice" are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancement ▸ Pen. Code, § 12022.53(e).
- Vicarious Liability Under Subdivision (e) ▸ *People v. Garcia* (2002) 28 Cal.4th 1166, 1171 [124 Cal.Rptr.2d 464, 52 P.3d 648]; *People v. Gonzales* (2001) 87 Cal.App.4th 1, 12 [104 Cal.Rptr.2d 247].
- Principal Defined ▸ Pen. Code, § 31.
- Firearm Defined ▸ Pen. Code, § 16520.
- Personally Uses ▸ *People v. Marvin Bland* (1995) 10 Cal.4th 991, 997 [43 Cal.Rptr.2d 77, 898 P.2d 391]; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320 [45 Cal.Rptr.2d 602]; see also Pen. Code, § 1203.06(b)(2).
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- Proximate Cause ▸ *People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 335–338 [121 Cal.Rptr.2d 546, 48 P.3d 1107].

- Accomplice Defined ▸ See Pen. Code, § 1111; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].

RELATED ISSUES

Principal Need Not Be Convicted
It is not necessary that the principal who actually used or discharged the firearm be convicted. (*People v. Garcia* (2002) 28 Cal.4th 1166, 1176 [124 Cal.Rptr.2d 464, 52 P.3d 648].)

Defendant Need Not Know Principal Armed
For an enhancement charged under Penal Code section 12022.53(e) where the prosecution is pursuing vicarious liability, it is not necessary for the prosecution to prove that the defendant knew that the principal intended to use or discharge a firearm. (*People v. Gonzales* (2001) 87 Cal.App.4th 1, 14–15 [104 Cal.Rptr.2d 247].)

See the Related Issues sections of CALCRIM Nos. 3146–3149.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 359-360.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.30[5] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.03[4] (Matthew Bender).

1501. Arson: Great Bodily Injury (Pen. Code, § 451)

The defendant is charged [in Count __] with arson that caused great bodily injury [in violation of Penal Code section 451].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant set fire to or burned [or (counseled[,]/ [or] helped[,]/ [or] caused) the burning of] (a structure/forest land/property);**

2. **(He/She) acted willfully and maliciously;**

AND

3. **The fire caused great bodily injury to another person.**

To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to defraud, annoy, or injure someone else.

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent).]

[*Forest land* means brush-covered land, cut-over land, forest, grasslands, or woods.]

[*Property* means personal property or land other than forest land.]

[A person does not commit arson if the only thing burned is his or her own personal property, unless he or she acts with the intent to defraud, or the fire also injures someone else or someone else's structure, forest land, or property.]

New January 2006; Revised February 2013, March 2020, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions

If attempted arson is charged, do not instruct generally on attempts but give CALCRIM No. 1520, *Attempted Arson*. (Pen. Code, § 455.)

AUTHORITY

- Elements ▸ Pen. Code, § 451.
- Great Bodily Injury ▸ Pen. Code, § 12022.7(f).
- Structure, Forest Land, and Maliciously Defined ▸ Pen. Code, § 450.
- To Burn Defined ▸ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

LESSER INCLUDED OFFENSES

- Arson ▸ Pen. Code, § 451.
- Attempted Arson ▸ Pen. Code, § 455.
- Unlawfully Causing a Fire ▸ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12 Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on its holding that failure to instruct on this crime as a lesser included offense of arson was invited error because defense counsel objected to such instruction; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1515, *Arson*.

Dual Convictions Prohibited

A single act of arson cannot result in convictions under different subdivisions of Penal Code section 451. (*People v. Shiga* (2019) 34 Cal.App.5th 466, 475 [246 Cal.Rptr.3d 198].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 268-276.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.47[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1530. Unlawfully Causing a Fire: Great Bodily Injury

The defendant is charged [in Count __] with unlawfully causing a fire that caused great bodily injury.

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant set fire to[,] [or] burned[,] [or caused the burning of] (a structure/forest land/property);**

2. **The defendant did so recklessly;**

AND

3. **The fire caused great bodily injury to another person.**

<Alternative A—Recklessness: General Definition>
[A person acts recklessly when (1) he or she is aware that his or her actions present a substantial and unjustifiable risk of causing a fire, (2) he or she ignores that risk, and (3) ignoring the risk is a gross deviation from what a reasonable person would have done in the same situation.]

<Alternative B—Recklessness: Voluntary Intoxication>
[A person acts recklessly when (1) he or she does an act that presents a substantial and unjustifiable risk of causing a fire but (2) he or she is unaware of the risk because he or she is voluntarily intoxicated. Intoxication is voluntary if the defendant willingly used any intoxicating drink, drug, or other substance knowing that it could produce an intoxicating effect.]

To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent).]

[*Forest land* means brush-covered land, cut-over land, forest, grasslands, or woods.]

[*Property* means personal property or land other than forest land.]

[A person does not unlawfully cause a fire if the only thing burned is his or her own personal property, unless he or she acts with the intent to defraud, or the fire also injures someone else or someone else's structure, forest land, or property.]

[Arson and unlawfully causing a fire require different mental states. For arson, a person must act willfully and maliciously. For unlawfully causing a fire, a person must act recklessly.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution's theory is that the defendant did not set the fire but "caused" the fire, the court has a **sua sponte** duty to instruct on aiding and abetting. (*People v. Sarkis* (1990) 222 Cal.App.3d 23, 28 [272, Cal.Rptr. 34].) See CALCRIM Nos. 400–403.

Depending upon the theory of recklessness the prosecutor is alleging, the court should instruct with alternative A or B.

If the defendant is also charged with arson, the court may wish to give the last bracketed paragraph, which explains the difference in intent between unlawfully causing a fire and arson. (*People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12 Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on the point that defense counsel's objection to instruction on lesser included offense constituted invited error; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 452.
- Great Bodily Injury ▸ Pen. Code, § 12022.7(f~~e~~).
- Structure, Forest Land Defined ▸ Pen. Code, § 450.
- Difference Between This Crime and Arson ▸ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810].
- To Burn Defined ▸ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

LESSER INCLUDED OFFENSES

- Unlawfully Causing a Fire ▸ Pen. Code, § 452.

RELATED ISSUES

See the Related Issues sections under CALCRIM No. 1515, *Arson* and CALCRIM No. 1532, *Unlawfully Causing a Fire*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 268–276.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.47[2] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1551. Arson Enhancements (Pen. Code, §§ 451.1, 456(b))

If you find the defendant guilty of arson [as charged in Count[s] __], you must then decide whether[, for each crime of arson,] the People have proved (the additional allegation that/one or more of the following additional allegations):

<Alternative A—monetary gain>

- **[The defendant intended to obtain monetary gain when (he/she) committed the arson.]**

<Alternative B—injury to firefighter, peace officer, or EMT>

- **[(A/An) (firefighter[,]/ peace officer[,]/ [or] emergency worker) suffered great bodily injury as a result of the arson.]**

<Alternative C—great bodily injury to more than one person>

- **[The defendant caused great bodily injury to more than one person during the commission of the arson.]**

<Alternative D—multiple structures burned>

- **[The defendant caused multiple structures to burn during the commission of the arson.]**

<Alternative E—device designed to accelerate fire>

- **[The arson (caused great bodily injury[,]/ [or] caused an inhabited structure or inhabited property to burn[,]/ [or] burned a structure or forest land), and was caused by use of a device designed to accelerate the fire or delay ignition.]**

[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a *peace officer*.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a *peace officer* if** _____*<insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer">*.**]**

[A *firefighter* includes anyone who is an officer, employee, or member of a (governmentally operated (fire department/fire protection or firefighting

agency) in this state/federal fire department/federal fire protection or firefighting agency), whether or not he or she is paid for his or her services.]

[An *emergency worker* includes an emergency medical technician. An *emergency medical technician* is someone who holds a valid certificate under the Health and Safety Code as an emergency medical technician.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A (structure/ [or] property) is *inhabited* if someone lives there and either is present or has left but intends to return.]

[A (structure/ [or] property) is *inhabited* if someone used it as a dwelling and left only because a natural or other disaster caused him or her to leave.]

[A (structure/ [or] property) is not *inhabited* if the former residents have moved out and do not intend to return, even if some personal property remains inside.]

[A *device designed to accelerate the fire* means a piece of equipment or a mechanism intended, or devised, to hasten or increase the fire's progress.]

[In order to prove that the defendant *caused* (great bodily injury to more than one person/ [or] more than one structure to burn), the People must prove that:

1. **A reasonable person in the defendant's position would have foreseen that committing arson could begin a chain of events likely to result in (great bodily injury to more than one person/ [or] the burning of more than one structure);**

2. **The commission of arson was a direct and substantial factor in causing (great bodily injury to more than one person/ [or] the burning of more than one structure);**

AND

3. **The (great bodily injury to more than one person/ [or the] burning of more than one structure) would not have happened if the defendant had not committed arson.]**

[You must decide whether the People have proved this allegation for each crime of arson and return a separate finding for each crime of arson.]

The People have the burden of proving (this/each) allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the sentencing enhancement.

The reference to "arson" in the first paragraph refers to all crimes charged under Penal Code section 451, including arson of a structure, forest land, or property (see CALCRIM No. 1515), arson causing great bodily injury (see CALCRIM No. 1501), and arson of an inhabited structure (see CALCRIM No. 1502). It does not refer to aggravated arson under Penal Code section 451.5 (see CALCRIM No. 1500).

Give one of the bracketed alternatives, A–E, depending on the enhancement alleged.

If the defendant is charged with a qualifying prior conviction under Penal Code section 451.1(a)(1), give either CALCRIM No. 3100, *Prior Conviction*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.

Give all relevant bracketed definitions, based on the enhancement alleged.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

Give the bracketed paragraph that begins with "In order to prove that the defendant *caused*" if the prosecution alleges that the defendant caused great bodily injury to multiple people or caused multiple structures to burn. (Pen. Code, § 451.1(a)(5); see Pen. Code, § 451(a)–(c).)

Give the bracketed sentence that begins with "You must decide whether the People have proved" if the same enhancement is alleged for multiple counts of arson.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancements ▸ Pen. Code, §§ 451.1, 456(b).
- Device Designed to Accelerate Fire Defined ▸ *People v. Andrade* (2000) 85 Cal.App.4th 579, 587 [102 Cal.Rptr.2d 254].
- Peace Officer Defined ▸ Pen. Code, § 830 et seq.
- Firefighter Defined ▸ Pen. Code, § 245.1.
- Emergency Medical Technician Defined ▸ Health & Saf. Code, §§ 1797.80–1797.84.
- Duty to Define Proximate Cause ▸ See *People v. Bland* (2002) 28 Cal.4th 313, 334–335 [121 Cal.Rptr.2d 546, 48 P.3d 1107] [in context of firearm enhancement].

RELATED ISSUES

Discretion to Strike Enhancement
The trial court retains discretion under Penal Code section 1385 to strike an arson sentence enhancement. (*People v. Wilson* (2002) 95 Cal.App.4th 198, 203 [115 Cal.Rptr.2d 355] [enhancement for use of an accelerant under Pen. Code, § 451.1(a)(5)].)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, § 372.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.47 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11[3] (Matthew Bender).

1552–1599. Reserved for Future Use

1945. Procuring Filing of False Document or Offering False Document for Filing (Pen. Code, § 115)

The defendant is charged [in Count __] with (offering a (false/ [or] forged) document for (filing[,]/ [or] recording[,]/ [or] registration)/having a (false/ [or] forged) document (filed[,]/ [or] recorded[,]/ [or] registered)) [in violation of Penal Code section 115].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—offering>

[1. The defendant offered a (false/ [or] forged) document for (filing[,]/ [or] recording[,]/ [or] registration) in a public office in California;

<Alternative 1B—procuring>

[1. The defendant caused a (false/ [or] forged) document to be (filed[,]/ [or] recorded[,]/ [or] registered) in a public office in California;

2. When the defendant did that act, (he/she) knew that the document was (false/ [or] forged);

AND

3. The document was one that, if genuine, could be legally (filed[,]/ [or] recorded[,]/ [or] registered).

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

AUTHORITY

- Elements ▸ Pen. Code, § 115.

- Materiality of Alteration Not Element ▸ *People v. Feinberg* (1997) 51 Cal.App.4th 1566, 1578–1579 [60 Cal.Rptr.2d 323].
- Meaning of Instrument as Used in Penal Code section 115 ▸ *People v. Parks* (1992) 7 Cal.App.4th 883, 886–887 [9 Cal.Rptr.2d 450]; *Generes v. Justice Court* (1980) 106 Cal.App.3d 678, 682–684 [165 Cal.Rptr. 222]; *People v. Powers* (2004) 117 Cal.App.4th 291, 295–297 [11 Cal.Rptr.3d 619].

RELATED ISSUES

Meaning of Instrument

Penal Code section 115 applies to any "instrument" that, "if genuine, might be filed, registered, or recorded under any law of this state or of the United States. . . ." (Pen. Code, § 115(a).) Modern cases have interpreted the term "instrument" expansively, including any type of document that is filed or recorded with a public agency that, if acted on as genuine, would have the effect of deceiving someone. (See *People v. Parks* (1992) 7 Cal.App.4th 883, 886–887 [9 CalRptr.2d 450]; *Generes v. Justice Court* (1980) 106 Cal.App.3d 678, 682–684 [165 Cal.Rptr. 222].) Thus, the courts have held that "instrument" includes a modified restraining order (*People v. Parks, supra,* 7 Cal.App.4th at p. 886), false bail bonds (*People v. Garcia* (1990) 224 Cal.App.3d 297, 306–307 [273 Cal.Rptr.666]), and falsified probation work referrals (*People v. Tate* (1997) 55 Cal.App.4th 663, 667 [64 Cal.Rptr.2d 206]). In ~~the recent case of~~ *People v. Powers* (2004) 117 Cal.App.4th 291, 297 [11 Cal.Rptr.3d 619], the court held that fishing records were "instruments" under Penal Code section 115. The court stated that "California courts have shown reluctance to interpret section 115 so broadly that it encompasses any writing that may be filed in a public office." (*Id.* at p. 295.) The court adopted the following analysis for whether a document is an "instrument," quoting the Washington Supreme Court:

> (1) the claimed falsity relates to a material fact represented in the instrument; and (2a) the information contained in the document is of such a nature that the government is required or permitted by law, statute or valid regulation to act in reliance thereon; or (2b) the information contained in the document materially affects significant rights or duties of third persons, when this effect is reasonably contemplated by the express or implied intent of the statute or valid regulation which requires the filing, registration, or recording of the document.

(*Id.* at p. 297 [quoting *State v. Price* (1980) 94 Wash.2d 810, 819 [620 P.2d 994].)

Each Document Constitutes a Separate Offense

Penal Code section 115 provides that each fraudulent instrument filed or offered for filing constitutes a separate violation (subdivision (b)) and may be punished separately (subdivision (d)). "Thus, the Legislature has unmistakably authorized the imposition of separate penalties for each prohibited act even though they may be part of a continuous course of conduct and have the same objective." (*People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1800 [17 Cal.Rptr.2d 462].)

Meaning of False

Unlawful procurement of a deed does not make it a false or forged document. (*People v. Schmidt* (2019) 41 Cal.App.5th 1042, 1056-1058 [254 Cal.Rptr.3d 694].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 188-189.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property,* § 143.04[1][b] (Matthew Bender).

1946–1949. Reserved for Future Use

1950. Sale or Transfer of Access Card or Account Number (Pen. Code, § 484e(a))

The defendant is charged [in Count __] with (selling[,]/ [or] transferring[,]/ [or] conveying) an access card [in violation of Penal Code section 484e(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) an access card;**

2. **The defendant did so without the consent of the cardholder or the issuer of the card;**

AND

3. **When the defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) the access card, (he/she) intended to defraud.**

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ *<insert description, e.g., ATM card, credit card>* **is an access card.]**

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

[*Selling* means exchanging something for money, services, or anything of value.]

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) the following access cards: _____ <*insert description of each card when multiple items alleged*>**. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) at least one of these cards and you all agree on which card (he/she) (sold[,]/ [or] transferred[,]/ [or] conveyed).]**

[If you find the defendant guilty of (selling[,]/ [or] transferring[,]/ [or] conveying) an access card, you must then decide whether the value of the access card was more than $950. If you have a reasonable doubt whether the value of the access card was more than $950, you must find this allegation has not been proved.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant sold or transferred multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of "access card," the court may give the bracketed portion that begins with "other than a transfer" at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating "(A/An) _____ is an access card" if the parties agree on that point.

Give the bracketed sentence that begins with "For the purpose of this instruction" if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with "It is not necessary" if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P2d 75].)

AUTHORITY

- Elements ▸ Pen. Code, § 484e(a).
- Definitions ▸ Pen. Code, § 484d.
- Intent to Defraud ▸ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▸ Pen. Code, § 8.
- Unanimity Instruction If Multiple Items ▸ *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr. 752].
- Value Must Exceed $950 For Felony ▸ *People v. Romanowski* (2017) 2 Cal.5th 903, 908-910 [215 Cal.Rptr.3d 758, 391 P.3d 633].

LESSER INCLUDED OFFENSES

Possession of Access Card With Intent to Sell (Pen. Code, § 484e(c)) may be a lesser included offense. (But see *People v. Butler* (1996) 43 Cal.App.4th 1224, 1245–1246 [51 Cal.Rptr.2d 150].)

RELATED ISSUES

Multiple Charges Based on Single Act

Prosecution under Penal Code section 484d et seq. does not preclude simultaneous prosecution under other statutes for the same conduct. (*People v. Braz* (1997) 57 Cal.App.4th 1, 8 [66 Cal.Rptr.2d 553]; *People v. Butler* (1996) 43 Cal.App.4th 1224, 1243–1244 [51 Cal.Rptr.2d 150].) Thus, the defendant may also be charged with such offenses as burglary (Pen. Code, § 459), forgery (Pen. Code, § 470), grand theft (Pen. Code, § 487), or telephone fraud (Pen. Code, § 502.7). (*People v.*

Braz, supra, 57 Cal.App.4th at p. 8; *People v. Butler, supra,* 43 Cal.App.4th at pp. 1243–1244.) However, Penal Code section 654 may preclude punishment for multiple offenses. (*People v. Butler, supra,* 43 Cal.App.4th at p. 1248.)

Cloned Cellular Phone

"[T]he Legislature intended that the definition of access card be broad enough to cover future technologies, the only limitation being on purely paper transactions. As the evidence disclosed here, a cloned cellular phone is a sophisticated and unlawful 'means of account access' to the account of a legitimate telephone subscriber." (*People v. Butler* (1996) 43 Cal.App.4th 1224, 1244 [51 Cal.Rptr.2d 150].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 215-216.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property,* § 143.04[1], [2] (Matthew Bender).

1952. Acquiring or Retaining Account Information (Pen. Code, § 484e(d))

The defendant is charged [in Count __] with (acquiring/ [or] retaining) the account information of an access card [in violation of Penal Code section 484e(d)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (acquired/ [or] retained) the account information of an access card that was validly issued to someone else;**

2. **The defendant did so without the consent of the cardholder or the issuer of the card;**

AND

3. **When the defendant (acquired/ [or] retained) the account information, (he/she) intended to use that information fraudulently.**

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ *<insert description, e.g., ATM card, credit card>* **is an access card.]**

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (acquired/ [or] retained) the account information of the following access cards: _____ *<insert description of each card when multiple items alleged>***. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (acquired/ [or] retained) the account information of at least one of these cards and you all agree on which card's account information (he/she) (acquired/ [or] retained).]**

[If you find the defendant guilty of (acquiring/ [or] retaining) the account information of an access card, you must then decide whether the value of the account information was more than $950. If you have a reasonable doubt whether the value of the account information was more than $950, you must find this allegation has not been proved.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed the account information of multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of "access card," the court may give the bracketed portion that begins with "other than a transfer" at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating "(A/An) _____ is an access card" if the parties agree on that point.

Give the bracketed sentence that begins with "For the purpose of this instruction" if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with "It is not necessary" if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements ▸ Pen. Code, § 484e(d).
- Definitions ▸ Pen. Code, § 484d.
- Intent to Defraud ▸ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▸ Pen. Code, § 8.
- Unanimity Instruction If Multiple Items ▸ *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Value Must Exceed $950 for Felony ▸ *People v. Romanowski* (2017) 2 Cal.5th 903, 908-910 [215 Cal.Rptr.3d 758, 391 P.3d 633].

RELATED ISSUES

Acquires

"If appellant is arguing that only the person who *first* acquires this information with the requisite intent is guilty of the crime, we disagree. We interpret the crime to apply to any person who acquires that information with the intent to use it fraudulently." (*People v. Smith* (1998) 64 Cal.App.4th 1458, 1470 [76 Cal.Rptr.2d 75].)

Includes Possession of Cancelled Card

In *People v. Molina* (2004) 120 Cal.App.4th 507, 511 15 Cal.Rptr.3d 493], the defendant possessed a cancelled access card that had been issued to someone else. The court held that this constituted a violation of Penal Code section 484e(d). (*Id.* at pp. 514–515.) The court further held that, although the defendant's conduct also violated Penal Code section 484e(c), a misdemeanor, the defendant's right to equal protection was not violated by being prosecuted for the felony offense. (*Id.* at pp. 517–518.)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 215-216.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property,* § 143.04[1], [2] (Matthew Bender).

2501. Carrying Concealed Explosive or Dirk or Dagger (Pen. Code, §§ 21310, 16470)

The defendant is charged [in Count __] with unlawfully carrying a concealed (explosive/dirk or dagger) [in violation of Penal Code section 21310].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant carried on (his/her) person (an explosive/a dirk or dagger);**

2. **The defendant knew that (he/she) was carrying it;**

3. **It was substantially concealed on the defendant's person;**

AND

4. **The defendant knew that it (was an explosive/could readily be used as a stabbing weapon).**

The People do not have to prove that the defendant used or intended to use the alleged (explosive/dirk or dagger) as a weapon.

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) that is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is also any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* **is an *explosive*.]**

[A *dirk or dagger* is a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. *Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A (pocketknife/nonlocking folding knife/folding knife that is not prohibited by Penal Code section 21510) is not a *dirk or dagger* unless the blade of the knife is exposed and locked into position.]

[A knife carried in a sheath and worn openly suspended from the waist of the wearer is not *concealed*.]

<Give only if object may have innocent uses.>
[When deciding whether the defendant knew the object (was an explosive/could be used as a stabbing weapon), consider all the surrounding circumstances, including the time and place of possession. Consider also (the destination of the defendant[,]/ the alteration of the object from standard form[,]) and other facts, if any.]

[The People allege that the defendant carried the following weapons: _____ <*insert description of each weapon when multiple items alleged*>. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant carried at least one of these weapons and you all agree on which weapon (he/she) carried and when (he/she) carried it.]

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple weapons and the possession was "fragmented as to time . . . [or] space," the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].) Give the bracketed paragraph beginning "The People allege that the defendant possessed the following weapons," inserting the items alleged.

Give the bracketed paragraph that begins with "When deciding whether" only if the object was not designed solely for use as a stabbing weapon but may have innocent uses. (*People v. Fannin* (2001) 91 Cal.App.4th 1399, 1404 [111 Cal.Rptr.2d 496]; *People v. Grubb* (1965) 63 Cal.2d 614, 620–621, fn. 9 [47 Cal.Rptr. 772, 408 P.2d 100].)

When instructing on the meaning of "explosive," if the explosive is listed in Health and Safety Code section 12000, the court may use the bracketed sentence

stating, "_____ is an explosive." For example, "Nitroglycerine is an explosive." However, the court may not instruct the jury that the defendant used an explosive. For example, the court may not state, "The defendant used an explosive, nitroglycerine," or "The substance used by the defendant, nitroglycerine, was an explosive." (See *People v. Dimitrov* (1995) 33 Cal.App.4th 18, 25–26 [39 Cal.Rptr.2d 257]; *People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].)

If the court gives the instruction on a "folding knife that is not prohibited by Penal Code section 21510," give a modified version of CALCRIM No. 2502, *Possession, etc., of Switchblade Knife.*

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 21310.
- Need Not Prove Intent to Use ▸ *People v. Rubalcava* (2000) 23 Cal.4th 322, 328 [96 Cal.Rptr.2d 735, 1 P.3d 52].
- Knowledge Required ▸ *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52].
- Substantial Concealment ▸ *People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [6 Cal.Rptr.2d 673]; *People v. Fuentes* (1976) 64 Cal.App.3d 953, 955 [134 Cal.Rptr. 885].
- Explosive Defined ▸ Health & Saf. Code, § 12000; *People v. Clark* (1990) 50 Cal.3d 583, 604 [789 P.2d 127, 268 Cal.Rptr. 399].
- Dirk or Dagger Defined ▸ Pen. Code, § 16470.
- Dirk or Dagger—No Length Requirement ▸ *In re Victor B.* (1994) 24 Cal.App.4th 521, 526 [29 Cal.Rptr.2d 362].
- Dirk or Dagger—Object Not Originally Designed as Knife ▸ *In re Victor B.* (1994) 24 Cal.App.4th 521, 525–526 [29 Cal.Rptr.2d 362].
- Dirk or Dagger—Capable of Ready Use ▸ *People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1457 [67 Cal.Rptr.2d 782].

- Dirk or Dagger—Pocketknives ▸ *In re Luke W.* (2001) 88 Cal.App.4th 650, 655–656 [105 Cal.Rptr.2d 905]; *In re George W.* (1998) 68 Cal.App.4th 1208, 1215 [80 Cal.Rptr.2d 868].

RELATED ISSUES

Knowledge Element

"[T]he relevant language of section 12020 is unambiguous and establishes that carrying a concealed dirk or dagger does not require an intent to use the concealed instrument as a stabbing weapon." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 328 [96 Cal.Rptr.2d 735, 1 P.3d 52] [interpreting now-repealed Pen. Code, § 12020].) However, "to commit the offense, a defendant must still have the requisite *guilty mind*: that is, the defendant must knowingly and intentionally carry concealed upon his or her person an instrument 'that is capable of ready use as a stabbing weapon.' ([now repealed] § 12020(a), (c)(24).) A defendant who does not know that he is carrying the weapon or that the concealed instrument may be used as a stabbing weapon is therefore not guilty of violating section 12020." (*Id.* at pp. 331–332 [emphasis in original] [referencing repealed Pen. Code § 12020; see now Pen. Code, §§ 16479, 21310].)

Definition of Dirk or Dagger

The definition of "dirk or dagger" contained in Penal Code section 16470 was effective on January 1, 2012. Prior decisions interpreting the meaning of "dirk or dagger" should be viewed with caution. (See *People v. Mowatt* (1997) 56 Cal.App.4th 713, 719–720 [65 Cal.Rptr.2d 722] [comparing old and new definitions]; *People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1457 [67 Cal.Rptr.2d 782] [same]; *In re George W.* (1998) 68 Cal.App.4th 1208, 1215 [80 Cal.Rptr.2d 868] [discussing 1997 amendment].)

Dirk or Dagger—"Capable of Ready Use"

"[T]he 'capable of ready use' requirement excludes from the definition of dirk or dagger a device carried in a configuration that requires assembly before it can be utilized as a weapon." (*People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1457 [67 Cal.Rptr.2d 782].)

Dirk or Dagger—"Pocketknife"

"Although they may not have folding blades, small knives obviously designed to be carried in a pocket in a closed state, and which cannot be used until there have been several intervening manipulations, comport with the implied legislative intent that such knives do not fall within the definition of proscribed dirks or daggers but

are a type of pocketknife excepted from the statutory proscription." (*In re Luke W.* (2001) 88 Cal.App.4th 650, 655–656 [105 Cal.Rptr.2d 905].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 213.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01[1][a] (Matthew Bender).

2503. Possession of Deadly Weapon With Intent to Assault (Pen. Code, § 17500)

The defendant is charged [in Count __] with possessing a deadly weapon with intent to assault [in violation of Penal Code section 17500].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant possessed a deadly weapon on (his/her) person;**

2. **The defendant knew that (he/she) possessed the weapon;**

AND

3. **At the time the defendant possessed the weapon, (he/she) intended to assault someone.**

A person intends to assault someone else if he or she intends to do an act that by its nature would directly and probably result in the application of force to a person.

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[The term *deadly weapon* is defined in another instruction to which you should refer.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed[,] [and] [where the person who possessed the object was going][,] [and] [whether the object was changed from its standard form] and any other evidence that indicates that the object would be used for a dangerous, rather than a harmless, purpose.]

The term *application of force* means to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

[The People allege that the defendant possessed the following weapons: _____ <*insert description of each weapon when multiple items alleged*>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these weapons and you all agree on which weapon (he/she) possessed.]

New January 2006; Revised February 2012, February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple weapons and the possession was "fragmented as to time [or] space," the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].) Give the bracketed paragraph that begins with "The People allege that the defendant possessed the following weapons," inserting the items alleged.

Give the definition of deadly weapon unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed paragraph that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.***Defenses—Instructional Duty*** Evidence of voluntary intoxication or mental impairment may be admitted to show that the defendant did not form the required mental state. (See *People v. Ricardi* (1992) 9 Cal.App.4th 1427, 1432 [12 Cal.Rptr.2d 364].) The court has no sua sponte duty to instruct on these defenses; however, the trial court must give these instructions on request if supported by the evidence. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119 [2 Cal.Rptr.2d 364, 820 P.2d 588] [on duty to instruct generally]; *People v. Stevenson* (1978) 79 Cal.App.3d 976, 988 [145 Cal.Rptr. 301] [instructions applicable to possession of weapon with intent to assault].) See Defenses and Insanity, CALCRIM No. 3400 et seq.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 17500.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Objects With Innocent Uses ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].
- Knowledge Required ▸ See *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52]; *People v. Gaitan* (2001) 92 Cal.App.4th 540, 547 [111 Cal.Rptr.2d 885].
- Assault ▸ Pen. Code, § 240; see also *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].

- Least Touching ‣ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ‣ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 189.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01[1] (Matthew Bender).

2514. Possession of Firearm by Person Prohibited by Statute: Self–Defense

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The defendant is not guilty of unlawful possession of a firearm[, as charged in Count __,] if (he/she) temporarily possessed the firearm in (self-defense/ [or] defense of another). The defendant possessed the firearm in lawful (self-defense/ [or] defense of another) if:

1. **The defendant reasonably believed that (he/she/someone else/_____ <*insert name of third party*>) was in imminent danger of suffering great bodily injury;**

2. **The defendant reasonably believed that the immediate use of force was necessary to defend against that danger;**

3. **A firearm became available to the defendant without planning or preparation on (his/her) part;**

4. **The defendant possessed the firearm temporarily, that is, for a period no longer than was necessary [or reasonably appeared to have been necessary] for self-defense;**

5. **No other means of avoiding the danger of injury was available;**

AND

6. **The defendant's use of the firearm was reasonable under the circumstances.**

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of great bodily injury to (himself/herself/ [or] someone else). Defendant's belief must have been reasonable and (he/she) must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the defendant did not act in lawful (self-defense/ [or] defense of another).

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar

knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[The defendant's belief that (he/she/someone else) was threatened may be reasonable even if (he/she) relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true.]

[If you find that _____ *<insert name of person who allegedly threatened defendant>* **threatened or harmed the defendant [or others] in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.]**

[If you find that the defendant knew that _____ *<insert name of person who allegedly threatened defendant>* **had threatened or harmed others in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.]**

[Someone who has been threatened or harmed by a person in the past, is justified in acting more quickly or taking greater self-defense measures against that person.]

[If you find that the defendant received a threat from someone else that (he/she) reasonably associated with _____ *<insert name of person who was the alleged source of the threat>***, you may consider that threat in deciding whether the defendant was justified in acting in (self-defense/ [or] defense of another).]**

The People have the burden of proving beyond a reasonable doubt that the defendant did not temporarily possess the firearm in (self-defense/ [or] defense of another). If the People have not met this burden, you must find the defendant not guilty of this crime.

New January 2006; Revised December 2008, February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on self-defense when "it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case." (See *People v. Breverman* (1998) 19 Cal.4th 142, 157 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing duty to instruct on defenses generally]; see also *People v. Lemus* (1988) 203 Cal.App.3d 470, 478 [249 Cal.Rptr. 897] [if substantial evidence of self-defense exists, court must instruct sua sponte and let jury decide credibility of witnesses]; *People v. King* (1978) 22 Cal.3d 12, 24 [148 Cal.Rptr. 409, 582 P.2d 1000] [self-defense applies to charge under now repealed Pen. Code, § 12021].)

On defense request and when supported by sufficient evidence, the court must instruct that the jury may consider the effect of "antecedent threats or assaults against the defendant on the reasonableness of defendant's conduct." (*People v. Garvin* (2003) 110 Cal.App.4th 484, 488 [1 Cal.Rptr.3d 774].) The court must also instruct that the jury may consider previous threats or assaults by the aggressor against someone else or threats received by the defendant from a third party that the defendant reasonably associated with the aggressor. (See *People v. Pena* (1984) 151 Cal.App.3d 462, 475 [198 Cal.Rptr. 819]; *People v. Minifie* (1996) 13 Cal.4th 1055, 1065, 1068 [56 Cal.Rptr.2d 133, 920 P.2d 1337]; see also CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.) If these instructions have already been given in CALCRIM No. 3470 or CALCRIM No. 505, the court may delete them here.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions

CALCRIM No. 3470, *Right to Self-Defense or Defense of Another (Non-Homicide)*.
CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.
CALCRIM No. 3472, *Right to Self-Defense: May Not Be Contrived*.
CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

AUTHORITY

- Temporary Possession of Firearm by Felon in Self-Defense ▸ *People v. King* (1978) 22 Cal.3d 12, 24 [148 Cal.Rptr. 409, 582 P.2d 1000].
- Duty to Retreat Limited to Felon in Possession Cases ▸ *People v. Rhodes* (2005) 129 Cal.App.4th 1339, 1343–1346 [29 Cal.Rptr.3d 226].
- Possession Must Be Brief and Not Planned ▸ *People v. McClindon* (1980) 114 Cal.App.3d 336, 340 [170 Cal.Rptr. 492].
- Instructional Requirements ▸ *People v. Moody* (1943) 62 Cal.App.2d 18 [143 P.2d 978]; *People v. Myers* (1998) 61 Cal.App.4th 328, 335, 336 [71 Cal.Rptr.2d 518].
- Lawful Resistance ▸ Pen. Code, §§ 692, 693, 694; Civ. Code, § 50.
- Burden of Proof ▸ Pen. Code, § 189.5; *People v. Banks* (1976) 67 Cal.App.3d 379, 383–384 [137 Cal.Rptr. 652].
- Elements ▸ *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082 [56 Cal.Rptr.2d 142, 921 P.2d 1].
- Imminence ▸ *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187 [264 Cal.Rptr. 167], disapproved on other grounds by *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088–1089 [56 Cal.Rptr.2d 142, 921 P.2d 1].
- Reasonable Belief ▸ *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082 [56 Cal.Rptr.2d 142, 921 P.2d 1]; *People v. Clark* (1982) 130 Cal.App.3d 371, 377 [181 Cal.Rptr. 682].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 86, 87, 68, 71, 72, 73.

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 233-237.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.11[1][a] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 93, *Disabilities Flowing From Conviction,* § 93.06 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01[1][d] (Matthew Bender).

2515–2519. Reserved for Future Use

2578. Explosion of Explosive or Destructive Device Causing Death, Mayhem, or Great Bodily Injury (Pen. Code, § 18755)

The defendant is charged [in Count __] with (exploding/ [or] igniting) (an explosive/ [or] a destructive device) causing (death[,]/ mayhem[,]/ [or] great bodily injury) to another person [in violation of Penal Code section 18755].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant willfully and maliciously (exploded/ [or] ignited) (an explosive/ [or] a destructive device);**

AND

2. **The explosion caused (death[,]/ mayhem[,]/ [or] great bodily injury) to another person.**

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to annoy or injure someone else.

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[*Mayhem* means unlawfully:

<A. Removing Body Part>
[Removing a part of someone's body](;[or]/.)

<B. Disabling Body Part>
[Disabling or making useless a part of someone's body and the disability is more than slight or temporary](;[or]/.)

<C. Disfigurement>
[Permanently disfiguring someone](;[or]/.)

<D. Tongue Injury>
[Cutting or disabling someone's tongue](;[or]/.)

<E. Slitting Nose, Ear, or Lip>
[Slitting someone's (nose[,]/ear[,]/ [or] lip)](; or/.)

<F. Significant Eye Injury>
[Putting out someone's eye or injuring someone's eye in a way that so significantly reduces his or her ability to see that the eye is useless for the purpose of ordinary sight.]]

[A disfiguring injury may be *permanent* even though it can be repaired by medical procedures.]

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is also any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* **is an *explosive*.]**

[A *destructive device* is _____ *<insert definition from Pen. Code, § 16460>*.**]**

[_____ *<insert type of destructive device from Pen. Code, § 16460>* **is a *destructive device*.]**

[The term[s] (*explosive*/ [and] *destructive device*) (is/are) defined in another instruction.]

[An act causes (death[,]/ mayhem[,]/ [or] great bodily injury) if the (death/injury) is the direct, natural, and probable consequence of the act, and the (death[,]/ mayhem[,]/ [or] great bodily injury) would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of (death[,]/ mayhem[,]/ [or] great bodily injury). An act causes (death/injury) only if it is a substantial factor in causing the (death/injury). A *substantial factor* is more than a trivial or remote factor. However, it need not be the only factor that causes the (death/injury).]

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (See *People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401] [causation issue in homicide].) If the evidence indicates that there was only one cause of injury, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of injury, the court should also give the "substantial factor" instruction and definition in the second bracketed paragraph. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

Depending on the device or substance used, give the bracketed definitions of "explosive" or "destructive device," inserting the appropriate definition from Penal Code section 16460, unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere. If the case involves a specific device listed in Health and Safety Code section 12000 or Penal Code section 16460, the court may instead give the bracketed sentence stating that the listed item "is an explosive" or "is a destructive device." For example, "A grenade is a destructive device." However, the court may not instruct the jury that the defendant used a destructive device. For example, the court may not state that "the defendant used a destructive device, a grenade," or "the device used by the defendant, a grenade, was a destructive device." (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 25–26 [39 Cal.Rptr.2d 257].)

If the device used is a bomb, the court may insert the word "bomb" in the bracketed definition of destructive device without further definition. (*People v. Dimitrov, supra,* 33 Cal.App.4th at p. 25.) Appellate courts have held that the term "bomb" is not vague and is understood in its "common, accepted, and popular sense." (*People v. Quinn* (1976) 57 Cal.App.3d 251, 258 [129 Cal.Rptr. 139];

People v. Dimitrov, supra, 33 Cal.App.4th at p. 25.) If the court wishes to define the term "bomb," the court may use the following definition: "A bomb is a device carrying an explosive charge fused to blow up or detonate under certain conditions." (See *People v. Morse* (1992) 2 Cal.App.4th 620, 647, fn. 8 [3 Cal.Rptr.2d 343].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 18755.
- Explosive Defined ▸ Health & Saf. Code, § 12000.
- Destructive Device Defined ▸ Pen. Code, § 16460.
- Maliciously Defined ▸ Pen. Code, § 7(4); *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101]; see also *People v. Heideman* (1976) 58 Cal.App.3d 321, 335 [130 Cal.Rptr. 349].
- Must Injure Another Person ▸ See *People v. Teroganesian* (1995) 31 Cal.App.4th 1534, 1538 [37 Cal.Rptr.2d 489].
- General Intent Crime ▸ See *People v. Thompson* (1992) 7 Cal.App.4th 1966, 1970–1971 [10 Cal.Rptr.2d 15].
- Great Bodily Injury Defined ▸ *People v. Poulin* (1972) 27 Cal.App.3d 54, 61 [103 Cal.Rptr. 623].

LESSER INCLUDED OFFENSES

- Possession of Destructive Device ▸ Pen. Code, § 18710; *People v. Westoby* (1976) 63 Cal.App.3d 790, 795 [134 Cal.Rptr. 97].
- Possession of Explosive ▸ Health & Saf. Code, § 12305; *People v. Westoby* (1976) 63 Cal.App.3d 790, 795 [134 Cal.Rptr. 97].

- Explosion of a Destructive Device Causing Injury ▸ Pen. Code, § 18750; see *People v. Poulin* (1972) 27 Cal.App.3d 54, 60 [103 Cal.Rptr. 623].

RELATED ISSUES

See the Related Issues section to CALCRIM No. 2571, *Carrying or Placing Explosive or Destructive Device on Common Carrier,* and CALCRIM No. 2577, *Explosion of Explosive or Destructive Device Causing Bodily Injury*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 225–226, 227.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04, Ch. 142, *Crimes Against the Person,* § 142.01[2][a][i], [ii], Ch. 144, *Crimes Against Order,* § 144.01[1][c] (Matthew Bender).

2622. Intimidating a Witness (Pen. Code, § 136.1(a) & (b))

The defendant is charged [in Count __] with intimidating a witness [in violation of Penal Code section 136.1].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—attending or giving testimony>

[1. The defendant maliciously (tried to (prevent/ [or] discourage)/(prevented/ [or] discouraged)) _____ *<insert name/description of person defendant allegedly sought to influence>* **from (attending/ [or] giving testimony at) _____** *<insert type of judicial proceeding or inquiry authorized by law>***;]**

<Alternative 1B—report of victimization>

[1. The defendant ~~[maliciously]~~ (tried to (prevent/ [or] discourage)/(prevented/ [or] discouraged)) _____ *<insert name/description of person defendant allegedly sought to influence>* **from making a report that (he/she/someone else) was a victim of a crime to _____** *<insert type of official specified in Pen. Code, § 136.1(b)(1)>***;]**

<Alternative 1C—causing prosecution>

[1. The defendant ~~[maliciously]~~ (tried to (prevent/ [or] discourage)/(prevented/ [or] discouraged)) _____ *<insert name/description of person defendant allegedly sought to influence>* **from cooperating or providing information so that a (complaint/indictment/information/probation violation/parole violation) could be sought and prosecuted, and from helping to prosecute that action;]**

<Alternative 1D—causing arrest>

[1. The defendant ~~[maliciously]~~ (tried to (prevent/ [or] discourage)/(prevented/ [or] discouraged)) _____ *<insert name/description of person defendant allegedly sought to influence>* **from (arresting[,]/ [or] (causing/ [or] seeking) the arrest of [,]) someone in connection with a crime;]**

2. _____ *<insert name/description of person defendant allegedly sought to influence>* **was a (witness/ [or] crime victim);**

AND

3. **The defendant knew (he/she) was (trying to (prevent/ [or] discourage)/(preventing/ [or] discouraging)) _____** *<insert name/description of person defendant allegedly sought to influence>* **from _____** *<insert appropriate description from element 1>* **and intended to do so.**

[A person acts *maliciously* when he or she unlawfully intends to annoy, harm, or injure someone else in any way, or intends to interfere in any way with the orderly administration of justice.]

[As used here, *witness* means someone [or a person the defendant reasonably believed to be someone]:

<Give the appropriate bracketed paragraph[s].>

- **[Who knows about the existence or nonexistence of facts relating to a crime(;/.)]**

  [OR]

- **[Whose declaration under oath has been or may be received as evidence(;/.)]**

  [OR]

- **[Who has reported a crime to a (peace officer[,]/ [or] prosecutor[,]/ [or] probation or parole officer[,]/ [or] correctional officer[,]/ [or] judicial officer)(;/.)]**

  [OR

- **Who has been served with a subpoena issued under the authority of any state or federal court.]]**

[A person is a *victim* if there is reason to believe that a federal or state crime is being or has been committed or attempted against him or her.]

[It is not a defense that the defendant was not successful in preventing or discouraging the (victim/ [or] witness).]

[It is not a defense that no one was actually physically injured or otherwise intimidated.]

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 1, alternative 1A applies to charges under Penal Code section 136.1(a), which prohibits "knowingly and maliciously" preventing or attempting to prevent a witness or victim from giving testimony. Alternatives 1B through 1D apply to charges under Penal Code section 136.1(b). ~~Subdivision (b) does not use the words "knowingly and maliciously." However, subdivision (c) provides a higher punishment if a violation of either subdivision (a) or (b) is done "knowingly and maliciously," and one of the other listed sentencing factors is proved. An argument can be made that the knowledge and malice requirements apply to all violations of Penal Code section 136.1(b), not just those charged with the additional sentencing factors under subdivision (c).~~ Because the offense always requires specific intent, the committee has included the knowledge requirement with the specific intent requirement in element 3. (*People v. Ford* (1983) 145 Cal.App.3d 985, 990 [193 Cal.Rptr. 684]; see also *People v. Womack* (1995) 40 Cal.App.4th 926, 929–930 [47 Cal.Rptr.2d 76].) ~~If the court concludes that the malice requirement also applies to all violations of subdivision (b), the court should give the bracketed word "maliciously" in element 1, in alternatives 1B through 1D, and the definition of this word.~~

If the defendant is charged with one of the sentencing factors in Penal Code section 136.1(c), give CALCRIM No. 2623, *Intimidating a Witness: Sentencing Factors*. If the defendant is charged with the sentencing factor based on a prior conviction, the court must give both CALCRIM No. 2623 and CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, unless the court has granted a bifurcated trial on the prior conviction or the defendant has stipulated to the conviction.

Note that Penal Code section 136.1(a)(3) states, "For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice." It is unclear whether the court must instruct on this presumption.

AUTHORITY

- Elements ▸ Pen. Code, § 136.1(a) & (b).
- Malice Defined ▸ Pen. Code, § 136(1).
- Witness Defined ▸ Pen. Code, § 136(2).
- Victim Defined ▸ Pen. Code, § 136(3).
- Specific Intent Required ▸ *People v. Ford* (1983) 145 Cal.App.3d 985, 990 [193 Cal.Rptr. 684]; see also *People v. Womack* (1995) 40 Cal.App.4th 926, 929–930 [47 Cal.Rptr.2d 76].
- Malice Not Required For Violations of Penal Code Section 136.1(b) ▸ *People v. Brackins* (2019) 37 Cal.App.5th 56, 66-67 [249 Cal.Rptr.3d 261].

LESSER INCLUDED OFFENSES

A violation of Penal Code section 136.1(a) or (b) is a felony-misdemeanor, punishable by a maximum of three years in state prison. If the defendant is also charged with one of the sentencing factors in Penal Code section 136.1(c), then the offense is a felony punishable by two, three, or four years. If~~n~~ the defendant is charged under Penal Code section 131.6(c), then the offenses under subdivisions (a) and (b) are lesser included offenses. The court must provide the jury with a verdict form on which the jury will indicate if the prosecution has proved the sentencing factor alleged. If the jury finds that this allegation has not been proved, then the offense should be set at the level of the lesser offense.

The misdemeanor offense of knowingly inducing a false statement to a law enforcement official in violation of Penal Code section 137(c) is not a lesser included offense of Penal Code section 137(b) because the latter offense lacks the element that the defendant must actually cause a false statement to be made. (*People v. Miles* (1996) 43 Cal.App.4th 575, 580 [51 Cal.Rptr.2d 52].)

RELATED ISSUES

Penal Code Sections 137(b), 136.1, and 138

Because one cannot "influence" the testimony of a witness if the witness does not testify, a conviction under Penal Code section 137(b) is inconsistent with a conviction under Penal Code section 136.1 or 138, which requires that a defendant prevent, rather than influence, testimony. (*People v. Womack* (1995) 40 Cal.App.4th 926, 931 [47 Cal.Rptr.2d 76].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, §§ 5, 6.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 82, *Witnesses,* § 82.07, Ch. 84, *Motions at Trial,* § 84.11 (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.23[6][e], 91.43 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.13[4][b]; Ch. 144, *Crimes Against Order,* § 144.03[2], [4] (Matthew Bender).

2623. Intimidating a Witness: Sentencing Factors (Pen. Code, § 136.1(c))

If you find the defendant guilty of intimidating a witness, you must then decide whether the People have proved the additional allegation[s] that the defendant [acted maliciously] [and] [(acted in furtherance of a conspiracy/ [or] used or threatened to use force/ [or] acted to obtain money or something of value)].

To prove (this/these) allegation[s], the People must prove that:

[1. The defendant acted maliciously(;/.)]

[AND]

<Alternative A—furtherance of a conspiracy>

[(2A/1). The defendant acted with the intent to assist in a conspiracy to intimidate a witness(;/.)]

<Alternative B—used or threatened force>

[(2B/2). The defendant used force or threatened, either directly or indirectly, to use force or violence on the person or property of [a] (witness[,]/ [or] victim[,]/ [or] any other person)(;/.)]

<Alternative C—financial gain>

[(2C/3). The defendant acted (in order to obtain (money/ [or] something of value)/ [or] at the request of someone else in exchange for something of value).]

[Instruction[s] __ *<insert instruction number[s]>* **explain[s] when someone is acting in a conspiracy to intimidate a witness. You must apply (that/those) instruction[s] when you decide whether the People have proved this additional allegation.** *<The court must modify and give Instruction 415, et seq., explaining the law of conspiracy as it applies to the facts of the particular case.>***]**

[A person acts *maliciously* when he or she unlawfully intends to annoy, harm, or injure someone else in any way, or intends to interfere in any way with the orderly administration of justice.]

The People have the burden of proving (this/each) allegation beyond a reasonable doubt. If the People have not met this burden [for any allegation], you must find that (this/the) allegation has not been proved.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

If the defendant is charged with a felony based on Penal Code section 136.1(c), the court has a **sua sponte** duty to instruct on the alleged sentencing factor. This instruction **must** be given with CALCRIM No. 2622, *Intimidating a Witness*.

As noted in the Bench Notes to CALCRIM No. 2622, the court will instruct the jury that knowledge and malice are elements of a violation of Penal Code section 136.1(a). ~~and may, in some circumstances, also instruct that malice is an element of a violation of Penal Code section 136.1(b).~~ If the court has given the malice element in CALCRIM No. 2622, the court may delete it here. If the court has not already given this element and the defendant is charged under subdivision (c), the court must give the bracketed element requiring malice here.

If the defendant is charged with the sentencing factor based on a prior conviction, the court must give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, unless the court has granted a bifurcated trial on the prior conviction or the defendant has stipulated to the conviction. In such cases, the court should also give this instruction, CALCRIM No. 2623, only if the court has not already instructed the jury on malice or the defendant is also charged with another sentencing factor.

The court must provide the jury with a verdict form on which the jury will indicate if each alleged sentencing factor has or has not been proved.

If the court instructs on furtherance of a conspiracy, give the appropriate corresponding instructions on conspiracy. (See CALCRIM No. 415, *Conspiracy*.)

AUTHORITY

- Factors ▸ Pen. Code, § 136.1(c).
- Malice Defined ▸ Pen. Code, § 136(1).

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 6.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 82, *Witnesses,* § 82.07, Ch. 84, *Motions at Trial,* § 84.11 (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.23[6][e], 91.43 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.13[4][b], Ch. 144, *Crimes Against Order,* § 144.03[2], [4] (Matthew Bender).

2720. Assault by Prisoner Serving Life Sentence (Pen. Code, § 4500)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) with malice aforethought, while serving a life sentence [in violation of Penal Code section 4500].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—force with weapon>

[1. The defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and the force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

5. The defendant acted with malice aforethought;

[AND]

<Alternative 6A—defendant sentenced to life term>

[6. When (he/she) acted, the defendant had been sentenced to a maximum term of life in state prison [in California](;/.)]

<Alternative 6B—defendant sentenced to life and to determinate term>

[6. When (he/she) acted, the defendant had been sentenced to both a specific term of years and a maximum term of life in state prison [in California](;/.)]

<Give element 7 when self-defense or defense of another is an issue raised by the evidence.>

[AND

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[The term (*great bodily injury/deadly weapon*) is defined in another instruction.]

There are two kinds of *malice aforethought*, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for this crime.

The defendant acted with *express malice* if (he/she) unlawfully intended to kill the person assaulted.

The defendant acted with *implied malice* if:

1. **(He/She) intentionally committed an act.**

2. **The natural and probable consequences of the act were dangerous to human life.**

3. **At the time (he/she) acted, (he/she) knew (his/her) act was dangerous to human life.**

AND

4. **(He/She) deliberately acted with conscious disregard for human life.**

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act is committed. It does not require deliberation or the passage of any particular period of time.

[A person is *sentenced to a term in a state prison* if he or she is (sentenced to confinement in _____ <*insert name of institution from Pen. Code, § 5003*>/committed to the Department of Corrections and Rehabilitation[, Division of Juvenile Justice,]) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the (confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *sentenced to a term in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is *not sentenced to a term in a state prison*.]]

New January 2006; Revised February 2013, August 2016, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In element 1, give alternative 1A if it is alleged the assault was committed with a deadly weapon. Give alternative 1B if it is alleged that the assault was committed with force likely to produce great bodily injury.

In element 6, give alternative 6A if the defendant was sentenced to only a life term. Give element 6B if the defendant was sentenced to both a life term and a determinate term. (*People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836].)

Give the bracketed definition of "application of force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

On request, give the bracketed definition of "sentenced to a term in state prison." Within that definition, give the bracketed portion that begins with "regardless of

the purpose," or the bracketed second or third sentence, if requested and relevant based on the evidence.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

Penal Code section 4500 provides that the punishment for this offense is death or life in prison without parole, unless "the person subjected to such assault does not die within a year and a day after" the assault. If this is an issue in the case, the court should consider whether the time of death should be submitted to the jury for a specific factual determination pursuant to *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Defense—Instructional Duty

As with murder, the malice required for this crime may be negated by evidence of heat of passion or imperfect self-defense. (*People v. St. Martin* (1970) 1 Cal.3d 524, 530–531 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Chacon* (1968) 69 Cal.2d 765, 780–781 [73 Cal.Rptr. 10, 447, P.2d 106].) If the evidences raises an issue about one or both of these potential defenses, the court has a **sua sponte** duty to give the appropriate instructions, CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion–Lesser Included Offense*, or CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense–Lesser Included Offense*. The court must modify these instructions for the charge of assault by a life prisoner.

Related Instructions

CALCRIM No. 875, *Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury*.

CALCRIM No. 520, *Murder With Malice Aforethought*.

AUTHORITY

- Elements of Assault by Life Prisoner ▸ Pen. Code, § 4500.

- Elements of Assault With Deadly Weapon or Force Likely ▸ Pen. Code, §§ 240, 245(a)(1)–(3) & (b).
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Malice Equivalent to Malice in Murder ▸ *People v. St. Martin* (1970) 1 Cal.3d 524, 536–537 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Chacon* (1968) 69 Cal.2d 765, 780–781 [73 Cal.Rptr. 10, 447 P.2d 106].
- Malice Defined ▸ Pen. Code, § 188; *People v. Dellinger* (1989) 49 Cal.3d 1212, 1217–1222 [264 Cal.Rptr. 841, 783 P.2d 200]; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 103–105 [13 Cal.Rptr.2d 864, 840 P.2d 969].
- Ill Will Not Required for Malice ▸ *People v. Sedeno* (1974) 10 Cal.3d 703, 722 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12 [160 Cal.Rptr. 84, 603 P.2d 1].
- Undergoing Sentence of Life ▸ *People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury—Not a Prisoner ▸ Pen. Code, § 245; see *People v. St. Martin* (1970) 1 Cal.3d 524, 536 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].
- Assault ▸ Pen. Code, § 240; *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].

Note: In *People v. Noah* (1971) 5 Cal.3d 469, 476–477 [96 Cal.Rptr. 441, 487 P.2d 1009], the court held that assault by a prisoner not serving a life sentence, Penal Code section 4501, is not a lesser included offense of assault by a prisoner serving a life sentence, Penal Code section 4500. The court based its on conclusion on the fact that Penal Code section 4501 includes as an element of the

offense that the prisoner was not serving a life sentence. However, Penal Code section 4501 was amended, effective January 1, 2005, to remove this element. The trial court should, therefore, consider whether Penal Code section 4501 is now a lesser included offense to Penal Code section 4500.

RELATED ISSUES

Status as Life Prisoner Determined on Day of Alleged Assault

Whether the defendant is sentenced to a life term is determined by his or her status on the day of the assault. (*People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836]; *Graham v. Superior Court* (1979) 98 Cal.App.3d 880, 890 [160 Cal.Rptr. 10].) It does not matter if the conviction is later overturned or the sentence is later reduced to something less than life. (*People v. Superior Court of Monterey (Bell), supra,* 99 Cal.App.4th at p. 1341; *Graham v. Superior Court, supra,* 98 Cal.App.3d at p. 890.)

Undergoing Sentence of Life

This statute applies to "[e]very person undergoing a life sentence . . . ." (Pen. Code, § 4500.) In *People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836], the defendant had been sentenced both to life in prison and to a determinate term and, at the time of the assault, was still technically serving the determinate term. The court held that he was still subject to prosecution under this statute, stating "a prisoner who commits an assault is subject to prosecution under section 4500 for the crime of assault by a life prisoner if, on the day of the assault, the prisoner was serving a sentence which potentially subjected him to actual life imprisonment, and therefore the prisoner might believe he had 'nothing left to lose' by committing the assault." *(Ibid.)*

Error to Instruct on General Definition of Malice and General Intent

"Malice," as used in Penal Code section 4500, has the same meaning as in the context of murder. (*People v. St. Martin* (1970) 1 Cal.3d 524, 536–537 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Chacon* (1968) 69 Cal.2d 765, 780–781 [73 Cal.Rptr. 10, 447 P.2d 106].) Thus, it is error to give the general definition of malice found in Penal Code section 7, subdivision 4. (*People v. Jeter* (2005) 125 Cal.App.4th 1212, 1217 [23 Cal.Rptr.3d 402].) It is also error to instruct that Penal Code section 4500 is a general intent crime. *(Ibid.)*

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 58–60.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.11[3] (Matthew Bender).

2721. Assault by Prisoner (Pen. Code, § 4501)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) while serving a state prison sentence [in violation of Penal Code section 4501].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—force with weapon>

[1. The defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and the force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

[AND]

5. When (he/she) acted, the defendant was confined in a [California] state prison(;/.)

<Give element 6 when self-defense or defense of another is an issue raised by the evidence.>

[AND

6. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[The term (*great bodily injury/deadly weapon*) is defined in another instruction.]

A person is *confined in a state prison* if he or she is (confined in _____ *<insert name of institution from Pen. Code, § 5003>*/committed to the Department of Corrections and Rehabilitation[, Division of Juvenile Justice,]) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the

(confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *confined in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is not *confined in a state prison*.]

New January 2006; Revised August 2016, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 6 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In element 1, give alternative 1A if it is alleged the assault was committed with a deadly weapon. Give alternative 1B if it is alleged that the assault was committed with force likely to produce great bodily injury.

Give the bracketed definition of "application of force and apply force" on request.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.
Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

In the definition of "serving a sentence in a state prison," give the bracketed portion that begins with "regardless of the purpose," or the bracketed second or third sentence, if requested and relevant based on the evidence.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Related Instructions
CALCRIM No. 875, *Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury*.

AUTHORITY

- Elements of Assault by Prisoner ▸ Pen. Code, § 4501.
- Elements of Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury ▸ Pen. Code, §§ 240, 245(a)(1)–(3) & (b).

- Willful Defined ▸ Pen. Code, § 7 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Confined in State Prison Defined ▸ Pen. Code, § 4504.
- Underlying Conviction Need Not Be Valid ▸ *Wells v. California* (9th Cir. 1965) 352 F.2d 439, 442.
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury—Not a Prisoner ▸ Pen. Code, § 245; see *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].
- Assault ▸ Pen. Code, § 240; *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].

RELATED ISSUES

Not Serving a Life Sentence

Previously, this statute did not apply to an inmate "undergoing a life sentence." (See *People v. Noah* (1971) 5 Cal.3d 469, 477 [96 Cal.Rptr. 441, 487 P.2d 1009].) The statute has been amended to remove this restriction, effective January 1, 2005. If the case predates this amendment, the court must add to the end of element 5, "for a term other than life."

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 61, 63.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.11[3] (Matthew Bender).

2745. Possession or Manufacture of Weapon in Penal Institution (Pen. Code, § 4502)

The defendant is charged [in Count __] with (possessing[,]/ [or] manufacturing[,]/ [or] attempting to manufacture) a weapon, specifically [(a/an)] _____ *<insert type of weapon from Pen. Code, § 4502, e.g., "explosive">*, **while (in a penal institution/being taken to or from a penal institution/under the custody of an (official/officer/employee) of a penal institution) [in violation of Penal Code section 4502].**

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant was (present at or confined in a penal institution/being taken to or from a penal institution/under the custody of an (official/officer/employee) of a penal institution);**

2. **The defendant (possessed[,]/ [or] carried on (his/her) person[,]/ [or] had under (his/her) custody or control[,]/ [or] manufactured[,]/ [or] attempted to manufacture) [(a/an)]** _____ *<insert type of weapon from Pen. Code, § 4502, e.g., "explosive">*;

3. **The defendant knew that (he/she) (possessed[,]/ [or] carried on (his/her) person[,]/ [or] had under (his/her) custody or control[,]/ [or] manufactured[,]/ [or] attempted to manufacture) the** _____ *<insert type of weapon from Pen. Code, § 4502, e.g., "explosive">*;

AND

4. **The defendant knew that the object (was [(a/an)]** _____ *<insert type of weapon from Pen. Code, § 4502, e.g., "explosive">*/**could be used** _____ *<insert description of weapon's use, e.g., "as a stabbing weapon," or "for purposes of offense or defense">*).

A *penal institution* is a (state prison[,]/ [or] prison camp or farm[,]/ [or] county jail[,]/ [or] county road camp).

[*Metal knuckles* means any device or instrument made wholly or partially of metal that is worn in or on the hand for purposes of offense or defense and

that either protects the wearer's hand while striking a blow or increases the injury or force of impact from the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs that would contact the individual receiving a blow.]

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is also any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* **(is/are) [an] *explosive[s]*.]**

[*Fixed ammunition* is a projectile and powder enclosed together in a case ready for loading.]

[A *dirk or dagger* is a knife or other instrument, with or without a handguard, that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.] [*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.] [A firearm need not be in working order if it was designed to shoot and appears capable of shooting.]

[*Tear gas* is a liquid, gaseous, or solid substance intended to produce temporary physical discomfort or permanent injury when vaporized or otherwise dispersed in the air.]

[A *tear gas weapon* is a shell, cartridge, or bomb capable of being discharged or exploded to release or emit tear gas.] [A *tear gas weapon* [also] means a revolver, pistol, fountain pen gun, billy, or other device, portable or fixed, intended specifically to project or release tear gas.] [A *tear gas weapon* does not include a device regularly manufactured and sold for use with firearm ammunition.]

[[(A/An)] _____ *<insert type of weapon from Pen. Code, § 4502, not covered in above definitions>* **(is/means/includes)** _____ *<insert appropriate definition, see Bench Notes>***.]**

The People do not have to prove that the defendant used or intended to use the object as a weapon.

[You may consider evidence that the object could be used in a harmless way in deciding if the object is (a/an) _____ *<insert type of weapon from Pen. Code, § 4502>*, **as defined here.]**

[The People do not have to prove that the object was (concealable[,]/ [or] carried by the defendant on (his/her) person[,]/ [or] (displayed/visible)).]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant (possessed[,]/ [or] carried on (his/her) person[,]/ [or] had under (his/her) custody or control[,]/ [or] manufactured[,]/ [or] attempted to manufacture) the following weapons: _____ *<insert description of each weapon when multiple items alleged>*. **You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (possessed[,]/ [or] carried on (his/her) person[,]/ [or] had under (his/her) custody or control[,]/ [or] manufactured[,]/ [or] attempted to manufacture) at least one of these weapons and you all agree on which weapon (he/she) (possessed[,]/ [or] carried on (his/her) person[,]/ [or] had under (his/her) custody or control[,]/ [or] manufactured[,]/ [or] attempted to manufacture).]**

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Where indicated in the instruction, insert one or more of the following weapons from Penal Code section 4502, based on the evidence presented:

metal knuckles
explosive substance
fixed ammunition

dirk or dagger
sharp instrument
pistol, revolver, or other firearm
tear gas or tear gas weapon
an instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag

Following the elements, give the appropriate definition of the alleged weapon. If the prosecution alleges that the defendant possessed an "instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, [or] sandbag," the court should give an appropriate definition based on case law. (See *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1402 [111 Cal.Rptr.2d 496] [definition of "slungshot"]; *People v. Mulherin* (1934) 140 Cal.App. 212, 215 [35 P.2d 174] [definition of this class of weapons].)
If the prosecution alleges under a single count that the defendant possessed multiple weapons, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483]; *People v. Rowland* (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].) Give the bracketed paragraph that begins with "The People allege that the defendant possessed," inserting the items alleged.

If there is sufficient evidence of a harmless use for the object possessed, give the bracketed sentence that begins with "You may consider evidence that the object could be used in a harmless way . . . ." (*People v. Savedra* (1993) 15 Cal.App.4th 738, 743–744 [19 Cal.Rptr.2d 115].)

If the prosecution alleges that the defendant attempted to manufacture a weapon, give CALCRIM No. 460, *Attempt Other Than Attempted Murder*.

It is unclear if the defense of momentary possession for disposal applies to a charge of weapons possession in a penal institution. In *People v. Brown* (2000) 82 Cal.App.4th 736, 740 [98 Cal.Rptr.2d 519], the court held that the defense was not available on the facts of the case before it but declined to consider whether "there can *ever* be a circumstance justifying temporary possession in a penal institution." (*Ibid.* [emphasis in original].) The California Supreme Court has reaffirmed that the momentary possession defense is available to a charge of illegal possession of a weapon. (*People v. Martin* (2001) 25 Cal.4th 1180, 1191–1192 [108 Cal.Rptr.2d 599, 25 P.3d 1081].) However, the Supreme Court has yet to determine whether the defense is available in a penal institution. If the trial court determines that an instruction on momentary possession is warranted on the facts of the case before it, give a modified version of the instruction on momentary possession contained in CALCRIM No. 2510, *Possession of Firearm by Person Prohibited Due to Conviction—No Stipulation to Conviction*.

If there is sufficient evidence of imminent death or bodily injury, the defendant may be entitled to an instruction on the defense of duress or threats. (*People v. Otis* (1959) 174 Cal.App.2d 119, 125–126 [344 P.2d 342].) Give CALCRIM No. 3402, *Duress or Threats*, modified as necessary.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 4502.
- Metal Knuckles Defined ▸ Pen. Code, § 21810.
- Explosive Defined ▸ Health & Saf. Code, § 12000.
- Fixed Ammunition ▸ *The Department of Defense Dictionary of Military Terms*, http://www.dtic.mil/doctrine/dod_dictionary/ (accessed January 11, 2012).
- Dirk or Dagger Defined ▸ Pen. Code, § 16470.
- Firearm Defined ▸ Pen. Code, § 16520.
- Tear Gas Defined ▸ Pen. Code, § 17240.
- Tear Gas Weapon Defined ▸ Pen. Code, § 17250.
- Blackjack, etc., Defined ▸ *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1402 [111 Cal.Rptr.2d 496]; *People v. Mulherin* (1934) 140 Cal.App. 212, 215 [35 P.2d 174].
- Knowledge ▸ See *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735]; *People v. Reynolds* (1988) 205 Cal.App.3d 776, 779 [252 Cal.Rptr. 637], overruled on other grounds, *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869].
- Harmless Use ▸ *People v. Savedra* (1993) 15 Cal.App.4th 738, 743–744 [19 Cal.Rptr.2d 115]; *People v. Martinez* (1998) 67 Cal.App.4th 905, 910–913 [79 Cal.Rptr.2d 334].
- Unanimity ▸ *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].

- Constructive vs. Actual Possession ▸ *People v. Reynolds* (1988) 205 Cal.App.3d 776, 782, fn. 5 [252 Cal.Rptr. 637], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869].

RELATED ISSUES

Administrative Punishment Does Not Bar Criminal Action

"[P]rison disciplinary measures do not bar subsequent prosecution in a criminal action for violation of a penal statute prohibiting the same act which was the basis of the prison discipline by virtue of the proscription against double punishment provided in section 654 [citation] or by the proscription against double jeopardy provided in the California Constitution (art. I, § 13) and section 1023." (*People v. Vatelli* (1971) 15 Cal.App.3d 54, 58 [92 Cal.Rptr. 763] [citing *People v. Eggleston* (1967) 255 Cal.App.2d 337, 340 [63 Cal.Rptr. 104]].)

Possession of Multiple Weapons at One Time Supports Only One Conviction

"[D]efendant is subject to only one conviction for his simultaneous possession of three sharp wooden sticks in prison." (*People v. Rowland* (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 244, 248.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 94, *Prisoners' Rights,* § 94.04 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01 (Matthew Bender).

2746. Possession of Firearm, Deadly Weapon, or Explosive in a Jail or County Road Camp (Pen. Code, § 4574(a))

The defendant is charged [in Count __] with possessing a weapon while confined in a (jail/county road camp) [in violation of Penal Code section 4574(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant was lawfully confined in a (jail/county road camp);**

2. **While confined there, the defendant [unlawfully] possessed [(a/an)] (firearm[,]/ [or] deadly weapon[,]/ [or] explosive[,]/ [or] tear gas[,]/ [or] tear gas weapon) within the (jail/county road camp);**

3. **The defendant knew that (he/she) possessed the (firearm[,]/ [or] deadly weapon[,]/ [or] explosive[,]/ [or] tear gas[,]/ [or] tear gas weapon);**

AND

4. **The defendant knew that the object was [(a/an)] (firearm[,]/ [or] deadly weapon[,]/ [or] explosive[,]/ [or] tear gas[,]/ [or] tear gas weapon).**

[A *jail* is a place of confinement where people are held in lawful custody.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.] [A firearm need not be in working order if it was designed to shoot and appears capable of shooting.]

[As used here, a *deadly weapon* is any weapon, instrument, or object that has the reasonable potential of being used in a manner that would cause great bodily injury or death.] [*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is also any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* **(is/are) [an] *explosive[s]*.]**

[*Tear gas* is a liquid, gaseous, or solid substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air.]

[A *tear gas weapon* is a shell, cartridge, or bomb capable of being discharged or exploded to release or emit tear gas.] [A *tear gas weapon* [also] means a revolver, pistol, fountain pen gun, billy, or other device, portable or fixed, intended specifically to project or release tear gas.] [A *tear gas weapon* does not include a device regularly manufactured and sold for use with firearm ammunition.]

The People do not have to prove that the defendant used or intended to use the object as a weapon.

[You may consider evidence that the object could be used in a harmless way in deciding whether the object is a deadly weapon as defined here.]

[The People do not have to prove that the object was (concealable[,]/ [or] carried by the defendant on (his/her) person[,]/ [or] (displayed/visible)).]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person knowingly has (control over it/ [or] the right to control it), either personally or through another person).]

[The People allege that the defendant possessed the following weapons: _____ *<insert description of each weapon when multiple items alleged>*.
You may not find the defendant guilty unless all of you agree that the People have proved that the defendant possessed at least one of these weapons and you all agree on which weapon (he/she) possessed.]

<Defense: Possession Authorized>

[The defendant is not guilty of this offense if (he/she) was authorized to possess the weapon by (law[,]/ [or] a person in charge of the (jail/county road camp)[,]/ [or] an officer of the (jail/county road camp) empowered by the person in charge of the (jail/camp) to give such authorization). The People have the burden of proving beyond a reasonable doubt that the defendant was not authorized to possess the weapon. If the People have not met this burden, you must find the defendant not guilty of this offense.]

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple weapons, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483]; *People v. Rowland* (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].) Give the bracketed paragraph that begins with "The People allege that the defendant possessed," inserting the items alleged.

Note that the definition of "deadly weapon" in the context of Penal Code section 4574 differs from the definition given in other instructions. (*People v. Martinez* (1998) 67 Cal.App.4th 905, 909 [79 Cal.Rptr.2d 334].)

If there is sufficient evidence of a harmless use for the object possessed, give the bracketed sentence that begins with "You may consider evidence that the object could be used in a harmless way . . . ." (*People v. Savedra* (1993) 15 Cal.App.4th 738, 743–744 [19 Cal.Rptr.2d 115].)

If there is sufficient evidence that the defendant was authorized to possess the weapon, give the bracketed word "unlawfully" in element 2. Give also the bracketed paragraph headed "Defense: Possession Authorized."

It is unclear if the defense of momentary possession for disposal applies to a charge of weapons possession in a penal institution. In *People v. Brown* (2000) 82 Cal.App.4th 736, 740 [98 Cal.Rptr.2d 519], the court held that the defense was not available on the facts of the case before it but declined to consider whether "there can *ever* be a circumstance justifying temporary possession in a penal institution." (*Ibid.* [emphasis in original].) The California Supreme Court has reaffirmed that the momentary possession defense is available to a charge of illegal possession of

a weapon. (*People v. Martin* (2001) 25 Cal.4th 1180, 1191–1192 [108 Cal.Rptr.2d 599, 25 P.3d 1081].) However, the Supreme Court has yet to determine whether the defense is available in a penal institution. If the trial court determines that an instruction on momentary possession is warranted on the facts of the case before it, give a modified version of the instruction on momentary possession contained in CALCRIM No. 2510, *Possession of Firearm by Person Prohibited Due to Conviction—No Stipulation to Conviction*.

If there is sufficient evidence of imminent death or bodily injury, the defendant may be entitled to an instruction on the defense of duress or threats. (*People v. Otis* (1959) 174 Cal.App.2d 119, 125–126 [344 P.2d 342].) Give CALCRIM No. 3402, *Duress or Threats*, modified as necessary.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 4574(a).
- Firearm Defined ▸ Pen. Code, § 16520.
- Explosive Defined ▸ Health & Saf. Code, § 12000.
- Tear Gas Defined ▸ Pen. Code, § 17240.
- Tear Gas Weapon Defined ▸ Pen. Code, § 17250.
- Deadly Weapon Defined ▸ *People v. Martinez* (1998) 67 Cal.App.4th 905, 909 [79 Cal.Rptr.2d 334].
- Jail Defined ▸ *People v. Carter* (1981) 117 Cal.App.3d 546, 550 [172 Cal.Rptr. 838].
- Knowledge ▸ See *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52]; *People v. James* (1969) 1 Cal.App.3d 645, 650 [81 Cal.Rptr. 845].
- Harmless Use ▸ *People v. Savedra* (1993) 15 Cal.App.4th 738, 743–744 [19 Cal.Rptr.2d 115]; *People v. Martinez* (1998) 67 Cal.App.4th 905, 910–913 [79 Cal.Rptr.2d 334].

- Unanimity ▸ *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].
- Firearm Need Not Be Operable ▸ *People v. Talkington* (1983) 140 Cal.App.3d 557, 563 [189 Cal.Rptr. 735].
- Constructive vs. Actual Possession ▸ *People v. Reynolds* (1988) 205 Cal.App.3d 776, 782, fn. 5 [252 Cal.Rptr. 637], overruled on other grounds, *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869].

RELATED ISSUES

Administrative Punishment Does Not Bar Criminal Action

"[P]rison disciplinary measures do not bar subsequent prosecution in a criminal action for violation of a penal statute prohibiting the same act which was the basis of the prison discipline by virtue of the proscription against double punishment provided in section 654 [citation] or by the proscription against double jeopardy provided in the California Constitution (art. I, § 13) and section 1023." (*People v. Vatelli* (1971) 15 Cal.App.3d 54, 58 [92 Cal.Rptr. 763]; [citing *People v. Eggleston* (1967) 255 Cal.App.2d 337, 340 [63 Cal.Rptr. 104]].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 244, 248.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 94, *Prisoners' Rights,* § 94.04 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01 (Matthew Bender).

2747. Bringing or Sending Firearm, Deadly Weapon, or Explosive Into Penal Institution (Pen. Code, § 4574(a)-(c))

The defendant is charged [in Count __] with (bringing/sending/ [or] assisting in (bringing/sending)) a weapon into a penal institution [in violation of Penal Code section 4574].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] (brought/sent/ [or] assisted in (bringing/sending)) [(a/an)] (firearm[,]/ [or] deadly weapon[,]/ [or] explosive[,]/ [or] tear gas[,]/ [or] tear gas weapon) into a penal institution [or onto the grounds (of/ [or] adjacent to) a penal institution];**

2. **The defendant knew that (he/she) was (bringing/sending/ [or] assisting in (bringing/sending)) an object into a penal institution [or onto the grounds (of/ [or] adjacent to) a penal institution];**

AND

3. **The defendant knew that the object was [(a/an)] (firearm[,]/ [or] deadly weapon[,]/ [or] explosive[,]/ [or] tear gas[,]/ [or] tear gas weapon).**

A *penal institution* is a (state prison[,]/ [or] prison camp or farm[,]/ [or] jail[,]/ [or] county road camp[,]/ [or] place where prisoners of the state prison are located under the custody of prison officials, officers, or employees).

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.] [A firearm need not be in working order if it was designed to shoot and appears capable of shooting.]

[As used here, a *deadly weapon* is any weapon, instrument or object that has the reasonable potential of being used in a manner that would cause great bodily injury or death.] [*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is also any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type[s] of explosive[s] from Health & Saf. Code, § 12000>* **(is/are) [an] *explosive[s]*.]**

[*Tear gas* means a liquid, gaseous, or solid substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air.]

[A *tear gas weapon* means any shell, cartridge, or bomb capable of being discharged or exploded to release or emit tear gas.] [A *tear gas weapon* [also] means a revolver, pistol, fountain pen gun, billy, or other device, portable or fixed, intended specifically to project or release tear gas.] [A *tear gas weapon* does not include a device regularly manufactured and sold for use with firearm ammunition.]

The People do not have to prove that the defendant used or intended to use the object as a weapon.

[You may consider evidence that the object could be used in a harmless way in deciding if the object is a deadly weapon as defined here.]

[The People do not have to prove that the object was (concealable[,]/ [or] carried by the defendant on (his/her) person[,]/ [or] (displayed/visible)).]

[The People allege that the defendant (brought/sent/ [or] assisted in (bringing/sending)) the following weapons: _____ *<insert description of each weapon when multiple items alleged>***. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (brought/sent/ [or] assisted in (bringing/sending)) at least one of these weapons and you all agree on which weapon (he/she) (brought/sent/ [or] assisted in (bringing/sending)).]**

<Defense: Conduct Authorized>

[The defendant is not guilty of this offense if (he/she) was authorized to (bring/send) a weapon into the penal institution by (law[,]/ [or] a person in charge of the penal institution[,]/ [or] an officer of the penal institution empowered by the person in charge of the institution to give such authorization). The People have the burden of proving beyond a reasonable doubt that the defendant was not authorized to (bring/send) the weapon into the institution. If the People have not met this burden, you must find the defendant not guilty of this offense.]

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant brought or sent multiple weapons into the institution, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483]; *People v. Rowland* (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].) Give the bracketed paragraph that begins with "The People allege that the defendant (brought/sent/ [or] assisted in (bringing/sending))," inserting the items alleged.

If the defendant is charged with a felony for bringing or sending tear gas or a tear gas weapon into a penal institution resulting in the release of tear gas (Pen. Code, § 4574(b)), the court has a **sua sponte** duty to instruct the jury on this additional allegation. The court should give the jury an additional instruction on this issue and a verdict form on which the jury may indicate if this fact has or has not been proved.

Note that the definition of "deadly weapon" in the context of Penal Code section 4574 differs from the definition given in other instructions. (*People v. Martinez* (1998) 67 Cal.App.4th 905, 909 [79 Cal.Rptr.2d 334].)

If there is sufficient evidence of a harmless use for the object, give the bracketed sentence that begins with "You may consider evidence that the object could be used in a harmless way . . . ." (*People v. Savedra* (1993) 15 Cal.App.4th 738, 743–744 [19 Cal.Rptr.2d 115].)

If there is sufficient evidence that the defendant was authorized to bring or send the weapon, give the bracketed word "unlawfully" in element 1. Give also the bracketed paragraph headed "Defense: Conduct Authorized."

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Elements ▸ Pen. Code, § 4574(a), (b) & (c).
- Firearm Defined ▸ Pen. Code, § 16520.
- Explosive Defined ▸ Health & Saf. Code, § 12000.
- Tear Gas Defined ▸ Pen. Code, § 17240.
- Tear Gas Weapon Defined ▸ Pen. Code, § 17250.
- Deadly Weapon Defined ▸ *People v. Martinez* (1998) 67 Cal.App.4th 905, 909 [79 Cal.Rptr.2d 334].
- Jail Defined ▸ *People v. Carter* (1981) 117 Cal.App.3d 546, 550 [172 Cal.Rptr. 838].
- Knowledge of Nature of Object ▸ See *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52]; *People v. James* (1969) 1 Cal.App.3d 645, 650 [81 Cal.Rptr. 845].
- Knowledge of Location as Penal Institution ▸ *People v. Seale* (1969) 274 Cal.App.2d 107, 111 [78 Cal.Rptr. 811].
- Harmless Use ▸ *People v. Savedra* (1993) 15 Cal.App.4th 738, 743–744 [19 Cal.Rptr.2d 115]; *People v. Martinez* (1998) 67 Cal.App.4th 905, 910–913 [79 Cal.Rptr.2d 334].
- Unanimity ▸ *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].
- Firearm Need Not Be Operable ▸ *People v. Talkington* (1983) 140 Cal.App.3d 557, 563 [189 Cal.Rptr. 735].
- "Adjacent to" and "Grounds" Not Vague ▸ *People v. Seale* (1969) 274 Cal.App.2d 107, 114–115 [78 Cal.Rptr. 811].

LESSER INCLUDED OFFENSES

- Attempt to Bring or Send Weapon Into Penal Institution ▸ Pen. Code, §§ 664, 4574(a), (b), or (c); *People v. Carter* (1981) 117 Cal.App.3d 546, 548 [172 Cal.Rptr. 838].

If the defendant is charged with bringing or sending tear gas or a tear gas weapon into a penal institution, the offense is a misdemeanor unless tear gas was released in the institution. (Pen. Code, § 4574(b) & (c).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the prosecution has proved that tear gas was released. If the jury finds that this has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Inmate Transferred to Mental Hospital

A prison inmate transferred to a mental hospital for treatment pursuant to Penal Code section 2684 is not "under the custody of prison officials." (*People v. Superior Court (Ortiz)* (2004) 115 Cal.App.4th 995, 1002 [9 Cal.Rptr.3d 745].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 105.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01 (Matthew Bender).

3100. Prior Conviction: Nonbifurcated Trial (Pen. Code, §§ 1025, 1158)

If you find the defendant guilty of a crime, you must also decide whether the People have proved the additional allegation that the defendant was previously convicted of (another/other) crime[s]. It has already been determined that the defendant is the person named in exhibit[s] _____ *<insert number[s] or description[s] of exhibit[s]>***. You must decide whether the evidence proves that the defendant was convicted of the alleged crime[s].**

The People allege that the defendant has been convicted of:

> **[1.] A violation of _____** *<insert code section alleged>***, on _____** *<insert date of conviction>***, in the _____** *<insert name of court>***, in Case Number _____** *<insert docket or case number>***(;/.)**
>
> **[AND** *<Repeat for each prior conviction alleged>***.]**

[Consider the evidence presented on this allegation only when deciding whether the defendant was previously convicted of the crime[s] alleged [or for the limited purpose of _____ *<insert other permitted purpose, e.g., assessing credibility of the defendant>***]. Do not consider this evidence as proof that the defendant committed any of the crimes with which he is currently charged or for any other purpose.]**

[You must consider each alleged conviction separately.] The People have the burden of proving (the/each) alleged conviction beyond a reasonable doubt. If the People have not met this burden [for any alleged conviction], you must find that the alleged conviction has not been proved.

New January 2006; Revised March 2018, September 2020

BENCH NOTES

Instructional Duty

If the defendant is charged with a prior conviction, the court has a **sua sponte** duty to instruct on the allegation.

If identity is an issue, the court must make the factual determination that the defendant is the person who has suffered the convictions in question before giving this instruction.

Do **not** give this instruction if the court has bifurcated the trial. Instead, give CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

If the defendant is charged with a prison prior, the court must determine whether the jury should decide if the defendant served a separate prison term for the conviction and whether the defendant remained free of prison custody for the "washout" period. (Pen. Code, § 667.5(a) & (b).) The Commentary below discusses these issues further. If the court chooses to submit these issues to the jury, give CALCRIM No. 3102, *Prior Conviction: Prison Prior*, with this instruction.

If the court determines that there is a factual issue regarding the prior conviction that must be submitted to the jury, give CALCRIM No. 3103, *Prior Conviction: Factual Issue for Jury*, with this instruction. The Commentary below discusses this issue further.

On request, the court should give the limiting instruction that begins with "Consider the evidence presented on this allegation only when deciding. . . ." (See *People v. Valentine* (1986) 42 Cal.3d 170, 182, fn. 7 [228 Cal.Rptr. 25, 720 P.2d 913].) There is no sua sponte duty to give the limiting instruction, and the defense may request that no limiting instruction be given. (See *People v. Griggs* (2003) 110 Cal.App.4th 1137, 1139 [2 Cal.Rptr.3d 380].)

The court must provide the jury with a verdict form on which the jury will indicate whether the prior conviction has been proved. (Pen. Code, § 1158.)

AUTHORITY

- Statutory Authority ▸ Pen. Code, §§ 1025, 1158.
- Bifurcation ▸ *People v. Calderon* (1994) 9 Cal.4th 69, 77–79 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41].
- Judge Determines Whether Defendant Is Person Named in Documents ▸ Pen. Code, § 1025(c); *People v. Epps* (2001) 25 Cal.4th 19, 25 [104 Cal.Rptr.2d 572, 18 P.3d 2]; *People v. Garcia* (2003) 107 Cal.App.4th 1159, 1165 [132 Cal.Rptr.2d 694].
- Limiting Instruction on Prior Conviction ▸ See *People v. Valentine* (1986) 42 Cal.3d 170, 182, fn. 7 [228 Cal.Rptr. 25, 720 P.2d 913]; *People v. Griggs* (2003) 110 Cal.App.4th 1137, 1139 [2 Cal.Rptr.3d 380].

- Disputed Factual Issues ▸ See *People v. Gallardo* (2017) 4 Cal.5th 120, 136 [226 Cal.Rptr.3d 379, 407 P.3d 55]; ~~*People v. Epps* (2001) 25 Cal.4th 19, 23 [104 Cal.Rptr.2d 572, 18 P.3d 2]; *People v. Kelii* (1999) 21 Cal.4th 452, 458–459 [87 Cal.Rptr.2d 674, 981 P.2d 518]; *People v. Wiley* (1995) 9 Cal.4th 580, 592 [38 Cal.Rptr.2d 347, 889 P.2d 541];~~ *Descamps v. United States* (2013) 570 U.S. 254, 268–70 [133 S.Ct. 2276, 186 L.Ed.2d 438]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435]~~; *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054]; *People v. Winslow* (1995) 40 Cal.App.4th 680, 687 [46 Cal.Rptr.2d 901]~~.
- Three-Strikes Statutes ▸ Pen. Code, §§ 667(e), 1170.12.
- Five-Year Enhancement for Serious Felony ▸ Pen. Code, § 667(a)(1).
- Three-Year Enhancement for Prison Prior If Violent Felony~~-~~ ▸ Pen. Code, § 667.5(a).
- One-Year Enhancement for Prison Prior ▸ Pen. Code, § 667.5(b).
- Serious Felony Defined ▸ Pen. Code, § 1192(c).
- Violent Felony Defined ▸ Pen. Code, § 667.5(c).

COMMENTARY

Factual Issues—Decided by Jury or Court?

Penal Code sections 1025 and 1158 state that when an accusation charges a defendant with having suffered a prior conviction, the jury must decide whether the defendant "suffered the prior conviction" (unless the right to a jury trial is waived). Under Penal Code section 1025, the court, not the jury, must determine whether the defendant is the person named in the documents submitted to prove the prior conviction. (Pen. Code, § 1025(c); see also *People v. Epps* (2001) 25 Cal.4th 19, 24-25 [104 Cal.Rptr.2d 572, 18 P.3d 2].)

In some cases, however, ~~A~~a prior conviction may present an ancillary factual issue that must be decided before the conviction may be used under a particular enhancement or sentencing statute. For example, if the prosecution ~~might~~ seeks sentencing under the "three strikes" law and~~,~~ alleges~~ing~~ that the defendant was previously convicted of two burglaries~~. T~~, these prior convictions would qualify as "strikes" only if the burglaries were residential. (See *People v. Kelii* (1999) 21 Cal.4th 452, 455 [87 Cal.Rptr.2d 674, 981 P.2d 518].) If the defendant had been specifically convicted of first degree burglary of an inhabited dwelling, then there would be no issue over whether the prior convictions qualified. If, on the other hand, the defendant had been convicted simply of "burglary," then whether the offenses were residential would be a factual issue. *(Ibid.)* ~~The question then arises: who decides these ancillary factual issues, the jury or the court?~~

Penal Code sections 1025(b) and 1158 specifically state that the jury must decide whether the defendant "suffered the prior conviction." The California Supreme Court has observed that "sections 1025 and 1158 are limited in nature. [Citation.] By their terms, [these sections] grant a defendant the right to have the jury determine only whether he or she 'suffered' the alleged prior conviction." (*People v. Epps* (2001) 25 Cal.4th 19, 23 [104 Cal.Rptr.2d 572, 18 P.3d 2] [internal quotation marks and citation omitted].) Thus, the California Supreme Court has held that the court, not the jury, must decide ancillary facts necessary to establish that a prior conviction comes within a particular recidivist statute. (*People v. Kelii, supra,* 21 Cal.4th at pp. 458–459; *People v. Wiley* (1995) 9 Cal.4th 580, 592 [38 Cal.Rptr.2d 347, 889 P.2d 541]; *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054].) Specifically, the court must determine whether the facts of a prior conviction make the conviction a "serious" felony (*People v. Kelii, supra,* 21 Cal.4th at p. 457); and whether prior convictions charged as serious felonies were "brought and tried separately." (*People v. Wiley, supra,* 9 Cal.4th at p. 592.)

Penal Code section 1025 was amended in 1997 to further provide that the court, not the jury, must determine whether the defendant is the person named in the documents submitted to prove the prior conviction. (Pen. Code, § 1025(c); see also *People v. Epps, supra,* 25 Cal.4th at pp. 24–25.) The California Supreme Court has held that the defendant still has a statutory right to a jury trial on whether he or she "suffered" the prior conviction, which "may include the question whether the alleged prior conviction *ever even occurred*. For example, in a rare case, the records of the prior conviction may have been fabricated, or they may be in error, or they may otherwise be insufficient to establish the existence of the prior conviction." (*People v. Epps, supra,* 25 Cal.4th at p. 25 [italics in original].) At the same time, the court also observed that "[t]his procedure would appear to leave the jury little to do except to determine whether those documents are authentic and, if so, are sufficient to establish that the convictions the defendant suffered are indeed the ones alleged." (*Id.* at p. 27 [italics omitted] [quoting *People v. Kelii, supra,* 21 Cal.4th at p. 459].)

However, in 2000, the United States Supreme Court held that the federal due process clause requires that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435]; see also *Blakely v. Washington* (2004) 542 U.S. 296 [124 S.Ct. 2531, 159 L.Ed.2d 403].) In *People v. Epps, supra,* 25 Cal.4th at p. 28, the California Supreme Court noted that *Apprendi* might have overruled the holdings of *Kelii* and *Wiley*. In *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054], however, the

~~California Supreme Court determined that it was not error for the trial court to examine the record of a prior conviction to determine whether it constitutes a qualifying prior conviction for purposes of a recidivist sentencing statute, because there is a "significant difference" between a "hate crime" enhancement and a traditional sentencing determination.~~

The court's role is "limited to identifying those facts that were established by virtue of the conviction itself—that is, facts the jury was necessarily required to find to render a guilty verdict, or that the defendant admitted as the factual basis for a guilty plea." (See *People v. Gallardo* (2017) 4 Cal.5th 120, 136-137 [226 Cal.Rptr.3d 379, 407 P.3d 55].) A court considering whether to impose an increased sentence based on a prior conviction may not make its own findings about what facts or conduct "realistically" supported the conviction. (*Ibid.*) To allow otherwise would constitute impermissible judicial factfinding violative of the Sixth Amendment right to a jury trial. (*Ibid.*; see also *Descamps v. United States* (2013) 570 U.S. 254, 268-70 [133 S.Ct. 2276, 186 L.Ed.2d 438] [under federal Constitution's Sixth Amendment right to jury trial, the only facts related to a prior conviction that a sentencing court can rely on in imposing recidivist punishment are the facts necessarily implied by the elements of the relevant prior offense].)

Prior Prison Term and "Washout" Period

A similar issue arises over whether the jury or the court must decide if the defendant served a prison term as a result of a particular conviction and if the defendant has been free of custody for sufficient time to satisfy the "washout" period. (See Pen. Code, § 667.5(a) & (b).) In *People v. Winslow* (1995) 40 Cal.App.4th 680, 687 [46 Cal.Rptr.2d 901], the Court of Appeal held that the jury must determine whether the defendant served a prior prison term for a felony conviction. The other holdings in *Winslow* were rejected by the California Supreme Court. (*People v. Kelii, supra,* 21 Cal.4th at pp. 458–459; *People v. Wiley* (1995) 9 Cal.4th 580, 592 [38 Cal.Rptr.2d 347, 889 P.2d 541]~~*People v. Wiley, supra,* 9 Cal.4th at p. 592~~.) However, the *Winslow* holding that the jury must determine if the defendant served a prison term for a felony conviction remains controlling authority.

But, in *People v. Epps, supra,* 25 Cal.4th at pp. 25–26, the Court expressed doubt, in dicta, about whether the fact of having served a prison term is properly submitted to the jury. Discussing the 1997 amendment to Penal Code section 1025, the Court noted that

> [t]he analysis lists the following questions that the jury would still decide if Senate Bill 1146 became law: . . . 'Was the defendant sentenced to prison based on that conviction? How long has the

> defendant been out of custody since he or she suffered the prior conviction?' . . .
>
> [T]hough we do not have a case before us raising the issue, it appears that many of the listed questions are the sort of legal questions that are for the court under [*Wiley*]. For example, determining . . . whether the defendant was sentenced to prison is "largely legal" (*Kelii*, *supra*, 21 Cal. 4th at p. 455, quoting *Wiley*, *supra*, 9 Cal. 4th at p. 590), and though these questions require resolution of some facts, "a factual inquiry, limited to examining court documents, is . . . 'the type of inquiry traditionally performed by judges as part of the sentencing function.'" (*Kelii*, at p. 457, quoting *Wiley*, at p. 590.) . . . Therefore, the list of questions in the committee analysis should not be read as creating new jury trial rights that did not exist under *Wiley*.

(Ibid.)

On the other hand, *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435] ~~*Apprendi*, discussed above,~~ could be interpreted as requiring the jury to make these factual findings. (But see *People v. Thomas* (2001) 91 Cal.App.4th 212, 223 [110 Cal.Rptr.2d 571] [even under *Apprendi*, no federal due process right to have jury determine whether defendant served a prior prison term].)

Until the California Supreme Court resolves this question, the court should consider submitting to the jury the issues of whether the defendant served a prison term and whether the defendant has remained free of custody for sufficient time to satisfy the "washout" period. The court may use CALCRIM No. 3102, *Prior Conviction: Prison Prior*.

RELATED ISSUES

~~***Review Limited to Record of Conviction***~~

~~When determining if a prior conviction comes under a particular recidivist statute, "the trier of fact may consider the entire record of the proceedings leading to imposition of judgment on the prior conviction" but may not consider facts outside the record of conviction. (*People v. Myers* (1993) 5 Cal.4th 1193, 1195 [22 Cal.Rptr.2d 911, 858 P.2d 301]; see also *People v. Riel* (2000) 22 Cal.4th 1153, 1204–1205 [96 Cal.Rptr.2d 1, 998 P.2d 969]; *People v. Henley* (1999) 72 Cal.App.4th 555, 564 [85 Cal.Rptr.2d 123].) The prosecution bears the burden of proving that the prior conviction meets the requirements of the enhancement statute. (*People v. Henley, supra,* 72 Cal.App.4th at pp. 564–565.)~~

Constitutionality of Prior

The prosecution is not required to prove the constitutional validity of a prior conviction as an "element" of the enhancement. (*People v. Walker* (2001) 89 Cal.App.4th 380, 386 [107 Cal.Rptr.2d 264].) Rather, following the procedures established in *People v. Sumstine* (1984) 36 Cal.3d 909, 922–924 [206 Cal.Rptr. 707, 687 P.2d 904], and *People v. Allen* (1999) 21 Cal.4th 424, 435–436 [87 Cal.Rptr.2d 682, 981 P.2d 525], the defense may bring a motion challenging the constitutional validity of the prior. These questions are matters of law to be determined by the trial court.

Defense Stipulation to Prior Convictions

The defendant may stipulate to the truth of the prior convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) If the defendant stipulates, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

Motion for Bifurcated Trial

Either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra,* 231 Cal.App.3d at p. 90.)

SECONDARY SOURCES

4 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 618.

2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 42, *Arraignment, Pleas, and Plea Bargaining,* § 42.21[6][a] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.21[2], 91.60, 91.80 (Matthew Bender).

3101. Prior Conviction: Bifurcated Trial (Pen. Code, §§ 1025, 1158)

The People have alleged that the defendant was previously convicted of (another/other) crime[s]. It has already been determined that the defendant is the person named in exhibit[s] _____ *<insert number[s] or description[s] of exhibit[s]>***. You must decide whether the evidence proves that the defendant was convicted of the alleged crime[s].**

The People allege that the defendant has been convicted of:

[1.] A violation of _____ *<insert code section[s] alleged>***, on** _____ *<insert date>***, in the** _____ *<insert name of court>***, Case Number** _____ *<insert docket or case number>***(;/.)**

[AND *<Repeat for each prior conviction alleged.>***]**

[In deciding whether the People have proved the allegation[s], consider only the evidence presented in this proceeding. Do not consider your verdict or any evidence from the earlier part of the trial.]

You may not return a finding that (the/any) alleged conviction has or has not been proved unless all 12 of you agree on that finding.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

If the defendant is charged with a prior conviction, the court has a **sua sponte** duty to instruct on the allegation. Give this instruction if the court has granted a bifurcated trial. The court **must also give** CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

If the defendant is charged with a prison prior, the court must determine whether the jury should decide if the defendant served a separate prison term for the conviction and whether the defendant remained free of prison custody for the "washout" period. (Pen. Code, § 667.5(a) & (b).) The Commentary to CALCRIM No. 3100 discusses this issue. If the court chooses to submit these issues to the jury, give CALCRIM No. 3102, *Prior Conviction: Prison Prior*, with this instruction.

If the court determines that there is a factual issue regarding the prior conviction that must be submitted to the jury, give CALCRIM No. 3103: *Prior Conviction: Factual Issue for Jury*, with this instruction. The Commentary to CALCRIM No. 3100 discusses this issue.

Give the bracketed paragraph that begins with "In deciding whether the People have proved" on request.

The court must provide the jury with a verdict form on which the jury will indicate whether each prior conviction has been proved. (Pen. Code, § 1158.)

AUTHORITY

- Statutory Authority ▸ Pen. Code, §§ 1025, 1158.
- Bifurcation ▸ *People v. Calderon* (1994) 9 Cal.4th 69, 77–79 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41].
- Judge Determines Whether Defendant Is Person Named in Documents ▸ Pen. Code, § 1025(b); *People v. Epps* (2001) 25 Cal.4th 19, 25 [104 Cal.Rptr.2d 572, 18 P.3d 2]; People *v. Garcia* (2003) 107 Cal.App.4th 1159, 1165 [132 Cal.Rptr.2d 694].
- Disputed Factual Issues ▸ See *People v. Gallardo* (2017) 4 Cal.5th 120, 136 [226 Cal.Rptr.3d 379, 407 P.3d 55]; ~~*People v. Epps* (2001) 25 Cal.4th 19, 23 [104 Cal.Rptr.2d 572, 18 P.3d 2]; *People v. Kelii* (1999) 21 Cal.4th 452, 458–459 [87 Cal.Rptr.2d 674, 981 P.2d 518]; *People v. Wiley* (1995) 9 Cal.4th 580, 592 [38 Cal.Rptr.2d 347, 889 P.2d 541];~~ *Descamps v. United States* (2013) 570 U.S. 254, 268–70 [133 S.Ct. 2276, 186 L.Ed.2d 438]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435]~~; *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054]; *People v. Winslow* (1995) 40 Cal.App.4th 680, 687 [46 Cal.Rptr.2d 901]~~.
- Three-Strikes Statutes ▸ Pen. Code, §§ 667(e), 1170.12.
- Five-Year Enhancement for Serious Felony ▸ Pen. Code, § 667(a)(1).
- Three-Year Enhancement for Prison Prior If Violent Felony ▸ Pen. Code, § 667.5(a).
- One-Year Enhancement for Prison Prior ▸ Pen. Code, § 667.5(b).
- Serious Felony Defined ▸ Pen. Code, § 1192(c).
- Violent Felony Defined ▸ Pen. Code, § 667.5(c).

RELATED ISSUES

See *Motion for Bifurcated Trial* in the Related Issues section of CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*.

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 618.

2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 42, *Arraignment, Pleas, and Plea Bargaining,* § 42.21[6][a] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.21[2], 91.60, 91.80 (Matthew Bender).

3102. Prior Conviction: Prison Prior

If you find that the defendant was previously convicted of _____ <*insert description of prior conviction*>, you must also decide whether the People have proved that the defendant served a separate prison term for the crime and did not remain (out of prison custody/ [and] free of a new felony conviction) for (5/10) years.

To prove this allegation, the People must prove that:

1. The defendant served a separate prison term for the crime of _____ <*insert description of prior conviction*>;

AND [EITHER]

[2[A]. The defendant did not remain out of prison custody for (5/10) years after (he/she) was no longer in prison custody for that crime(;/.)]

[OR]

[2[B]. The defendant was convicted of a new felony that (he/she) committed within (5/10) years after (he/she) was no longer in prison custody.]

A person *served a separate prison term for a crime* if he or she served a continuous period of prison confinement imposed for that crime. [The prison term may have been served for that crime alone or in combination with prison terms imposed at the same time for other crimes.] [A person is still *serving a separate prison term for a crime* if he or she is placed back in custody (following an escape/ [or] for a parole violation).] [If a person is returned to custody following (an escape/ [or] a parole violation) and is also sentenced to prison for a new crime, then that person is serving a new separate prison term.]

A person is *in prison custody* until he or she is discharged from prison or released on parole, whichever happens first. [A person is also *in prison custody* if he or she (is placed back in custody for a parole violation/ [or] has unlawfully escaped from custody).]

A *prison term* includes confinement in [(a/the)] (state prison/federal penal institution/California Youth Authority/Division of Juvenile Justice/Department of Youth and Community Restoration/_____ *<insert name of hospital or other institution where confinement entitles person to prison credits>***).**

[A *prison term* includes commitment to the State Department of Mental Health as a mentally disordered sex offender following a felony conviction if the commitment lasts more than one year.]

[A conviction of _____ *<insert name of offense from other state or federal offense>* **is the same as a conviction for a felony if the defendant served one year or more in prison for the crime.]**

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

Review the Commentary to CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, regarding the current state of the law on whether the court must submit these issues to the jury. If the court gives this instruction, the court **must** also give either CALCRIM No. 3100 or CALCRIM No. 3101.

The court must give one of the bracketed elements (did not remain out of prison custody or was convicted of a new felony), depending on the prosecution's theory. The court may give both of the bracketed elements with the bracketed words "either" and "or."

The court may give the bracketed sentence that begins with "If a person is returned to custody following (an escape/ [or] a parole violation) and is also sentenced to prison for a new offense" on request if relevant based on the evidence. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241 [17 Cal.Rptr.3d 596, 95 P.3d 865].)

If the court gives this instruction, the court must provide the jury with a verdict form on which the jury will indicate whether the allegation has been proved. (Pen. Code, § 1158.)

AUTHORITY

- Disputed Factual Issues ▸ See *People v. Gallardo* (2017) 4 Cal.5th 120, 136 [226 Cal.Rptr.3d 379, 407 P.3d 55]; *People v. Epps* (2001) 25 Cal.4th 19, 23 [104 Cal.Rptr.2d 572, 18 P.3d 2]; ~~*People v. Kelii* (1999) 21 Cal.4th 452, 458–459 [87 Cal.Rptr.2d 674, 981 P.2d 518]; *People v. Wiley* (1995) 9 Cal.4th 580, 592 [38 Cal.Rptr.2d 347, 889 P.2d 541];~~ *Descamps v. United States* (2013) 570 U.S. 254, 268–70 [133 S.Ct. 2276, 186 L.Ed.2d 438]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435]~~; *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054]; *People v. Winslow* (1995) 40 Cal.App.4th 680, 687 [46 Cal.Rptr.2d 901]~~.
- Burden of Proof ▸ *People v. Fielder* (2004) 114 Cal.App.4th 1221, 1231 [8 Cal.Rptr.3d 247].
- Continuous, Completed Term ▸ *People v. Medina* (1988) 206 Cal.App.3d 986, 991–992 [254 Cal.Rptr. 89]; *People v. Cardenas* (1987) 192 Cal.App.3d 51, 56 [237 Cal.Rptr. 249].
- Term for Offense Committed in Prison Is Separate ▸ *People v. Langston* (2004) 33 Cal.4th 1237, 1242 [17 Cal.Rptr.3d 596, 95 P.3d 865]; *People v. Walkkein* (1993) 14 Cal.App.4th 1401, 1410 [18 Cal.Rptr.2d 383]; *People v. Cardenas* (1987) 192 Cal.App.3d 51, 56 [237 Cal.Rptr. 249].
- Direct Commitment to Youth Authority as Minor Is Not Prison Prior ▸ *People v. Seals* (1993) 14 Cal.App.4th 1379, 1384–1385 [18 Cal.Rptr.2d 676].
- New Commitment Following Escape Is Separate Prison Term ▸ *People v. Langston* (2004) 33 Cal.4th 1237, 1241, 1246 [17 Cal.Rptr.3d 596, 95 P.3d 865].
- Three-Year Enhancement for Prison Prior If Violent Felony ▸ Pen. Code, § 667.5(a).
- One-Year Enhancement for Prison Prior ▸ Pen. Code, § 667.5(b).
- Violent Felony Defined ▸ Pen. Code, § 667.5(c).

RELATED ISSUES

Commitment to Youth Authority

A direct commitment to the Department of Youth and Community Restoration (DYCR) (formerly known as California Youth Authority (CYA) and Division of Juvenile Justice (DJJ)) under Welfare and Institutions Code section 1731.5(a) is not a prison prior for the purposes of Penal Code section 667.5. (Pen. Code, § 667.5(j); *People v. Seals* (1993) 14 Cal.App.4th 1379, 1383–1385 [18 Cal.Rptr.2d 676].) Time at one of the above facilities ~~the CYA~~ qualifies as a prison prior only

if the person was sentenced to state prison and transferred to the facility ~~CYA~~ for housing under Welfare and Institutions Code section 1731.5(c). (*People v. Seals, supra,* 14 Cal.App.4th at pp. 1383–1385.)

Term for Offense Committed in Prison Is Separate

"When a consecutive sentence is imposed under section 1170.1, subdivision (c), for an offense committed in state prison, section 1170.1 requires such sentence to commence *after* the completion of the term for which the defendant was originally imprisoned. Thus, each term is a separate, 'continuous completed' term, which is available for enhancement under section 667.5 if the defendant is subsequently convicted of a felony." (*People v. Walkkein* (1993) 14 Cal.App.4th 1401, 1409–1410 [18 Cal.Rptr.2d 383] [footnote and citations omitted; italics in original]; see also *People v. Langston* (2004) 33 Cal.4th 1237, 1242 [17 Cal.Rptr.3d 596, 95 P.3d 865].)

Calculating "Washout" Period

Penal Code section 667.5, subdivisions (a) and (b), contain "washout" periods of 10 and 5 years, respectively. The prosecution bears the burden of proving that the "washout" period does not apply to a particular conviction. (*People v. Fielder* (2004) 114 Cal.App.4th 1221, 1232 [8 Cal.Rptr.3d 247].) The "washout" period commences when the defendant is discharged from custody or released on parole, "whichever first occurs." (Pen. Code, § 667.5(d); *People v. Nobleton* (1995) 38 Cal.App.4th 76, 84–85 [44 Cal.Rptr.2d 611].) Any return to prison on a parole violation is considered part of the original prison term. (Pen. Code, § 667.5(d).) Thus, in calculating whether the defendant has remained free of prison custody and a felony conviction for sufficient time, the calculation begins from when the defendant was released on parole without subsequently returning to prison on a parole violation. (*People v. Nobleton, supra,* 38 Cal.App.4th at pp. 84–85.) The calculation ends when the defendant commits a new offense that ultimately results in a felony conviction. (*People v. Fielder, supra,* 114 Cal.App.4th at p. 1233.) The date the offense is committed, not the date of the ultimate conviction, is controlling. (*Id.* at pp. 1233–1234.) The new felony ends the allowable time for the "washout" period regardless of whether the defendant was sentenced to prison for the new felony. (*Id.* at p. 1230.)

See the Related Issues section of CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*.

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 42, *Arraignment, Pleas, and Plea Bargaining,* § 42.21[6][a] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.21[2], 91.80 (Matthew Bender).

3103. Prior Conviction: Factual Issue for Jury (Pen. Code, §§ 1025, 1158)

If you find that the defendant was previously convicted of the crime of _____ <*insert description of prior conviction*>**, you must also decide whether the People have proved that in the commission of that prior crime** _____ <*insert description of other factual issue, e.g., the defendant personally used a firearm*>**.**

To prove this allegation, the People must prove that:

<*INSERT ELEMENTS REQUIRED.*>

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

To determine whether or not this instruction is required, review the Commentary to CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, regarding the current state of the law on whether the jury must determine ancillary factual issues.

If the court gives this instruction, the court must provide the jury with a verdict form on which the jury will indicate whether the allegation has been proved. (Pen. Code, § 1158.)

AUTHORITY

- Statutory Authority ▸ Pen. Code, §§ 1025, 1158.
- Disputed Factual Issues ▸ See *People v. Gallardo* (2017) 4 Cal.5th 120, 136 [226 Cal.Rptr.3d 379, 407 P.3d 55]; ~~*People v. Epps* (2001) 25 Cal.4th 19, 23 [104 Cal.Rptr.2d 572, 18 P.3d 2]; *People v. Kelii* (1999) 21 Cal.4th 452, 458–459 [87 Cal.Rptr.2d 674, 981 P.2d 518]; *People v. Wiley* (1995) 9 Cal.4th 580, 592 [38 Cal.Rptr.2d 347, 889 P.2d 541];~~ *Descamps v. United States* (2013) 570 U.S. 254, 268–70 [133 S.Ct. 2276, 186 L.Ed.2d 438]; *Apprendi v. New Jersey*

(2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435]~~; *People v. McGee* (2006) 38 Cal.4th 682 [42 Cal.Rptr.3d 899, 133 P.3d 1054]; *People v. Winslow* (1995) 40 Cal.App.4th 680, 687 [46 Cal.Rptr.2d 901]~~.

RELATED ISSUES

See the Related Issues section of CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*.

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 42, *Arraignment, Pleas, and Plea Bargaining,* § 42.21[6][a] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.21[2], 91.60[2][b], [c][ii], [3][b], 91.80[1][c], [2][a][ii] (Matthew Bender).

3104–3114. Reserved for Future Use

3130. Personally Armed With Deadly Weapon (Pen. Code, § 12022.3)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant was personally armed with a deadly weapon in the commission [or attempted commission] of that crime. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed[,] [and] [where the person who possessed the object was going][,] [and] [whether the object was changed from its standard form] [and any other evidence that indicates whether the object would be used for a dangerous, rather than a harmless, purpose.]]

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

A person is *armed* with a deadly weapon when that person:

1. **Carries a deadly weapon [or has a deadly weapon available] for use in either offense or defense in connection with the crime[s] charged;**

   AND

2. **Knows that he or she is carrying the deadly weapon [or has it available].**

<If there is an issue in the case over whether the defendant was armed with the weapon "in the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised December 2008, February 2013, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction when the enhancement is charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

In the definition of "armed," the court may give the bracketed phrase "or has a deadly weapon available" on request if the evidence shows that the weapon was at the scene of the alleged crime and "available to the defendant to use in furtherance of the underlying felony." (*People v. Bland* (1995) 10 Cal.4th 991, 997–998 [43 Cal.Rptr.2d 77, 898 P.2d 391]; see also *People v. Wandick* (1991) 227 Cal.App.3d 918, 927–928 [278 Cal.Rptr. 274] [language of instruction approved; sufficient evidence defendant had firearm available for use]; *People v. Jackson* (1995) 32 Cal.App.4th 411, 419–422 [38 Cal.Rptr.2d 214] [evidence that firearm was two blocks away from scene of rape insufficient to show available to defendant].)

If the case involves an issue of whether the defendant was armed "in the commission of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancement ▸ Pen. Code, § 12022.3.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086–1087 [130 Cal.Rptr.2d 717].
- Objects With Innocent Uses ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].
- Armed ▸ *People v. Pitto* (2008) 43 Cal.4th 228, 236–240 [74 Cal.Rptr.3d 590, 180 P.3d 338]; *People v. Bland* (1995) 10 Cal.4th 991, 997–998 [43 Cal.Rptr.2d 77, 898 P.2d 391]; *People v. Jackson* (1995) 32 Cal.App.4th 411, 419–422 [38 Cal.Rptr.2d 214]; *People v. Wandick* (1991) 227 Cal.App.3d 918, 927–928 [278 Cal.Rptr. 274].
- Must Be Personally Armed ▸ *People v. Rener* (1994) 24 Cal.App.4th 258, 267 [29 Cal.Rptr.2d 392]; *People v. Reed* (1982) 135 Cal.App.3d 149, 152–153 [185 Cal.Rptr. 169].
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

RELATED ISSUES

Penal Code Section 220

A defendant convicted of violating Penal Code section 220 may receive an enhancement under Penal Code section 12022.3 even though the latter statute does not specifically list section 220 as a qualifying offense. (*People v. Rich* (2003) 109 Cal.App.4th 255, 261 [134 Cal.Rptr.2d 553].) Section 12022.3 does apply to attempts to commit one of the enumerated offenses, and a conviction for violating section 220, assault with intent to commit a sexual offense, "translates into an attempt to commit" a sexual offense. (*People v. Rich, supra,* 109 Cal.App.4th at p. 261.)

Multiple Weapons

There is a split in the Court of Appeal over whether a defendant may receive multiple enhancements under Penal Code section 12022.3 if the defendant has multiple weapons in his or her possession during the offense. (*People v. Maciel* (1985) 169 Cal.App.3d 273, 279 [215 Cal.Rptr. 124] [defendant may only receive one enhancement for each sexual offense, either for being armed with a rifle or for using a knife, but not both]; *People v. Stiltner* (1982) 132 Cal.App.3d 216, 232 [182 Cal.Rptr. 790] [defendant may receive both enhancement for being armed with a knife and enhancement for using a pistol for each sexual offense].) The court should review the current state of the law before sentencing a defendant to multiple weapons enhancements under Penal Code section 12022.3.

Pepper Spray

In *People v. Blake* (2004) 117 Cal.App.4th 543, 559 [11 Cal.Rptr.3d 678], the court upheld the jury's determination that pepper spray was a deadly weapon.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 349, 364, 388.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.31 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* §§ 142.20[7][c], 142.21[1][d][iii] (Matthew Bender).

3145. Personally Used Deadly Weapon (Pen. Code, §§ 667.61(e)(3), 1192.7(c)(23), 12022(b)(1) & (2), 12022.3)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally used a deadly [or dangerous] weapon during the commission [or attempted commission] of that crime. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

A *deadly* [*or dangerous*] *weapon* is any object, instrument, or weapon that is [inherently deadly] [or] [dangerous] [or one that is] used in such a way that it is capable of causing and likely to cause death or great bodily injury.

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed[,] [and] [where the person who possessed the object was going][,] [and] [whether the object was changed from its standard form] [and any other evidence that indicates whether the object would be used for a dangerous, rather than a harmless, purpose.]]

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

Someone *personally uses* a deadly [or dangerous] weapon if he or she intentionally [does any of the following]:

[1. Displays the weapon in a menacing manner(./;)]

[OR]

[(2/1). Hits someone with the weapon(./;)]

[OR]

[(3/2). Fires the weapon(./;)]

[OR

(4/3). _____ *<insert description of use>*. **]**

<If there is an issue in the case over whether the defendant used the weapon "in the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised June 2007, February 2013, September 2017, September 2019, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the enhancement. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give all of the bracketed "or dangerous" phrases if the enhancement charged uses both the words "deadly" and "dangerous" to describe the weapon. (Pen. Code, §§ 667.61, 1192.7(c)(23), 12022(b).) Do not give these bracketed phrases if the enhancement uses only the word "deadly." (Pen. Code, § 12022.3.)

Give the bracketed phrase "inherently deadly" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)
If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

In the definition of "personally uses," the court may give the bracketed item 3 if the case involves an object that may be "fired."

If the case involves an issue of whether the defendant used the weapon "in the commission of" the offense, the court may give CALCRIM No. 3261, *In*

Commission of Felony: Defined—Escape Rule. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancements ▸ Pen. Code, §§ 667.61(e)(3), 1192.7(c)(23), 12022(b)(1) & (2), 12022.3.
- Deadly Weapon Defined ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086–1087 [130 Cal.Rptr.2d 717].
- Objects With Innocent Uses ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].
- Personally Uses ▸ *People v. Bland* (1995) 10 Cal.4th 991, 997 [43 Cal.Rptr.2d 77, 898 P.2d 391]; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320 [45 Cal.Rptr.2d 602]; see also Pen. Code, § 1203.06(b)(2).
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- May Not Receive Enhancement for Both Using and Being Armed With One Weapon ▸ *People v. Wischemann* (1979) 94 Cal.App.3d 162, 175–176 [156 Cal.Rptr. 386].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

RELATED ISSUES

No Duty to Instruct on "Lesser Included Enhancements"

"[A] trial court's sua sponte obligation to instruct on lesser included offenses does not encompass an obligation to instruct on 'lesser included enhancements.' " (*People v. Majors* (1998) 18 Cal.4th 385, 411 [75 Cal.Rptr.2d 684, 956 P.2d 1137].) Thus, if the defendant is charged with an enhancement for use of a weapon, the court does not need to instruct on an enhancement for being armed.

Weapon Displayed Before Felony Committed

Where a weapon is displayed initially and the underlying crime is committed some time after the initial display, the jury may conclude that the defendant used the weapon in the commission of the offense if the display of the weapon was "at least … an aid in completing an essential element of the subsequent crimes. . . ." (*People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705].)

Weapon Used Did Not Cause Death

In *People v. Lerma* (1996) 42 Cal.App.4th 1221, 1224 [50 Cal.Rptr.2d 580], the defendant stabbed the victim and then kicked him. The coroner testified that the victim died as a result of blunt trauma to the head and that the knife wounds were not life threatening. *(Ibid.)* The court upheld the finding that the defendant had used a knife during the murder even though the weapon was not the cause of death. (*Id.* at p. 1226.) The court held that in order for a weapon to be used in the commission of the crime, there must be "a nexus between the offense and the item at issue, [such] that the item was an instrumentality of the crime." *(Ibid.)* [ellipsis and brackets omitted] Here, the court found that "[t]he knife was instrumental to the consummation of the murder and was used to advantage." *(Ibid.)*

"One Strike" Law and Use Enhancement

Where the defendant's use of a weapon has been used as a basis for applying the "one strike" law for sex offenses, the defendant may not also receive a separate enhancement for use of a weapon in commission of the same offense. (*People v. Mancebo* (2002) 27 Cal.4th 735, 754 [117 Cal.Rptr.2d 550, 41 P.3d 556].)

Assault and Use of Deadly Weapon Enhancement

"A conviction [for assault with a deadly weapon or by means of force likely to cause great bodily injury] under [Penal Code] section 245, subdivision (a)(1) cannot be enhanced pursuant to section 12022, subdivision (b)." (*People v. Summersville* (1995) 34 Cal.App.4th 1062, 1070 [40 Cal.Rptr.2d 683].)

Robbery and Use of Deadly Weapon Enhancement

A defendant may be convicted and sentenced for both robbery and an enhancement for use of a deadly weapon during the robbery. (*In re Michael L.* (1985) 39 Cal.3d 81, 88 [216 Cal.Rptr. 140, 702 P.2d 222].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 40.

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 356-357, 361–369.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.30, 91.81[1][d] (Matthew Bender).

3149. Personally Used Firearm: Intentional Discharge Causing Injury or Death (Pen. Code, §§ 667.61(e)(3), 12022.53(d))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally and intentionally discharged a firearm during that crime causing (great bodily injury/ [or] death). [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation, the People must prove that:

1. **The defendant personally discharged a firearm during the commission [or attempted commission] of that crime;**

2. **The defendant intended to discharge the firearm;**

AND

3. **The defendant's act caused (great bodily injury to/ [or] the death of) a person [who was not an accomplice to the crime].**

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[The term *firearm* is defined in another instruction.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An act causes (great bodily injury/ [or] death) if the (injury/ [or] death) is the direct, natural, and probable consequence of the act and the (injury/ [or] death) would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

[There may be more than one cause of (great bodily injury/ [or] death). An act causes (injury/ [or] death) only if it is a substantial factor in causing the (injury/ [or] death). A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the (injury/ [or] death).]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. A person is subject to prosecution if he or she committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant used the firearm "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the enhancement. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].) If the defendant is charged with an enhancement for both intentional discharge *and* intentional discharge causing great bodily injury or death, the court may give CALCRIM No. 3150, *Personally Used Firearm: Intentional Discharge and Discharge Causing Injury or Death Both Charged*, instead of this instruction.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause (*People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 335 [121 Cal.Rptr.2d 546, 48 P.3d 1107]); give the bracketed paragraph that begins with "An act causes . . . ." If there is evidence of multiple potential causes, the court should also give the

bracketed paragraph that begins with "There may be more than one cause . . . ." (*Id.* at pp. 335–338.)

The court should give the bracketed definition of "firearm" unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

If the case involves an issue of whether the defendant used the firearm "during the commision of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

If, in element 3, the court gives the bracketed phrase "who was not an accomplice to the crime," the court should also give the bracketed definition of "accomplice." (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of "accomplice" are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancement ▸ Pen. Code, §§ 667.61(e)(3), 12022.53(d).
- Firearm Defined ▸ Pen. Code, § 16520.
- "During Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- Proximate Cause ▸ *People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 335–338 [121 Cal.Rptr.2d 546, 48 P.3d 1107].

- Accomplice Defined ▸ See Pen. Code, § 1111; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].

RELATED ISSUES

Need Not Personally Cause Injury or Death

"[Penal Code] Section 12022.53(d) requires that the defendant 'intentionally and *personally* discharged a firearm' (italics added), but only that he 'proximately caused' the great bodily injury or death. . . . The statute states nothing else that defendant must *personally* do. Proximately causing and personally inflicting harm are two different things." (*People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 336 [121 Cal.Rptr.2d 546, 48 P.3d 1107] [italics in original].)

Person Injured or Killed Need Not Be Victim of Crime

In *People v. Oates* (2004) 32 Cal.4th 1048, 1052 [12 Cal.Rptr.3d 325, 88 P.3d 56], the defendant fired two shots into a group of people, hitting and injuring one. He was convicted of five counts of premeditated attempted murder. The Court held that the subdivision (d) enhancement for causing great bodily injury applied to each of the five counts even though the defendant only injured one person. (*Id.* at p. 1056.) The Court observed that "the phrase, 'any person other than an accomplice,' does not mean 'the victim' of the underlying crime." (*Id.* at p. 1055.) Note, however, that the Supreme Court has again granted review in this case. (See *People v. Oates* (Dec. 1, 2004, S128181) [21 Cal.Rptr.3d 890, 101 P.3d 956].)

Multiple Enhancements for Single Injury

The Court in *Oates* ((2004) 32 Cal.4th 1048 [12 Cal.Rptr.3d 325, 88 P.3d 56]; discussed above) also held that the trial court was required to impose all five subdivision (d) enhancements because Penal Code section 12022.53(f) requires a court to impose the longest enhancement available. (*Id.* at p. 1056.) The Court further found that Penal Code section 654 did not preclude imposition of multiple subdivision (d) enhancements due to "the long-recognized, judicially-created exception for cases involving multiple victims of violent crime." (*Id.* at p. 1062.) Note, however, that the Supreme Court has again granted review in this case. (See *People v. Oates* (Dec. 1, 2004, S128181) [21 Cal.Rptr.3d 890, 101 P.3d 956].)

Multiple Enhancements May Not Be Imposed Based on Multiple Participants

In *People v. Cobb* (2004) 124 Cal.App.4th 1051, 1054, fn. 3 [21 Cal.Rptr.3d 869], the defendant and two others simultaneously shot at the decedent. The defendant was convicted of personally inflicting death by use of a firearm. (*Id.* at p. 1053; Pen. Code, § 12022.53(d).) In addition to the sentence for personally using a firearm, the trial court also imposed two sentences under Penal Code section

12022.53(e)(1) based on the other two participants having also fired at the decedent (*People v. Cobb, supra*, at p. 1053.) The Court of Appeal reversed the latter two enhancements, holding that Penal Code section 12022.53(f) did not permit multiple sentence enhancements based on multiple participants in one crime. (*Id.* at p. 1058.)

Self-Defense and Imperfect Self-Defense

Penal Code section 12022.53(*l*) provides that "[t]he enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5." In *People v. Watie* (2002) 100 Cal.App.4th 866, 884 [124 Cal.Rptr.2d 258], the court held, "[t]his subdivision, on its face, exempts lawful (perfect) self-defense from the section's application. It does not exempt imperfect self-defense." Further, an instruction informing the jury that the defense of self-defense applies to the enhancement is not necessary. (*Id.* at p. 886.)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 359-360.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.30[5] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04 (Matthew Bender).

3160. Great Bodily Injury (Pen. Code, §§ 667.5(c)(8), 667.61(d)(6), 1192.7(c)(8), 12022.7, 12022.8)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ *<insert name[s] of alleged lesser offense[s]>***], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury on _____** *<insert name of injured person>* **during the commission [or attempted commission] of that crime. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]**

[The People must also prove that _____ *<insert name of injured person>* **was not an accomplice to the crime.]**

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[Committing the crime of _____ *<insert sexual offense charged>* **is not by itself the infliction of great bodily injury.]**

<Group Assault>
[If you conclude that more than one person assaulted _____ *<insert name of injured person>* **and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily injury on _____** *<insert name of injured person>* **if the People have proved that:**

1. **Two or more people, acting at the same time, assaulted _____** *<insert name of injured person>* **and inflicted great bodily injury on (him/her);**

2. **The defendant personally used physical force on _____** *<insert name of injured person>* **during the group assault;**

AND

[3A. The amount or type of physical force the defendant used on _____ *<insert name of injured person>* **was enough that it alone**

could have caused _____ <*insert name of injured person*> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <*insert name of injured person*> was sufficient in combination with the force used by the others to cause _____ <*insert name of injured person*> to suffer great bodily injury.]

The defendant must have applied substantial force to _____ <*insert name of injured person*>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant inflicted the injury "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised June 2007, February 2015, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed sentence that begins with "Committing the crime of" if the defendant is charged with a sexual offense. (*People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100] [injury must be more than that which is present in every offense of rape].)

The bracketed section beneath the heading "Group Assault" is designed to be used in cases where the evidence shows a group assault.

If the court gives the bracketed sentence instructing that the People must prove that the person assaulted "was not an accomplice to the crime," the court should also give the bracketed definition of "accomplice." (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of "accomplice" are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The jury must determine whether an injury constitutes "great bodily injury." (*People v. Escobar* (1992) 3 Cal.4th 740, 750 [12 Cal.Rptr.2d 586, 837 P.2d 1100]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].)

If there is an issue in the case over whether the defendant inflicted the injury "during the commission of" the offense, the court may give CALCRIM No. 3261, ~~*In Commission of*~~ *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancements ▸ Pen. Code, §§ 667.5(c)(8), 667.61(d)(6), 12022.7, 12022.8.

- Great Bodily Injury Enhancements Do Not Apply to Conviction for Murder or Manslaughter. ▸ *People v. Cook* (2015) 60 Cal.4th 922, 924 [183 Cal.Rptr.3d 502].
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); *People v. Escobar* (1992) 3 Cal.4th 740, 749–750 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Great Bodily Injury May Be Established by Pregnancy or Abortion ▸ *People v. Cross* (2008) 45 Cal.4th 58, 68 [82 Cal.Rptr.3d 373, 190 P.3d 706].
- Must Personally Inflict Injury ▸ *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- Sex Offenses—Injury Must Be More Than Incidental to Offense ▸ *People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Group Beating Instruction ▸ *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762, 139 P.3d 136].
- This Instruction Is Correct In Defining Group Beating ▸ *People v. Dunkerson* (2007) 155 Cal.App.4th 1413, 1418 [66 Cal.Rptr.3d 795].
- Accomplice Defined ▸ See Pen. Code, § 1111; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- This Instruction Correctly Omits Requirement Of Intent to Inflict GBI ▸ *People v. Poroj* (2010) 190 Cal.App.4th 165, 176 [117 Cal.Rptr.3d 884].

RELATED ISSUES

Specific Intent Not Required

Penal Code section 12022.7 was amended in 1995, deleting the requirement that the defendant act with "the intent to inflict such injury." (Stats. 1995, ch. 341, § 1; see also *People v. Carter* (1998) 60 Cal.App.4th 752, 756 [70 Cal.Rptr.2d 569] [noting amendment].)

Instructions on Aiding and Abetting

In *People v. Magana* (1993) 17 Cal.App.4th 1371, 1378–1379 [22 Cal.Rptr.2d 59], the evidence indicated that the defendant and another person both shot at the victims. The jury asked for clarification of whether the evidence must establish that the bullet from the defendant's gun struck the victim in order to find the enhancement for personally inflicting great bodily injury true. (*Id.* at p. 1379.) The trial court responded by giving the instructions on aiding and abetting. *(Ibid.)* The Court of Appeal reversed, finding the instructions erroneous in light of the requirement that the defendant must personally inflict the injury for the enhancement to be found true. (*Id.* at p. 1381.)

Sex Offenses—Examples of Great Bodily Injury

The following have been held to be sufficient to support a finding of great bodily injury: transmission of a venereal disease (*People v. Johnson* (1986) 181 Cal.App.3d 1137, 1140 [225 Cal.Rptr. 251]); pregnancy (*People v. Sargent* (1978) 86 Cal.App.3d 148, 151 [150 Cal.Rptr. 113]); and a torn hymen (*People v. Williams* (1981) 115 Cal.App.3d 446, 454 [171 Cal.Rptr. 401]).

Enhancement May be Applied Once Per Victim

The court may impose one enhancement under Penal Code section 12022.7 for each injured victim. (Pen. Code, § 12022.7(h); *People v. Ausbie* (2004) 123 Cal.App.4th 855, 864 [20 Cal.Rptr.3d 371].)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350-351.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.35 (Matthew Bender).

3150. Personally Used Firearm: Intentional Discharge and Discharge Causing Injury or Death—Both Charged (Pen. Code, §§ 667.61(e)(3), 12022.53(d))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegations that the defendant personally and intentionally discharged a firearm during (that/those) crime[s] and, if so, whether the defendant's act caused (great bodily injury/ [or] death). [You must decide whether the People have proved these allegations for each crime and return a separate finding for each crime.]

To prove that the defendant intentionally discharged a firearm, the People must prove that:

1. **The defendant personally discharged a firearm during the commission [or attempted commission] of that crime;**

AND

2. **The defendant intended to discharge the firearm.**

If the People have proved both 1 and 2, you must then decide whether the People also have proved that the defendant's act caused (great bodily injury to/ [or] the death of) a person [who was not an accomplice to the crime].

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[The term *firearm* is defined in another instruction.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An act causes (great bodily injury/ [or] death) if the (injury/ [or] death) is the direct, natural, and probable consequence of the act and the (injury/ [or] death) would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if

nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

[There may be more than one cause of (great bodily injury/ [or] death). An act causes (injury/ [or] death) only if it is a substantial factor in causing the (injury/ [or] death). A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the (injury/ [or] death).]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. A person is subject to prosecution if he or she committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant used the firearm "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each of these allegations beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised February 2012, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the enhancement. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].) This instruction may be used when the defendant is charged with an enhancement both for intentional discharge *and* for intentional discharge causing great bodily injury or death. If only one of these enhancements is charged, do not use this instruction. Instead, give CALCRIM No. 3148, *Personally Used Firearm: Intentional Discharge*, or CALCRIM No. 3149, *Personally Used Firearm: Intentional Discharge Causing Injury or Death*, whichever is appropriate.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause (*People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 335 [121 Cal.Rptr.2d 546, 48 P.3d 1107]); give the bracketed paragraph that begins with "An act causes . . . ." If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins wtih "There may be more than one cause . . . ." (*Id.* at pp. 335–338.)

The court should give the bracketed definition of "firearm" unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

If the case involves an issue of whether the defendant used the weapon "during the commision of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

If, in the paragraph following the elements, the court gives the bracketed phrase "who was not an accomplice to the crime," the court should also give the bracketed definition of "accomplice." (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of "accomplice" are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancement ▸ Pen. Code, §§ 667.61(e)(3), 12022.53(d).
- Firearm Defined ▸ Pen. Code, § 16520.
- "During Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th

1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].

- Proximate Cause ▸ *People v. Jomo K. Bland* (2002) 28 Cal.4th 313, 335–338 [121 Cal.Rptr.2d 546, 48 P.3d 1107].
- Accomplice Defined ▸ See Pen. Code, § 1111; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].

RELATED ISSUES

See the Related Issues sections of CALCRIM No. 3148, *Personally Used Firearm: Intentional Discharge*, and CALCRIM No. 3149, *Personally Used Firearm: Intentional Discharge Causing Injury or Death*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 359-360.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.30[5] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04 (Matthew Bender).

3151–3159. Reserved for Future Use

3161. Great Bodily Injury: Causing Victim to Become Comatose or Paralyzed (Pen. Code, § 12022.7(b))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury that caused _____ <*insert name of injured person*> to become (comatose/ [or] permanently paralyzed). [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation, the People must prove that:

1. **The defendant personally inflicted great bodily injury on _____ <*insert name of injured person*> during the commission [or attempted commission] of the crime;**

[AND]

2. **The defendant's acts caused _____ <*insert name of injured person*> to (become comatose due to brain injury/ [or] suffer permanent paralysis)(./;)**

<*Give element 3 when instructing on whether injured person was an accomplice.*>
[AND

3. **_____ <*insert name of injured person*> was not an accomplice to the crime.]**

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[*Paralysis* is a major or complete loss of motor function resulting from injury to the nervous system or to a muscular mechanism.]

<*Group Assault*>
[If you conclude that more than one person assaulted _____ <*insert name of injured person*> and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily

injury on _____ <*insert name of injured person*> if the People have proved that:

1. **Two or more people, acting at the same time, assaulted _____ <*insert name of injured person*> and inflicted great bodily injury on (him/her);**

2. **The defendant personally used physical force on _____ <*insert name of injured person*> during the group assault;**

AND

[3A. The amount or type of physical force the defendant used on _____ <*insert name of injured person*> was enough that it alone could have caused _____ <*insert name of injured person*> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <*insert name of injured person*> was sufficient in combination with the force used by the others to cause _____ <*insert name of injured person*> to suffer great bodily injury.]

The defendant must have applied substantial force to _____ <*insert name of injured person*>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant inflicted the injury "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised June 2007, December 2008, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

The bracketed section beneath the heading "Group Assault" is designed to be used in cases where the evidence shows a group assault.

If the court gives bracketed element 3 instructing that the People must prove that the person assaulted "was not an accomplice to the crime," the court should also give the bracketed definition of "accomplice." (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of "accomplice" are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The jury must determine whether an injury constitutes "great bodily injury." (*People v. Escobar* (1992) 3 Cal.4th 740, 750 [12 Cal.Rptr.2d 586, 837 P.2d 1100]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].)

If the case involves an issue of whether the defendant inflicted the injury "during the commission of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than

minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancement ▸ Pen. Code, § 12022.7(b).
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); *People v. Escobar* (1992) 3 Cal.4th 740, 749–750 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Must Personally Inflict Injury ▸ *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- Group Beating Instruction ▸ *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762].
- Accomplice Defined ▸ See Pen. Code, § 1111; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- "During Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].

RELATED ISSUES

Coma Need Not Be Permanent

In *People v. Tokash* (2000) 79 Cal.App.4th 1373, 1378 [94 Cal.Rptr. 2d 814], the court held that an enhancement under Penal Code section 12022.7(b) was proper where the victim was maintained in a medically induced coma for two months following brain surgery necessitated by the assault.

See the Related Issues section of CALCRIM No. 3160, *Great Bodily Injury*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350–354.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.35 (Matthew Bender).

3162. Great Bodily Injury: Age of Victim (Pen. Code, § 12022.7(c) & (d))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ *<insert name[s] of alleged lesser offense[s]>*, **you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury on someone who was (under the age of 5 years/70 years of age or older). [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]**

To prove this allegation, the People must prove that:

1. **The defendant personally inflicted great bodily injury on** _____ *<insert name of injured person>* **during the commission [or attempted commission] of the crime;**

[AND]

2. **At that time,** _____ *<insert name of injured person>* **was (under the age of 5 years/70 years of age or older)(./;)**

<Give element 3 when instructing on whether injured person was an accomplice.>

[AND

3. _____ *<insert name of injured person>* **was not an accomplice to the crime.]**

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[Committing the crime of _____ *<insert sexual offense charged>* **is not by itself the infliction of great bodily injury.]**

<Group Assault>
[If you conclude that more than one person assaulted _____ *<insert name of injured person>* **and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily**

injury on _____ <*insert name of injured person*> if the People have proved that:

1. **Two or more people, acting at the same time, assaulted _____ <*insert name of injured person*> and inflicted great bodily injury on (him/her);**

2. **The defendant personally used physical force on _____ <*insert name of injured person*> during the group assault;**

AND

[3A. The amount or type of physical force the defendant used on _____ <*insert name of injured person*> was enough that it alone could have caused _____ <*insert name of injured person*> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <*insert name of injured person*> was sufficient in combination with the force used by the others to cause _____ <*insert name of injured person*> to suffer great bodily injury.

The defendant must have applied substantial force to _____ <*insert name of injured person*>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<If there is an issue in the case over whether the defendant inflicted the injury "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved

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New January 2006; Revised June 2007, December 2008, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed sentence that begins with "Committing the crime of" if the defendant is charged with a sexual offense. (*People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100] [injury must be more than that which is present in every offense of rape].)

The bracketed section beneath the heading "Group Assault" is designed to be used in cases where the evidence shows a group assault. If the court gives bracketed element 3 instructing that the People must prove that the person assaulted "was not an accomplice to the crime," the court should also give the bracketed definition of "accomplice." (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of "accomplice" are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

The jury must determine whether an injury constitutes "great bodily injury." (*People v. Escobar* (1992) 3 Cal.4th 740, 750 [12 Cal.Rptr.2d 586, 837 P.2d 1100]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].)

If the case involves an issue of whether the defendant inflicted the injury "during the commission of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancements ▸ Pen. Code, § 12022.7(c) & (d).
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); *People v. Escobar* (1992) 3 Cal.4th 740, 749–750 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Must Personally Inflict Injury ▸ *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- Sex Offenses—Injury Must Be More Than Incidental to Offense ▸ *People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Group Beating Instruction ▸ *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762].
- Accomplice Defined ▸ See Pen. Code, § 1111; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- "During Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].

RELATED ISSUES

See the Related Issues section of CALCRIM No. 3160, *Great Bodily Injury*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350–354.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.35 (Matthew Bender).

3163. Great Bodily Injury: Domestic Violence (Pen. Code, § 12022.7(e))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury on _____ <*insert name of injured person*> during the commission [or attempted commission] of that crime, under circumstances involving domestic violence. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

[The People must also prove that _____ <*insert name of injured person*> was not an accomplice to the crime.]

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

Domestic violence **means abuse committed against (an adult/a fully emancipated minor) who is a (spouse[,]/ [or] former spouse[,]/ [or] cohabitant[,]/ [or] former cohabitant[,]/ [or] person with whom the defendant has had a child[,]/ [or] person with whom the defendant is having or has had a dating relationship[,]/ [or] person who was or is engaged to the defendant).**

Abuse **means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable fear of imminent serious bodily injury to himself or herself or to someone else.**

[The term *dating relationship* means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.]

[The term *cohabitants* means two unrelated persons living together for a substantial period of time, resulting in some permanency of the relationship. Factors that may determine whether people are cohabiting include, but are not limited to (1) sexual relations between the parties while sharing the same residence, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) the parties' holding themselves out as (husband and wife/domestic partners), (5) the continuity of the relationship, and (6) the length of the relationship.]

[A *fully emancipated minor* is a person under the age of 18 who has gained certain adult rights by marrying, being on active duty for the United States armed services, or otherwise being declared emancipated under the law.]

[Committing the crime of _____ *<insert sexual offense charged>* **is not by itself the infliction of great bodily injury.]**

<Group Assault>
[If you conclude that more than one person assaulted _____ *<insert name of injured person>* **and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily injury on _____** *<insert name of injured person>* **if the People have proved that:**

1. **Two or more people, acting at the same time, assaulted _____** *<insert name of injured person>* **and inflicted great bodily injury on (him/her);**

2. **The defendant personally used physical force on _____** *<insert name of injured person>* **during the group assault;**

AND

[3A. The amount or type of physical force the defendant used on _____ *<insert name of injured person>* **was enough that it alone could have caused _____** *<insert name of injured person>* **to suffer great bodily injury(;/.)]**

[OR]

[3B. The physical force that the defendant used on _____ *<insert name of injured person>* **was sufficient in combination with the force used by the others to cause _____** *<insert name of injured person>* **to suffer great bodily injury.]**

The defendant must have applied substantial force to _____ *<insert name of injured person>***. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]**

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

1. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

2. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant inflicted the injury "in the commission of" the offense, see Bench Notes.>

[The person who was injured does not have to be a person with whom the defendant had a relationship.]

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised June 2007, December 2008, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed sentence that begins with "Committing the crime of" if the defendant is charged with a sexual offense. (*People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100] [injury must be more than that which is present in every offense of rape].)

The bracketed section beneath the heading "Group Assault" is designed to be used in cases where the evidence shows a group assault

The jury must determine whether an injury constitutes "great bodily injury." (*People v. Escobar* (1992) 3 Cal.4th 740, 750 [12 Cal.Rptr.2d 586, 837 P.2d 1100]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].)

If the case involves an issue of whether the defendant inflicted the injury "in the commission of" the offense, the court may give CALCRIM No. 3261, ~~*In Commission of*~~ *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Enhancement ▸ Pen. Code, § 12022.7(e).
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); *People v. Escobar* (1992) 3 Cal.4th 740, 749–750 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Dating Relationship Defined ▸ Fam. Code, § 6210; Pen. Code, § 243(f)(10).
- Must Personally Inflict Injury ▸ *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- General Intent Only Required ▸ *People v. Carter* (1998) 60 Cal.App.4th 752, 755–756 [70 Cal.Rptr.2d 569].
- Sex Offenses—Injury Must Be More Than Incidental to Offense ▸ *People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100].
- Group Beating Instruction ▸ *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762].
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].

RELATED ISSUES

Person Who Suffers Injury Need Not Be "Victim" of Domestic Abuse
Penal Code section 12022.7(e) does not require that the injury be inflicted on the "victim" of the domestic violence. (*People v. Truong* (2001) 90 Cal.App.4th 887, 899 [108 Cal.Rptr.2d 904].) Thus, the enhancement may be applied where "an angry husband physically abuses his wife and, as part of the same incident, inflicts great bodily injury upon the man with whom she is having an affair." (*Id.* at p. 900.)

See also the Related Issues section of CALCRIM No. 3160, *Great Bodily Injury*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350–354.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.35 (Matthew Bender).

3164–3174. Reserved for Future Use

3177. Sex Offenses: Sentencing Factors—Torture (Pen. Code, § 667.61(d)(3))

If you find the defendant guilty of the crime[s] charged in Count[s] __ <*insert counts charging sex offense[s] from Pen. Code, § 667.61(c)*>, you must then decide whether[, for each crime,] the People have proved the additional allegation that, while committing that crime, the defendant also committed torture. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation, the People must prove that:

1. **During the commission of the crime, the defendant inflicted great bodily injury on someone else;**

AND

2. **When inflicting the injury, the defendant intended to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, or persuasion or for any sadistic purpose.**

Great bodily injury **means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[It is not required that a victim actually suffer pain.]

[Someone acts for the purpose of *extortion* if he or she intends to (1) obtain a person's property with the person's consent and (2) obtain the person's consent through the use of force or fear.]

[Someone acts for the purpose of *extortion* if he or she (1) intends to get a public official to do an official act and (2) uses force or fear to make the official do the act. An *official act* is an act that an officer does in his or her official capacity using the authority of his or her public office.]

[Someone acts with a *sadistic purpose* if he or she intends to inflict pain on someone else in order to experience pleasure himself or herself.]

<If there is an issue in the case over whether the torture was inflicted "during the commission of" the offense, see Bench Notes.>

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the sentencing factor when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Unlike murder by torture, the crime of torture under Penal Code section 206 does not require that the intent to cause pain be premeditated or that any cruel or extreme pain be prolonged. (*People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739]; *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204–1205 [68 Cal.Rptr.2d 619]; *People v. Vital* (1996) 45 Cal.App.4th 441, 444 [52 Cal.Rptr.2d 676].) Torture as defined in section 206 focuses on the mental state of the perpetrator and not the actual pain inflicted. (*People v. Hale* (1999) 75 Cal.App.4th 94, 108 [88 Cal.Rptr.2d 904].) Give the bracketed sentence stating that "It is not required that a victim actually suffer pain" on request if there is no proof that the alleged victim actually suffered pain.

"Extortion" need not be defined for purposes of torture. (*People v. Barrera* (1993) 14 Cal.App.4th 1555, 1564 [18 Cal.Rptr.2d 395]; but see *People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628] [term should be defined for kidnapping under Pen. Code, § 209].) Nevertheless, either of the bracketed definitions of extortion, and the related definition of "official act," may be given on request if any of these issues are raised in the case. (See Pen. Code, § 518 [defining "extortion"]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141] [defining "official act"].) Extortion may also be committed by using "the color of official right" to make an official do an act. (Pen. Code, § 518; see *Evans v. United States* (1992) 504 U.S. 255, 258 [112 S.Ct. 1881, 119 L.Ed.2d 57]; *McCormick v. United States* (1990) 500 U.S. 257, 273 [111 S.Ct. 1807, 114 L.Ed.2d 307] [both discussing common law definition of the term].) It appears that this type of extortion would rarely occur in the context of torture, so it is excluded from this instruction.

"Sadistic purpose" may be defined on request. (See *People v. Barrera, supra,* 14 Cal.App.4th at p. 1564; *People v. Raley* (1992) 2 Cal.4th 870, 899–901 [8 Cal.Rptr.2d 678, 830 P.2d 712] [approving use of phrase in torture-murder and special circumstances torture-murder instructions].)

If the case involves an issue of whether the defendant inflicted the injury "during the commission of" the offense, the court may give CALCRIM No. 3261, ~~*During Commission of*~~ *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- One-Strike Sex Offense Statute—Torture Factor ▸ Pen. Code, § 667.61(d)(3).
- Factors Must Be Pleaded and Proved ▸ Pen. Code, § 667.61(j); *People v. Mancebo* (2002) 27 Cal.4th 735, 743 [117 Cal.Rptr.2d 550, 41 P.3d 556].
- Elements of Torture ▸ Pen. Code, § 206.
- Extortion Defined ▸ Pen. Code, § 518.
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); see, e.g., *People v. Hale* (1999) 75 Cal.App.4th 94, 108 [88 Cal.Rptr.2d 904] [broken and smashed teeth, split lip, and facial cut sufficient evidence of great bodily injury].
- Cruel Pain Equivalent to Extreme or Severe Pain ▸ *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202 [68 Cal.Rptr.2d 619].
- Intent ▸ *People v. Hale* (1999) 75 Cal.App.4th 94, 106–107 [88 Cal.Rptr.2d 904]; *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042–1043 [84 Cal.Rptr.2d 5]; see *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204–1206 [68 Cal.Rptr.2d 619] [neither premeditation nor intent to inflict prolonged pain are elements of torture].
- Sadistic Purpose Defined ▸ *People v. Raley* (1992) 2 Cal.4th 870, 899–901 [8 Cal.Rptr.2d 678, 830 P.2d 712]; *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202–1204 [68 Cal.Rptr.2d 619]; see *People v. Healy* (1993) 14 Cal.App.4th 1137, 1142 [18 Cal.Rptr.2d 274] [sexual element not required].
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th

1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].

RELATED ISSUES

See the Related Issues section of CALCRIM No. 810, *Torture*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 459–463.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.102[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.15 (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure § 13:9 (The Rutter Group).

3456. Initial Commitment of Mentally Disordered Offender as Condition of Parole (Pen. Code, § 2970)

The petition alleges that _____ <*insert name of respondent*> is a mentally disordered offender.

To prove this allegation, the People must prove beyond a reasonable doubt that at the time of (his/her) hearing before the Board of Parole Hearings:

1. **(He/She) was convicted of _____ <*specify applicable offense(s) from Penal Code section 2962, subdivision (e)(2)*> and received a prison sentence for a fixed period of time;**

2. **(He/She) had a severe mental disorder;**

3. **The severe mental disorder was one of the causes of the crime for which (he/she) was sentenced to prison or was an aggravating factor in the commission of the crime;**

4. **(He/She) was treated for the severe mental disorder in a state or federal prison, a county jail, or a state hospital for 90 days or more within the year before (his/her) parole release date;**

5. **The severe mental disorder either was not in remission, or could not be kept in remission without treatment;**

AND

6. **Because of (his/her) severe mental disorder, (he/she) represented a substantial danger of physical harm to others.**

A *severe mental disorder* is an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or that grossly impairs his or her behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. [It does not include (a personality or adjustment disorder[,]/ [or] epilepsy[,]/ [or] mental retardation or other developmental disabilities[,]/ [or] addiction to or abuse of intoxicating substances).]

***Remission* means that the external signs and symptoms of the severe mental disorder are controlled by either psychotropic medication or psychosocial support.**

[A severe mental disorder cannot be *kept in remission without treatment* if during the year before the Board of Parole hearing, [on _____ *<insert date of hearing, if desired>*], **the person:**

<Give one or more alternatives, as applicable>

[1. Was physically violent except in self-defense; [or]]

[2. Made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family; [or]]

[3. Intentionally caused property damage; [or]]

[4. Did not voluntarily follow the treatment plan.]]

[A person has voluntarily followed the treatment plan if he or she has acted as a reasonable person would in following the treatment plan.]

[A *substantial danger of physical harm* does not require proof of a recent overt act.]

You will receive [a] verdict form[s] on which to indicate your finding whether the allegation that _____ *<insert name of respondent>* **is a mentally disordered offender is true or not true. To find the allegation true or not true, all of you must agree. You may not find it to be true unless all of you agree the People have proved it beyond a reasonable doubt.**

New December 2008; Revised August 2014, September 2017, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury about the basis for a finding that a respondent is a mentally disordered offender.

Give this instruction for an initial commitment as a condition of parole. For recommitments, give CALCRIM No. 3457, *Extension of Commitment as Mentally Disordered Offender.*

The court also **must give** CALCRIM No. 219, *Reasonable Doubt in Civil Proceedings*, CALCRIM No. 222, *Evidence*, CALCRIM No. 226, *Witnesses*, CALCRIM No. 3550, *Pre-Deliberation Instructions*, and any other relevant post-trial instructions. These instructions may need to be modified.

Case law provides no direct guidance about whether a finding of an enumerated act is necessary to show that the disorder cannot be kept in remission without treatment or whether some alternative showing, such as medical opinion or non-enumerated conduct evidencing lack of remission, would suffice. One published case has said in dictum that "the option of 'cannot be kept in remission without treatment' requires a further showing that the prisoner, within the preceding year, has engaged in violent or threatening conduct or has not voluntarily followed the treatment plan." (*People v. Buffington* (1999) 74 Cal.App.4th 1149, 1161, fn. 4 [88 Cal.Rptr.2d 696]). The *Buffington* case involved a sexually violent predator.

AUTHORITY

- Elements and Definitions. ▸ Pen. Code, §§ 2962, 2966(b); *People v. Merfield* (2007) 147 Cal.App.4th 1071, 1075, fn. 2 [54 Cal.Rptr.3d 834].
- Unanimous Verdict, Burden of Proof. ▸ Pen. Code, § 2966(b); *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [152 Cal.Rptr. 425, 590 P.2d 1] [discussing conservatorship proceedings under the Lanterman-Petris-Short Act and civil commitment proceedings in general].
- Institutions That May Fulfill the 90-Day Treatment Requirement. ▸ Pen. Code, § 2981.
- Treatment Must Be for Serious Mental Disorder Only. ▸ *People v. Sheek* (2004) 122 Cal.App.4th 1606, 1611 [19 Cal.Rptr.3d 737].
- Definition of Remission. ▸ Pen. Code, § 2962(a).
- Need for Treatment Established by One Enumerated Act. ▸ *People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1407 [32 Cal.Rptr.3d 729].
- Evidence of Later Improvement Not Relevant. ▸ Pen. Code, § 2966(b); *People v. Tate* (1994) 29 Cal.App.4th 1678, 1683 [35 Cal.Rptr.2d 250].

- Board of Parole Hearings. ‣ Pen. Code, § 5075.
- This Instruction Cited As Authority With Implicit Approval. ‣ *People v. Harrison* (2013) 57 Cal.4th 1211, 1230 [164 Cal.Rptr.3d 167, 312 P.3d 88].
- Proof of Recent Overt Act Not Required. ‣ Pen. Code, § 2962(g).
- 90-Day Treatment Period Includes Extension Under Pen. Code, § 2963. ‣ *People v. Parker* (2020) 44 Cal.App.5th 286, 289 [257 Cal.Rptr.3d 493].

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 763-767.

3457. Extension of Commitment as Mentally Disordered Offender (Pen. Code, § 2970)

The petition alleges that _____ <*insert name of respondent*> is a mentally disordered offender.

To prove this allegation, the People must prove beyond a reasonable doubt that [at the time of (his/her) hearing before the Board of Prison Terms]:

1. (He/She) (has/had) a severe mental disorder;

2. The severe mental disorder (is/was) not in remission or (cannot/could not) be kept in remission without continued treatment;

AND

3. Because of (his/her) severe mental disorder, (he/she) (presently represents/represented) a substantial danger of physical harm to others.

A *severe mental disorder* is an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or that grossly impairs his or her behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. [It does not include (a personality or adjustment disorder[,]/ [or] epilepsy[,]/ [or] mental retardation or other developmental disabilities[,]/ [or] addiction to or abuse of intoxicating substances).]

***Remission* means that the external signs and symptoms of the severe mental disorder are controlled by either psychotropic medication or psychosocial support.**

[A severe mental disorder cannot be *kept in remission without treatment* if, during the period of the year prior to _____ <*insert the date the trial commenced*> the person:

<Give one or more alternatives, as applicable.>

[1. Was physically violent except in self-defense; [or]]

[2. Made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family; [or]]

[3. Intentionally caused property damage; [or]]

[4. Did not voluntarily follow the treatment plan.]]

[A person has voluntarily followed the treatment plan if he or she has acted as a reasonable person would in following the treatment plan.]

[A *substantial danger of physical harm* does not require proof of a recent overt act.]

You will receive [a] verdict form[s] on which to indicate your finding whether the allegation that _____<*insert name of respondent*>** is a mentally disordered offender is true or not true. To find the allegation true or not true, all of you must agree. You may not find it to be true unless all of you agree the People have proved it beyond a reasonable doubt.**

New December 2008; Revised September 2017, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury about the basis for a finding that a respondent is a mentally disordered offender.

Give this instruction for a successive commitment. For an initial commitment as a condition of parole, give CALCRIM No. 3456, *Initial Commitment of Mentally Disordered Offender as Condition of Parole.*

The court also **must give** CALCRIM No. 219, *Reasonable Doubt in Civil Proceedings,* CALCRIM No. 222, *Evidence*, CALCRIM No. 226, *Witnesses*, CALCRIM No. 3550, *Pre-Deliberation Instructions* and any other relevant post-trial instructions. These instructions may need to be modified.

Give the bracketed language in the sentence beginning with "To prove this allegation" and use the past tense for an on-parole recommitment pursuant to Penal Code section

2966. For a recommitment after the parole period pursuant to Penal Code sections 2970 and 2972, omit the bracketed phrase and use the present tense.

Case law provides no direct guidance about whether a finding of an enumerated act is necessary to show that the disorder cannot be kept in remission without treatment or whether some alternative showing, such as medical opinion or non-enumerated conduct evidencing lack of remission, would suffice. One published case has said in dictum that "the option of 'cannot be kept in remission without treatment' requires a further showing that the prisoner, within the preceding year, has engaged in violent or threatening conduct or has not voluntarily followed the treatment plan." (*People v. Buffington* (1999) 74 Cal.App.4th 1149, 1161, fn. 4 [88 Cal.Rptr.2d 696]). The *Buffington* case involved a sexually violent predator.

The committee found no case law addressing the issue of whether or not instruction about an affirmative obligation to provide treatment exists.

AUTHORITY

- Elements and Definitions ▸ Pen. Code, §§ 2966, 2970, 2972; *People v. Merfield* (2007) 147 Cal.App.4th 1071, 1075, fn. 2 [54 Cal.Rptr.3d 834].
- Unanimous Verdict, Burden of Proof ▸ Pen. Code, § 2972(a); *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [152 Cal.Rptr. 425, 590 P.2d 1] [discussing conservatorship proceedings under the Lanterman-Petris-Short Act and civil commitment proceedings in general].
- Treatment Must Be for Serious Mental Disorder Only ▸ *People v. Sheek* (2004) 122 Cal.App.4th 1606, 1611 [19 Cal.Rptr.3d 737].
- Definition of Remission ▸ Pen. Code, § 2962(a).
- Recommitment Must Be for the Same Disorder ~~As~~ That ~~for Which the Offender Received Treatment~~Was Basis For Initial Commitment. ▸ *People v. Torfason* (2019) 38 Cal.App.5th 1062, 1067-68 [252 Cal.Rptr.3d 11]; *People v. Garcia* (2005) 127 Cal.App.4th 558, 565 [25 Cal.Rptr.3d 660].
- Proof of Recent Overt Act Not Required. ▸ Pen. Code, § 2962(g).
- Redesignation of MDO-Qualifying Conviction to Misdemeanor Under Penal Code Section 1170.18 Does Not Bar Recommitment. ▸ *People v. Foster* (2019) 7 Cal.5th 1202, 1211 [251 Cal.Rptr.3d 312, 447 P.3d 228].

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, § 767.

3477. Presumption That Resident Was Reasonably Afraid of Death or Great Bodily Injury (Pen. Code, § 198.5)

The law presumes that the defendant reasonably feared imminent death or great bodily injury to (himself/herself)[, or to a member of (his/her) family or household,] if:

1. **An intruder unlawfully and forcibly (entered/ [or] was entering) the defendant's home;**

2. **The defendant knew [or reasonably believed] that an intruder unlawfully and forcibly (entered/ [or] was entering) the defendant's home;**

3. **The intruder was not a member of the defendant's household or family;**

AND

4. **The defendant used force intended to or likely to cause death or great bodily injury to the intruder inside the home.**

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

The People have the burden of overcoming this presumption. This means that the People must prove that the defendant did not have a reasonable fear of imminent death or injury to (himself/herself)[, or to a member of his or her family or household,] when (he/she) used force against the intruder. If the People have not met this burden, you must find the defendant reasonably feared death or injury to (himself/herself)[, or to a member of his or her family or household].

New January 2006; Revised March 2017, September 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on presumptions relevant to the issues of the case. (See *People v. Hood* (1969) 1 Cal.3d 444, 449 [82 Cal.Rptr. 618, 462 P.2d 370]; but see *People v. Silvey* (1997) 58 Cal.App.4th 1320, 1327 [68

Cal.Rptr.2d 681] [presumption not relevant because defendant was not a resident]; *People v. Owen* (1991) 226 Cal.App.3d 996, 1005 [277 Cal.Rptr. 341] [jury was otherwise adequately instructed on pertinent law].)

Give this instruction when there is evidence that a resident had a reasonable expectation of protection against unwanted intruders. *People v. Grays* (2016) 246 Cal.App.4th 679, 687-688 [202 Cal.Rptr.3d 288].

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Instructional Requirements ▸ Pen. Code, § 198.5; *People v. Brown* (1992) 6 Cal.App.4th 1489, 1494–1495 [8 Cal.Rptr.2d 513].
- Rebuttable Presumptions Affecting Burden of Proof ▸ Evid. Code, §§ 601, 604, 606.
- Definition of Residence ▸ *People v. Grays* (2016) 246 Cal.App.4th 679, 687-688 [202 Cal.Rptr.3d 288].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 76.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* §§ 73.11[1], 73.13 (Matthew Bender).

3478–3499. Reserved for Future Use

D. FELONY MURDER

Introduction to Felony-Murder Series

Senate Bill No. 1437 (2017-2018 Reg. Sess.) substantially changed accomplice liability for felony murder. Malice may no longer be imputed simply from participation in a designated crime. (Pen. Code, § 188(a)(3).) If a defendant participated in the commission or attempted commission of a designated felony when a person was killed, the defendant is now liable under the felony-murder rule only if: (1) the defendant was the actual killer; (2) the defendant was not the actual killer but, *with intent to kill*, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in committing murder in the first degree; or (3) the defendant was a major participant in the underlying designated felony *and* acted with reckless indifference to human life. (Pen. Code, § 189(e).) These restrictions do not apply when the victim was a peace officer and the defendant knew or reasonably should have known that the victim was a peace officer acting within the performance of his or her duties. (Pen. Code, § 189(f).)

As a result of these changes, the committee has modified CALCRIM Nos. 540B and 540C to incorporate the additional statutory elements for accomplice liability. The committee has also removed CALCRIM Nos. 541A, 541B, and 541C which addressed second degree felony murder. ~~These instructions are included in an appendix, along with the former versions of Nos. 540A, 540B, and 540C.~~

The three separate instructions for felony murder present the following options:

A. Defendant Allegedly Committed Fatal Act

B. Coparticipant Allegedly Committed Fatal Act

C. Other Acts Allegedly Caused Death

For a simple case in which the defendant allegedly personally caused the death by committing a direct act of force or violence against the victim, the court may use CALCRIM No. 540A. This instruction contains the least amount of bracketed material and requires the least amount of modification by the court.

In a case where the prosecution alleges that a participant in the felony other than the defendant caused the death, the court must use CALCRIM No. 540B. This instruction allows the court to instruct that the defendant may have committed the underlying felony or may have aided and abetted or conspired to commit an underlying felony that actually was committed by a coparticipant.

If the evidence indicates that either the defendant or a coparticipant may have committed the fatal act, the court should give both CALCRIM No. 540A and CALCRIM No. 540B.

In addition, the committee has provided CALCRIM No. 540C to account for the unusual factual situations where a victim dies during the course of a felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants. (See *People v. Billa* (2003) 31 Cal.4th 1064, 1072.) This instruction is

the most complicated of the three instructions. Thus, although CALCRIM No. 540C is broad enough to cover most felony-murder scenarios, the committee recommends using CALCRIM Nos. 540A or 540B whenever appropriate to avoid providing the jury with unnecessarily complicated instructions.

In *People v. Wilkins* (2013) 56 Cal.4th 333, 344, the Supreme Court clarified the temporal component necessary for liability for a death under the felony-murder rule and noted the limited usefulness of former CALCRIM No. 549, *Felony Murder, One Continuous Transaction—Defined*. To avoid any potential confusion, the committee has deleted that instruction and replaced it with appropriate bench note references. If the defendant committed the homicidal act and fled, that killing did not occur in the commission of the felony if the fleeing felon has reached a place of temporary safety. (*People v. Wilkins, supra,* at p. 345.)

Item number: 06

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Amend Cal. Rules of Court, rule 10.469 to make education on unconscious bias and prevention of sexual harassment and inappropriate workplace conduct mandatory

Committee or other entity submitting the proposal:
CJER Advisory Committee

Staff contact (name, phone and e-mail): Mary Ann Koory, 415-865-7525, maryann.koory@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A
Project description from annual agenda:

New or One-Time Projects
1. Amend California Rules of Court, rule 10.469 Priority 1
Strategic Plan Goal V

Project Summary : Pursuant to the recommendations of the Workgroup on the Prevention of Discrimination and Harassment, CJER Advisory Committee has engaged in the rulemaking process and will develop a proposal to amend rule 10.469 to make prevention of discrimination and harassment training mandatory for judicial officers.

Status/Timeline: Proposal to Rules and Projects Committee submitted by March 3, 2020; if approved by the Judicial Council, the amendment will be effective January 2021.

Fiscal Impact/Resources: N/A
☐ This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.

Internal/External Stakeholders: N/A

AC Collaboration: CJER Advisory Committee sought feedback on the draft amendment from the Advisory Committee on Providing Access and Fairness, the Appellate Clerk Executive Officers, the Appellate Advisory Committee, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, the Court Executive Officer Advisory Committee, and the California Judges Association.

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-157
For business meeting September 24–25, 2020

Title
Judicial Branch Education: Mandatory Education on Unconscious Bias and Prevention of Discrimination and Harassment

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 10.469

Recommended by
Center for Judicial Education and Research Advisory Committee
Hon. Kimberly A. Gaab, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 30, 2020

Contact
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Executive Summary

Pursuant to the recommendations of the Work Group on the Prevention of Discrimination and Harassment, the Center for Judicial Education and Research Advisory Committee recommends amending a rule of court to make education on unconscious bias, as well as on the prevention of discrimination and harassment, mandatory for judicial officers. Research shows that unconscious bias effects all human beings, but can escape the awareness of even the most diligent decision-makers; therefore, making this training mandatory will help raise awareness and reduce the impact of bias in judicial decision-making. Mandatory training on the prevention of discrimination and harassment demonstrates the judicial branch's commitment to a workplace free of sexual harassment and discrimination.

Recommendation

The Center for Judicial Education and Research Advisory Committee recommends that, effective January 1, 2021, the Judicial Council amend rule 10.469 of the California Rules of Court to

make education on unconscious bias, as well as on the prevention of discrimination and harassment, mandatory for judicial officers.

The text of the amended rule is attached at page 6.

Relevant Previous Council Action

Rule 10.469 (Judicial education recommendations for justices, judges, and subordinate judicial officers) was adopted effective January 2008. The Judicial Council has not taken any previous action relevant to subdivision (e) (Fairness and access education), which is proposed to be amended.

Analysis/Rationale

Based on the recommendations of the Work Group on the Prevention of Discrimination and Harassment, and with input from other Judicial Council advisory bodies, the Center for Judicial Education and Research (CJER) Advisory Committee proposes to amend rule 10.469 of the California Rules of Court to make education on unconscious bias, as well as for the prevention of discrimination and harassment, mandatory for judicial officers.

Mandatory training on the prevention of sexual harassment has existed in California since 2005 when Assembly Bill 1825 (Stats. 2004, ch. 933) mandated that all organizations with 50 or more employees provide two hours of sexual harassment training and education to supervisory employees every two years. In January 2019, in response to the nationwide #MeToo movement, legislators passed AB 1343 (Stats. 2018, ch. 956), which mandated sexual harassment training for non-supervisory employees every two years for employers with five employees or more, in addition to the training for supervisors already mandated by AB 1825.

Work group recommendation 2(A)(1)

In October 2018, the Chief Justice appointed the Work Group for the Prevention of Discrimination and Harassment to support the judicial branch's commitment to a workplace free of harassment and discrimination. The work group examined research and discussed potential areas for improvement relating to harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The work group ultimately proposed recommendations to the Judicial Council, including recommendation 2(A)(1):

> Consistent with the requirements of California Government Code sections 68088 and 11135, and the California Rules of Court, rules 10.461 et seq., the Work Group recommends that the Center for Judicial Education and Research Advisory Committee, in consultation with the administrative presiding justices, appellate court clerk/executive officers, trial court presiding judges, and trial court executive officers, under the oversight of the Rules and Projects Committee, engage in the rulemaking process regarding education for judicial officers on the

> prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.[1]

The Judicial Council adopted the recommendations of the work group at its meeting on July 19, 2019.

Rule 10.469

The rules regarding the education requirements for judicial officers are specific to court level. Supreme Court and appellate court justices are covered by rule 10.461. Superior court judges and subordinate judicial officers are covered by rule 10.462. Both rules discuss content-based and hours-based education recommendations for justices and judges.

Rule 10.469, however, applies to all categories of judicial officers. Subdivision (e) of the rule states that "each justice, judge, and subordinate judicial officer should regularly participate in education on access and fairness." The CJER Advisory Committee recommends amending the subdivision to make education on access and fairness mandatory, based on the recommendations of the work group. Specifically, the committee proposes adding subdivision (e)(1) and (2). Subdivision (e)(1) would include the text of former subdivision (e) but would omit the term "sexual harassment." Subdivision (e)(2) would read as follows:

> Each justice, judge, and subordinate judicial officer must participate in education on unconscious bias, as well as the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct. This education must be taken at least once every three-year continuing education period as determined by rules 10.461(c)(1) and 10.462(d)(1).

Policy implications

Mandatory education on unconscious bias, as well as on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct, is consistent with the policy and priorities of the Chief Justice and the Judicial Council. In her 2019 State of the Judiciary address, the Chief Justice noted with approval that Administrative Director Martin Hoshino had made unconscious bias training mandatory for Judicial Council staff, stating that he "recognizes the science, as do I, that the formation of unconscious stereotypes can affect attitudes, actions, and beliefs in all encounters where we meet someone different from ourselves."

When the Chief Justice convened the Work Group on the Prevention of Discrimination and Harassment, she noted, "Institutions and industries across our country, including our judicial branch, have rightfully been focusing on issues of harassment and discrimination in the

[1] Judicial Council of Cal., Work Group for the Prevention of Discrimination and Harassment, *Judicial Branch Administration: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification* (June 12, 2019), pp. 2–3 and 7–8, *https://jcc.legistar.com/View.ashx?M=F&ID=7336325&GUID=6B7E4EDA-1AEF-457E-8045-CA0439798302*.

workplace." She appointed the work group "to ensure that we are on the right track in our efforts to ensure our own workplaces are safe for all employees and free of inappropriate behavior."

Comments

After the Judicial Council directed the CJER Advisory Committee to implement the work group's recommendations, the committee consulted with the Advisory Committee on Providing Access and Fairness, the Appellate Advisory Committee, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, appellate clerk/executive officers, and the California Judges Association about the language of the proposed amendment to the rule. The amendment as proposed herein reflects input by those bodies. The CJER Advisory Committee also adopted a suggestion from the Administrative Presiding Justices Advisory Committee to specify unconscious bias education as well as education on the prevention of harassment and discrimination.

The amendment was circulated for public comment from April through June 2020 and received five comments. As indicated in the attached comment chart at pages 7–11, four of the five comments approved the proposed change. One commenter apparently misunderstood the change as adding hours to the existing mandatory requirement and limiting the opportunities for judicial officers to fulfill the requirement. No other disapproving comment, internal or external, was made to the CJER Advisory Committee during the previous 12 months of seeking feedback on the proposed rule amendment.

Alternatives considered

The Work Group on the Prevention of Discrimination and Harassment considered alternatives before recommending that the rules of court be amended to make training on the prevention of discrimination and harassment a mandatory requirement. Since rule 10.469 currently recommends that judicial officers have education on "race and ethnicity, gender, sexual orientation, persons with disabilities, and sexual harassment," the CJER Advisory Committee did not think that keeping the rule as written or simply adding the categories of "retaliation, and inappropriate workplace conduct based on a protected classification" would adequately meet the work group's recommendation. Nor would keeping the education recommended signal a commitment of the judicial branch commensurate to other employers in a state in which supervisory and non-supervisory employees are mandated to take such training. Adding educational categories to the rule and making the training mandatory would fully support the branch's ability, in the words of the Chief Justice, to "ensure our own workplaces are safe for all employees and free of inappropriate behavior." Moreover, when considering the unconscious nature of unconscious bias, the CJER Advisory Committee deemed it possible that some judicial officers may not be aware of the effects of their unconscious biases and, therefore, would not make such training a priority on a purely voluntary basis.

Fiscal and Operational Impacts

The education offered by the Center for Judicial Education and Research already includes training in unconscious bias and the prevention of harassment; the new requirements will lead to some expansion in those areas, as well as in the areas of prevention of discrimination, retaliation, and inappropriate workplace conduct. Education that fulfills this new requirement can also be provided by approved providers in addition to CJER. The primary costs to the judicial branch to implement the amended rule are associated with the development of expanded education content in these areas.

No direct fiscal or operational impacts are anticipated for any other entity. Although implementation of this rule would add additional content requirements, the overall required number of education hours would not change; there would be no increase in education hours for judicial officers and no increase in education costs for judicial officers or their courts. No negative impacts are anticipated on justice partners, attorneys, self-represented litigants, or the courts; in fact, these entities may perceive benefits from working with judicial officers with more training in these areas.

The relatively minor implementation costs would be outweighed by the enormous benefit of educating judicial officers about these important issues.

Attachments and Links

1. Cal. Rules of Court, rule 10.469, at page 6
2. Chart of comments, at pages 7–11

Rule 10.469 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 10.469. Judicial education recommendations for justices, judges, and subordinate judicial officers, and additional requirements

(a)–(d) * * *

(e) Education on fairness and access ~~education~~, unconscious bias, and prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct

(1) In order to achieve the objective of assisting judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of bias, each justice, judge, and subordinate judicial officer should regularly participate in education on fairness and access. The education should include the following subjects: race and ethnicity, gender, sexual orientation, and persons with disabilities~~, and sexual harassment~~.

(2) Each justice, judge, and subordinate judicial officer must participate in education on unconscious bias, as well as the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct. This education must be taken at least once every three-year continuing education period as determined by rules 10.461(c)(1) and 10.462(d)(1).

SPR 20-06

Judicial Branch Education: Mandatory Judicial Training Requirement for Prevention of Discrimination, Sexual Harassment and Inappropriate Workplace Behavior, and Unconscious Bias (Cal. Rules of Court, rule 10.469)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Legal Aid Association of California by Selena Copeland Executive Director, LAAC Kate Marr Executive Director, Community Legal Aid SoCal Martina Cucullu Lim Executive Director, Eviction Defense Collaborative Amy Poyer Senior Staff Attorney, California Women's Law Center Leigh Ferrin Director of Litigation and Pro Bono, Public Law Center	A	* We **support** the Center for Judicial Education and Research (CJER) Advisory Committee's proposal to add the subsection to Rule 10.469 (e) . . . Empirical evidence demonstrates that we all have unconscious and implicit bias. This bias contributes to staggering disparities in our justice system. Research shows that trial court judges often rely on intuition, rather than deliberative judging in deciding matters before the bench. Studies show prosecutors are more likely to charge Black suspects than White suspects in similar circumstances. Public defenders may work harder for a defendant they perceive as more educated or likely to be successful than for other defendants.	No response required.
2.	California Commission on Access to Justice by Hon. Mark Juhas Chair	A	* The Access Commission supports the change to rule 10.469 and all of the recommendations made by the Prevention of Discrimination and Harassment Work Group. The Access Commission believes that the proposed amendment to Rule 10.469 is a good step towards addressing one of the stated purposes of the Work Group—to improve efforts by the judicial branch to prevent harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. Mandatory judicial training on these topics is an important improvement in prevention efforts . . . As noted by the Work Group, mandatory trainings are only part of the solution. The Access	No response required.

	Commenter	Position	Comment	Committee Response
			Commission encourages the Judicial Council to implement other of the Work Group's recommendations. . . The Access Commission also supports the proposed amendment to rule 10.469 and the other recommendations of the Work Group to the extent they set standard baselines for prevention training and other issues through Rules of Court paired with the ability for courts to develop their own solutions and approaches, with the Judicial Council's support, based on their needs and circumstances.	
3.	The Family Violence Appellate Project Cory Hernandez Staff Attorney	A	*In addition to agreeing with the proposed revisions to make rule 10.469(e)2 mandatory, the FVAP also urges that a) rule 10.469(e)1 become mandatory, b) domestic violence be included as a mandatory education topic along with the topics listed in 10.469(e)2, and c) education on unconscious bias, prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct and domestic violence become mandatory for court personnel. We are writing to express **support** for SPR20-06, and to urge the Council to extend these amendments to cover additional judicial officers and court personnel, as well as another area of concern, domestic violence . . . . we would urge that rule 10.469(e)(1) also become mandatory, instead of recommendatory as it is now. . . . Rule 10.649(e)(1) recommends training on fairness and access, with a focus on race, ethnicity, gender, sexual orientation, and people with disabilities. Rule 10.649(e)(1) states its intent is to "assist[ ] judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of bias." . . . Expanding the required education will only further help "judicial officers in preserving the integrity and impartiality of the judicial	Because these would be important substantive changes to the proposal, the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.

	Commenter	Position	Comment	Committee Response
			system." The issues in both rules 10.469(e)(1) and 10.469(e)(2) are related and there is overlap, which means the mandatory education requirements could be fulfilled at once or at least without substantially more time needed, alleviating potential concerns of cost. . . . Furthermore, we would urge the Council to expand proposed rule 10.469(e)(2) to include "domestic violence" in the list of "prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct." Domestic violence is a grievous problem in our state that cuts across all genders, sexual orientations, races, ethnicities, ability levels, socioeconomic levels, and professions. Judicial officers not only encounter domestic violence in their courtrooms, regardless of the type of cases they hear, but also in their workplace. . .. Although domestic violence may be more likely to arise in criminal, family, juvenile, and probate cases, it could certainly arise in any other context. For instance, domestic violence is expressly listed as a tort in Civil Code section 1708.6, and being a victim of domestic violence can trigger special protections in housing and employment law. Domestic violence can touch any part of someone's life, so it can show up in any given court case. Plus, many judicial officers switch assignments at least once in their career, meaning they may move into a position where domestic violence is more frequently litigated than they had previously experienced. By expanding rule 10.464, there would be no gap in education for such judicial officers; they would already be trained on domestic violence. . . . In addition, all of these education requirements should be extended to all court personnel, not just judicial officers. Currently, rule 10.479(c) only recommends training on fairness and access for court personnel. While rules 10.471-	

	Commenter	Position	Comment	Committee Response
			10.478 provide some education requirements for various court personnel, no requirement includes those mandated or recommended in rule 10.469. . . . court personnel also make important decisions that can impact a case. In many cases, litigants may interact more with court personnel than with judicial officers. . . . For the same reasons judicial officers must be trained on these important issues, so too must court personnel.	
4.	Superior Court of Los Angeles County by Bryan Borys, Senior Advisor	D	We support the goals of this proposal, which are to provide appropriate training to the judiciary that may help them avoid unconscious bias and prevent discrimination in the courtroom. However, this training should be included as part of the mandatory curriculum for Judicial College, New Judges Orientation, and the Qualifying Ethics curriculum. This approach will insure that all bench officers receive this important training twice -- once in their first few months on the bench, and again within their first 2 years, then every few years thereafter as part of the Ethics insurance requirements. This would allow judges to continue with the broad array of bias related courses already offered to them through the courts, CJA, the Bar and other organizations as part of the expected education framework.	The B.E. Witkin Judicial College and New Judges Orientation already contain content on unconscious bias. The Qualifying Ethics curriculum already contains content on unconscious bias, and prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct. All of the existing content would count toward the proposed mandatory requirement. Judges would not be barred from the "broad array of bias related courses already offered to them through the courts, the CJA, the Bar and other organizations." As long as they are approved providers (which all of the named organizations are), their classes would count toward the proposed mandatory requirement.
5.	Bay Area Legal Aid by Kemi Mustapha, Supervising Attorney and Fawn Jade Korr, Senior Staff Attorney	A	This proposed rule comes at a time when thousands of Americans are protesting the killing of George Floyd and the widespread racialized violence against Black people. There is no American institution exempt from systemic racism. . . While overt discrimination is largely condemned, most of the behavior that produces racial discrimination is influenced by unconscious racial motivation. An intention to end racial bias is not enough, and the judicial system will continue to sanction institutional discrimination unless measures are taken to	No response required.

	Commenter	Position	Comment	Committee Response
			disrupt the status quo. Those measures must begin with mandatory implicit bias training for judges. . . Judicial officers, who hold positions of privilege and power, are not immune from the same implicit biases that impact the general population, leading to adverse consequences for people from marginalized communities navigating the legal system. . . . Bay Area Legal Aid stands in strong **support** of SPR20-06. We thank the Judicial Council and its committees for taking this issue seriously and addressing the devastating impact of racism in this country.	

Deferred

Item number: **08**

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Requesting Court Reporters for Civil Proceedings (Amend Cal. Rules of Court, rule 2.956; approve form FW-020; and revise form FW-001-INFO

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Implementation of New Law re Court Reporters
Project Summary:
1. Jameson v. Desta: Develop or revise forms to assist indigent parties to request court reporter or electronic recording at civil proceedings under the holding of Jameson v. Desta, and consider input from commenters that further rules or legislation are needed to appropriately implement that decision, including investigating potential costs and feasibility of proposals to provide court reporters or electronic recording for all civil proceedings involving an indigent party.

2. Assembly Bill 2664 (2018): This bill amended Government Code section 68086, which mandates that the council adopt rules on court reporting services in civil cases. (See CA Rules of Court, rule 2.956). Assembly Bill 2664 added a new provision to be included in the rules, clarifying that, when court reporters are not available, courts are, upon the request of a party, to appoint a pro tem court reporter to be present in the court, unless there is good cause to refuse the appointment.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Civil Practice and Procedure: Requesting Court Reporters for Civil Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 2.956; approve form FW-020; and revise form FW-001-INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 19, 2020

Contact
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Executive Summary

The California Supreme Court recently held that courts that do not provide official court reporters in civil proceedings must, if requested by an indigent party, use court reporters or other means to make a verbatim record available. (*Jameson v. Desta* (2018) 5 Cal.5th 594.) The Civil and Small Claims Advisory Committee recommends a new court reporter request form, revisions to the fee waiver information form, and amendments to California Rules of Court, rule 2.956, to help fee waiver recipients avail themselves of rights recognized in *Jameson*. The proposal would also further amend that rule of court to reflect recent changes to Government Code section 68086.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend California Rules of Court, rule 2.956;

2. Approve *Request for Court Reporter by Party with Fee Waiver* (form FW-020); and

3. Revise *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).

The text of the amended rule and the new and revised forms is attached at pages 11–15.

Relevant Previous Council Action

Effective January 1, 2020, the Judicial Council amended California Rules of Court, rules 2.956 (regarding obtaining court reporters in civil actions) and 3.55 (listing which fees are automatically waived when a fee waiver is granted) to make changes consistent with *Jameson v. Desta* (2018) 5 Cal.5th 594. The amendment to rule 2.956 provided that a party with a fee waiver could, if there was not an electronic recording being made of a hearing, request that the court provide a court reporter. It did not set out a statewide process for how to make or act on such a request.

At the same time, the council revised the following forms to make changes consistent with *Jameson* and recent legislation by, among other things, replacing the existing language concerning a waiver of reporter's fees: forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, and FW-012-GC.[1]

Analysis/Rationale

Background

Jameson v. Desta (2018) 5 Cal.5th 594 (*Jameson*) involved a plaintiff who had been granted a fee waiver under Government Code section 68631. Such a litigant is entitled to a waiver of court fees for the attendance of an official court reporter at a court proceeding (Gov. Code, § 68086(b).) In *Jameson,* however, the plaintiff was not provided a court reporter at his civil trial because the superior court, as a result of a reduction in its budget, had adopted a policy under which no official court reporters were provided at most civil trials, even for persons who qualified for a fee waiver. Under the policy, a party could hire and pay for a private court reporter. (*Jameson*, at p. 598.) It was undisputed that if an official court reporter had been made available for the trial in this case, the plaintiff would have been entitled to the court reporter's attendance at the trial without the payment of a fee. (*Id.* at p. 600.) The Supreme Court concluded that the superior court policy was inconsistent with general principles discussed in prior in forma pauperis judicial decisions and with the public policy of facilitating equal access to the courts. (*Id.* at p. 599.) It stated:

> [I]n order to satisfy the principles underlying California's in forma pauperis doctrine and embodied in the legislative public policy set forth in [Government Code] section 68630, subdivision (a), when a superior court adopts a general policy under which official court reporters are not made available in civil cases

[1] A copy of the 2019 report may be viewed at *https://jcc.legistar.com/View.ashx?M=F&ID=7521735&GUID=933697EE-6331-4566-8CF5-EB25AAF1DA33.*

> but parties who can afford to pay for a private court reporter are permitted to do so, the superior court must include in its policy an exception for fee waiver recipients that assures such litigants the availability of a verbatim record of the trial court proceedings, which under current statutes would require the presence of an official court reporter.

(*Jameson,* at p. 623.)

The Supreme Court concluded that a superior court must generally make available to fee waiver recipients an official court reporter or other valid means to create an official verbatim record, for purposes of appeal, upon request. (*Jameson, supra,* 5 Cal.5th 594 at p. 599.)

As noted above, last year the Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, approved revisions to several fee waiver forms and to rule 2.956[2] so that they would reflect the *Jameson* holding. At the time the recommendation was made, the advisory committee noted that this year it would develop and recommend a statewide form that could be used by a fee waiver recipient to ask for a court reporter.

Also at that time, the council received comments from several legal service organizations asserting that the recommendation did not go far enough and asking that the council make further rules. The commenters proposed, among other things, that courts should be required to provide court reporters automatically at any hearing in which a fee waiver recipient is a party, with no request required. The council directed the committee to consider the suggestions made by the commenters, and the committee has done so.

After thorough consideration of the proposals, the advisory committee divided the proposals into two groups. The first group consists of items the committee concluded could be addressed along with the planned form proposal. These included the following proposals, all but one of which were accepted by the committee:

- That, if a request for a court reporter is required, rules provide a uniform statewide process for making and acting on that request, rather than leaving it up to each court.

- That, if a request is required, it be included on the fee waiver application form itself, rather than on a separate form;

- That it be made clear that a court reporter requested by a fee waiver recipient should be at no cost to that party; and

- That rule 2.956, which was revised last year to include the fee waiver recipient's right to ask for a court reporter, include a mandate that the court must grant that request.

[2] All references to rules in this document are to the California Rules of Court, unless otherwise indicated.

The other group of proposals included those items that the committee concluded are not best addressed by Civil and Small Claims Advisory Committee on its own. These proposals include:

- That the council should adopt a rule requiring that courts automatically, whenever a fee waiver recipient is a party to an action, provide a court reporter at all hearings and proceedings in that action; and

- That a copy of any electronic recordings made by the court be provided to a fee waiver recipient at no charge.

The committee believes that the suggestion to require a court reporter in all courtrooms where a fee waiver recipient appears, without any request, would expand the holding of *Jameson*. In determining whether to adopt such a rule, the council will need to consider the possibility and practicability of providing court reporters for all such hearings and proceedings where electronic recording is either not permitted or not available, in the many different types of non-criminal cases handled by the courts. These issues will likely involve several different advisory bodies in addition to Civil and Small Claims and will require more consideration and work than can be addressed at this time, given the current challenges the judicial branch is facing with the public health issues raised by the COVID-19 pandemic. While the advisory committee recognizes that the proposal does not address all the issues raised, the committee believes it will provide a consistent state-wide process that will benefit both courts and litigants.

The proposal

The advisory committee recommends moving forward with the planned statewide court reporter request form and with revisions to an information sheet provided to fee waiver applicants. In addition, in light of the comments received last year, the committee is recommending statewide rules for the process of requesting and providing a court reporter.

Rule 2.956

Rule 2.956 was originally adopted to implement the mandate in Government Code section 68086 that the council adopt rules to ensure that:

- The parties are given adequate and timely notice of the availability of an official court reporter (rule 2.956(b));
- If no official court reporter is available, a party is authorized to arrange for a certified shorthand reporter to serve as a court reporter pro tem at that party's expense (rule 2.956(c)); and
- None of the other fees in the statute are to be charged if the party arranges for and pays for the court reporter pro tem (rule 2.956(d)).

Last year, at this committee's recommendation, the council revised subdivision (c) of the rule to reflect the *Jameson* holding, by dividing it into two parts. The rule currently provides that in the instance where there is no official court reporter at a hearing or trial in a civil case, a party could either (1) arrange for one at the party's expense; or (2) if a fee waiver recipient, ask the court to

provide one. The current rule also notes that the request should be made in compliance with local rules.

Amendments relating to fee waiver recipients
The commenters who addressed the council last year urged the council that, if a request is to be required to ensure the presence of a court reporter, then there should be a statewide process for doing so, in order to provide consistency across the state. They asserted that this would simplify the process for fee waiver recipients, who are frequently self-represented, and for the legal service agencies and self-help centers who provide information to those parties. The committee agrees, and the proposed amendments to rule 2.956 prescribe such a process, identifying a form that should be used to request a court reporter and setting out the recommended, albeit not mandatory, timeline: the request should be made 10 days before the proceeding for which court reporter is wanted, or, if the proceeding is set on a shorter time frame, as soon as practicable. (See recommended rule 2.956(c)(2)(A) and (B).)

The rule also provides that once a request for a court reporter for a trial is made, it does not have to be repeated if the trial is continued to a later date. (See recommended rule 2.956(c)(2)(C).) In addition, because the commenters asserted that, as drafted, the rule may be unclear as to whether the court would not only provide a court reporter for a fee waiver recipient who asked for one, but do so at no charge to that party, a statement to that effect has been added. (See recommended rule 2.956(c)(2)(D).)

Commenters last year also asserted that if the rule is to require that a fee recipient has to request a court reporter, then it should also mandate that the request must be granted. They asserted that, as it currently stands, rule 2.956(c) leaves the decision up to the court. As currently written, the rule is focused on the party's action. As to the court's action, the rule (and this committee) assumes that the court will follow the law under *Jameson*. However, in light of the concerns raised, the requested mandate has been included in the proposed amendments. (See recommended rule 2.956(c)(2).)[3]

Amendments relating to other parties
Government Code section 68086(d)—the provision requiring the council to adopt certain rules regarding court reporters—was amended effective January 1, 2019. The primary amendment of the statute was to provide that if an official court reporter is not available and a party arranges for the presence of a certified shorthand reporter in the courtroom, the court *shall* appoint that reporter as the pro tem court reporter unless there is good cause shown for the court to refuse to appoint the appointment. The rule has been amended to reflect this mandate. (See recommended rule 2.956(c)(1).)

[3] In light of the changes to the rule to add provisions arising from the *Jameson* decision, the beginning of the rule has also been amended to reflect that it no longer is based solely on Government Code section 68086.

New and revised forms

The proposed *Request for Court Reporter by Party with Fee Waiver* (form FW-020) is based on several current local court forms. It contains instructions at the top, including a statement of the recommended timeline for filing included in the proposed rule of court, and a request for a court reporter for a particular hearing or trial date at the bottom. It also asks the party to confirm that the party has received a fee waiver in the case, or is filing a request for such a waiver concurrently with filing the form.

In light of the concerns raised by the commenters last year that fee waiver recipients would not know to ask for a court reporter and that they might not understand that the court reporter would be free if requested, the committee is also proposing the addition of a new paragraph for the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to provide more information to all fee waiver recipients about obtaining a record, including how to request a court reporter at no charge and how to find out about obtaining a transcript (for which generally there will be a charge). In addition, a cross-reference to the new request form has been added to item 1 on the first page of that form, to the item for court reporter fees in the list of waived fees.

Policy implications

This proposal would expand access to justice by providing a consistent process and form that fee waiver recipients across the state will be able to use to request that a court reporter be provided to make a record of court proceedings. Having the same process across all courts will also make it easier for legal service providers and self-help centers to advise self-represented parties on how to exercise their rights in this area.

Comments

The proposed amendments to rule 2.956, the new *Request for Court Reporter by Party with Fee Waiver* (form FW-020), and the revised form FW-001-INFO were circulated for comments from April 10, 2020, to June 9, 2020. Twenty-four comments were received on the proposal:

- Four from Superior Courts of Los Angeles, Orange (two separate comments), and San Diego Counties.
- A comment from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (Joint Rules Subcommittee).
- A comment from the California Commission of Access to Justice.
- Eleven almost identical comments from a variety of legal service providers, public interest advocates, and a law firm. Because some of these comments (those from the Family Violence Appellate Project, Legal Aid Association of California, and Western Center for Law and Poverty) were made on behalf of multiple groups, these comments actually come from a total of 33 groups. (These comments are referred to hereafter as the Legal Service Providers comments.)
- Two from legal service groups with individual technical comments.
- Three from professional bar associations (two different sections of California Lawyers Association and Orange County Bar Association).

- Two from child support services groups.

Other than the Legal Service Providers comments, the comments either agreed with the proposed rule and form, agreed with minor modifications requested, or did not indicate a position. The Legal Service Providers comments did not indicate a position, but within the text of the comments, they indicated support for a statewide process and the rule that courts must provide a court reporter if requested by a fee waiver recipient, while at the same time stating that they would prefer there being no requirement for a request at all.[4] A summary of the most substantive comments is included here.

Legal Service Providers comments on proposal as a whole

The Legal Service Providers comments each supported a statewide process for providing court reporters to indigent parties but proposed that the process be for courts to automatically provide court reporters or electronic recordings in all proceedings involving a party who has received a fee waiver. As a second choice, if a request is required, they wanted the request for a court reporter to be included on the fee waiver application form. (The committee notes that while identified in the letters as an "alternative" proposal, this essentially amounts to the same thing as requiring the courts to automatically provide court reporters in all proceedings in which a party has a fee waiver.) The Legal Service Providers comments repeated the assertions made last year as to why verbatim records are important to providing access to justice for indigent parties: because such records aid in crafting accurate orders after hearings, provide a clear history in cases involving custody and visitation that can take place over many years, and can be used to successfully appeal bad orders and judgments.

The committee notes that to the extent the comment extolls the value of court reporters for all proceedings, the committee agrees that the ideal situation would be to provide electronic recordings or court reporters in all cases. This proposal, however, is limited to new statewide rules setting out a process for indigent parties' requesting a court reporter when electronic recording is not available, and for courts' providing a reporter in response to such a request. To the extent the comment asks for a rule that court reporters be provided automatically for all proceedings in all civil actions with indigent parties, that is outside the scope of the current proposal and will be considered separately as time and resources allow.

[4] A comment chart showing all commenters is attached. Because the 11 Legal Service Providers comments are almost identical and lengthy, the comment chart includes the complete text of only the first two comments (in alphabetical order) from that group, the first with an emphasis on domestic violence cases and the second with an emphasis on unlawful detainers. Copies of all the Legal Service comments received, which contain almost identical information, are provided separately from the chart. All other comments are contained within the attached chart, along with the committee's responses.

Comments on amendments to rule 2.956

The only comments received on rule 2.956 addressed only subdivision (c)(2) of the rule.[5] That subdivision prescribes a statewide process for requests for court reporters, in order to promote consistency across the state.

Comments on rule generally

All commenters agreed with the concept of a statewide rule, for reasons of consistency.[6] The Department of Child Support Services and Child Support Services Directors Association, however, commented that the entire process will not work well in situations where parties do not have to pay fees, and so do not have fee waivers. They focused on title IV-D proceedings (certain child support enforcement proceedings), in which they said the rule may also be problematic because in some instances interested parties (custodial parents) are not actually made parties to the proceedings until after the first set of hearings. They suggested that a separate process be added for requesting court reporters for title IV-D hearings, either in this rule or elsewhere, that addresses these issues or that the council recommend that electronic recording be permitted in such cases. The committee concluded that those specific suggestions are outside the scope of the current proposal, and the purview of this committee, and will forward the suggestions to the Family and Juvenile Law Advisory Committee for consideration as time and resources permit. In the meantime, the committee does agree with another solution suggested by the commenters, and has modified the rule and form FW-020 to provide that an indigent party without a fee waiver, such as party in a title IV-D hearing or in a domestic violence proceeding, may use the process by filing a request for a fee waiver concurrently with the request for a court reporter. *Jameson* provides that a court reporter be provided for indigent parties, and evaluation of the fee waiver application is the method by which courts generally determine indigency.

Comments re subdivision (c)(2)(A)—that parties should use form FW-020

As noted above, the Legal Service Providers comments argued against having to use any form, or at least any form beyond the fee waiver request itself. On the other hand, the Joint Rules Subcommittee suggested that the form be made mandatory, and the rule state that parties must use this form. The committee declines both suggestions. It concluded that *Jameson* assumes a request be made, but also concluded that under that case a court must provide a court reporter no

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[5] In addition to the amendment noted in footnote 2, rule 2.956(c)(1) was amended to reflect changes to Government Code section 68086(d)—the section requiring the council to adopt certain rules re court reporters—amended by Assembly Bill 2664 effective January 1, 2019. The primary amendment of the statute was to mandate that, if an official court reporter is available and a party arranges for the presence of a certified shorthand reporter in the courtroom, the court *shall* appoint that reporter as the pro tem court reporter unless there is good cause shown for the court to refuse to appoint the appointment. That statutory amendment is now reflected in the proposed amendment to rule 2.956(c)(1).

No comments were received addressing either the proposed amendments described in footnote 2 or here.

[6] The Legal Service Provider commenters assert that the rule should, however, mandate that a court reporter be required for a fee waiver recipient in all instances, without any request required. As previously discussed, that is not being addressed as part of this proposal.

matter how the request is made. As a result, the recommended form is optional; the rule encourages but does not mandate its use.

Comments re subdivision (c)(2)(B)—that the request should be made 10 calendar days in advance or as soon as practicable if proceeding is set with less than 10 days' notice
The Superior Court of San Diego County suggested this time frame be made mandatory, to provide more notice to the court, while the Legal Service Providers comments were concerned that the 10-day time frame is too far in advance of the hearing date, asserting that self-represented parties may not know that soon that they need to ask for a court reporter.[7] The committee concluded that 10-days' notice is preferred in order for courts to have sufficient notice to schedule court reporters without having to continue a hearing or trial date, but also noted that the 10 days is not mandated, and a later request must be accepted. Without the notice, a court may not be able to provide a court reporter for the scheduled date, and a continuance may be required if the party wants to ensure a record is made. A warning to that effect is included on the form.

One Legal Service Providers commenter, Asian-Americans Advancing Justice—Asian Law Caucus, suggested listing factors for the court to consider in determining whether a matter should be continued to obtain a court reporter. The committee concluded that there was no reason to provide factors for a court to consider in continuing a proceeding to provide a court reporter, because the court is required under *Jameson* to provide a court reporter if one is requested by an indigent party and no electronic recording is available. If that means that a continuance is needed to provide the court reporter, the court will have to provide such a continuance if the party desires it—the only factor to be considered is the party's request.

Comments on form FW-020
As noted above, the recommended form has been modified in light of comments received, so that it can be used by an indigent party who does not have a fee waiver at the time the party is making the request. In this way, a party to a proceeding in which filing fees are not required—and so who would not otherwise have sought a fee waiver—will be able to request and qualify for a court reporter. It has also been modified so that it can be signed by either a self-represented party or counsel for a party, at the suggestion of the California Lawyers Association.

There were several comments that the first bullet point in the instructions on this form should say the party "should," rather than must, make a request 10 days in advance, to be consistent with the rule. The committee agrees and the modification has been made. Similarly, in the last bullet point, a few commenters noted that it should state the parties are not guaranteed a "free" transcript. This has now been added along with information and a link to a self-help webpage where a party can learn more about records and obtaining transcripts.

[7] These comments also point out that in some proceedings (such as motions in unlawful detainer cases and emergency protective order proceedings), the party may not have 10-days' notice. The committee notes, however, that shorter notice periods are already provided for in the rule.

That last modification is the result of a comment from the California Commission on Access to Justice, which also suggested adding more explanation to the beginning of the instruction about why a party who wishes to appeal an order will need a transcript. The committee declined to add all the suggested language to form FW-020 both because it is incomplete—as the Legal Service Providers comments noted, there are several good reasons for wanting a record of the proceedings—and because adding a full explanation of those reasons would make the instructions on this form overly wordy and thus more difficult for self-represented parties to use.

Comments on form FW-001-INFO

Specific comments were requested on whether the cross-reference on this form to form FW-020, the new court reporter request form, would be helpful or confusing. One superior court thought it was confusing, but everyone else who addressed this point thought it was helpful. The Legal Service Providers comments pointed out that the language used ("See form FW-020") is legalistic and suggested instead, "Use form FW-020 to ask for a court reporter." The committee agrees and has added that suggested language to the form.

The Commission on Access to Justice suggested that additional language be added to the new paragraph on the form about obtaining a record, to include advice about the importance of making a record for an appeal. The committee notes that while there are several reasons for wanting a record of a court hearing or trial, the ability to have a transcript for an appeal is indeed an important reason. While not including all the language proposed by the commission, the committee has added information regarding the advisability of having a record for an appeal to form FW-001-INFO, along with information on how to learn about making a record and obtaining a transcript.

Alternatives considered

The committee considered not recommending statewide rules and forms for the process of requesting a court reporter, instead leaving it to each court to develop its own process, to allow the courts more flexibility, particularly considering the severe shortage of court reporters in many areas. However, advisory committee members from legal service organizations pointed out that without a statewide procedure, it could be difficult for fee waiver recipients—or those that advise them—to determine how to request a court reporter. The committee concluded it should develop the rule and forms to aid self-represented parties.

The committee considered including the request for a court reporter as an integral part of the request that fees be waived, on forms FW-001 and FW-001-GC, rather than developing a separate request form. The committee rejected this alternative because, as noted above, such an alternative is essentially the same thing as a rule requiring that a court reporter be provided in all proceedings in every case with a party who has been granted a fee waiver—a rule which the committee declined to make as part of this proposal.

In addition to considering the alternatives raised in the comments, the committee considered but did not include in the request form a statement contained on several of the local court forms currently in use, that a party to the action who is not a fee waiver recipient will be responsible for

a proportionate share of the cost of the court reporter's attendance at the hearing. While this statement is correct for long cause matters (see Gov. Code, § 68068(a)(2)), the committee concluded it is not information that needs to be included on a form being filed by the fee waiver recipient.

Fiscal and Operational Impacts

The primary fiscal and operational impacts are from the requirement laid out in *Jameson* that court reporters be provided upon request of an indigent party. The impact of this rule setting out a statewide process and providing an optional form for parties to use will not significantly change that impact. The Superior Courts of Orange and San Diego Counties both noted that the time and effort to implement the proposal would be minimal. A system update will be required to configure the new form and modify docket codes in electronic case management systems. Staff who will need to be informed include legal processing specialists, courtroom clerks, court reporter staff, court reporters, management, and judicial officers.

Attachments and Links

1. Cal. Rules of Court, rule 2.956, at pages 12–13
2. Forms FW-001 INFO and FW-020, at pages 14–16
3. Chart of comments, at pages 17–62
4. Attachment A: Copies of Legal Service Providers comments

Rule 2.956 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 2.956. Court reporting services in civil cases

(a) Statutory reference; application

This rule implements and must be applied so as to give effect to ~~is adopted to effectuate the statutory mandate of~~ Government Code sections 68086(a) ~~(b)~~(c) ~~and must be applied so as to give effect to these sections. It applies to trial courts~~.

(b) * * *

(c) Party may procure reporter or request reporter if granted fee waiver

If the services of an official court reporter are not available for a hearing or trial in a civil case, a party may:

(1) Arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, whom the court must appoint unless there is good cause shown to refuse to do so. It is that party's responsibility to pay the reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law; or

(2) If the party has been granted a fee waiver, ~~In compliance with any local court rules,~~ request that the court provide an official reporter for attendance at the proceedings. The court must provide an official reporter if the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial.

(A) The request should be made by filing a *Request for Court Reporter by a Party with a Fee Waiver* (form FW-020). If the requesting party has not been granted a fee waiver, a completed *Request to Waive Court Fees* (form FW-001 or form FW-001-GC in guardianship or conservator cases) must be filed at the same time as the request for court reporter.

(B) The party should file the request 10 calendar days before the proceeding for which a court reporter is desired, or as soon as practicable if the proceeding is set with less than 10-days' notice.

(C) If the party has requested a court reporter for a trial, that request remains in effect if the trial is continued to a later date.

(D) The court reporter's attendance is to be provided at no fee or cost to the fee waiver recipient.

(d)–(e) * * *

INFORMATION SHEET ON WAIVER OF SUPERIOR COURT FEES AND COSTS

If you have been sued or if you wish to sue someone, if you are filing or have received a family law petition, or if you are asking the court to appoint a guardian for a minor or a conservator for an adult or are an appointed guardian or conservator, and if you (or your ward or conservatee) cannot afford to pay court fees and costs, you may not have to pay them in order to go to court. If you (or your ward or conservatee) are getting public benefits, are a low-income person, or do not have enough income to pay for your (or his or her) household's basic needs *and* your court fees, you may ask the court to waive all or part of those fees.

1. To make a request to the court to waive your fees in superior court, complete the *Request to Waive Court Fees* (form FW-001) or, if you are petitioning for the appointment of a guardian or conservator or are an appointed guardian or conservator, complete the *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC). If you qualify, the court will waive all or part of its fees for the following:

   - Filing papers in superior court (other than for an appeal in a case with a value of over $25,000)
   - Making and certifying copies
   - Giving notice and certificates
   - Sheriff's fee to give notice
   - Sending papers to another court department
   - Court fee for telephone hearing
   - Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter (use form FW-020 to ask for a court reporter)
   - Assessment for court investigations under Probate Code section 1513, 1826, or 1851
   - Preparing, certifying, copying, and sending the clerk's transcript on appeal
   - Holding in trust the deposit for a reporter's transcript on appeal under rule 8.833 or 8.834
   - Making a transcript or copy of an official electronic recording under rule 8.835

2. You may ask the court to waive other court fees during your case in superior court as well. To do that, complete a *Request to Waive Additional Court Fees (Superior Court)* (form FW-002) or *Request to Waive Additional Court Fees (Superior Court) (Ward or Conservatee)* (form FW-002-GC). The court will consider waiving fees for items such as the following, or other court services you need for your case:

   - Jury fees and expenses
   - Fees for court-appointed experts
   - Other necessary court fees
   - Fees for a peace officer to testify in court
   - Court-appointed interpreter fees for a witness

3. If you want the Appellate Division of the Superior Court or the Court of Appeal to review an order or judgment against you and you want the court fees waived, ask for and follow the instructions on *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO).

IMPORTANT INFORMATION!

- **You are signing your request under penalty of perjury. Answer truthfully, accurately, and completely.**
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability, or the ability of your ward or conservatee, to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you or your ward or conservatee are granted may be ended if you do not go to court when asked. You or your ward's or conservatee's estate may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **Public benefits programs listed on the application form.** In item 5 on the *Request to Waive Court Fees* (item 8 of the *Request to Waive Court Fees (Ward or Conservatee))*, there is a list of programs from which you (or your ward or conservatee) may be receiving benefits, listed by the abbreviations they are commonly known by. The full names of those programs can be found in Government Code section 68632(a), and are also listed here:
  - Medi-Cal
  - Food Stamps—California Food Assistance Program, CalFresh Program, or SNAP
  - SSP—State Supplemental Payment
  - Supp. Sec. Inc.—Supplemental Security Income (not Social Security)
  - County Relief/Gen. Assist.—County Relief, General Relief (GR), or General Assistance (GA)

- IHSS—In-Home Supportive Services
- CalWORKs—California Work Opportunity and Responsibility to Kids Act
- Tribal TANF—Tribal Temporary Assistance for Needy Families
- CAPI—Cash Assistance Program for Aged, Blind, or Disabled Legal Immigrants

• **If you receive a fee waiver, you must tell the court if there is a change in your finances, or the finances of your ward or conservatee.** You must tell the **court** within five days if those finances improve or if you, or your ward or conservatee, become able to pay court fees or costs during this case. (File *Notice to Court of Improved Financial Situation or Settlement* (form FW-010) or *Notice to Court of Improved Financial Situation or Settlement (Ward or Conservatee)* (form FW-010-GC) with the court.) You may be ordered to repay any amounts that were waived after your eligibility, or the eligibility of your ward or conservatee, came to an end.

• **If you receive a judgment or support order in a family law matter:** You may be ordered to pay all or part of your waived fees and costs if the court finds your circumstances have changed so that you can afford to pay. You will have the opportunity to ask the court for a hearing if the court makes such a decision.

• **If you win your case in the trial court:** In most circumstances the other side will be ordered to pay your waived fees and costs to the court. The court will not enter a satisfaction of judgment until the court is paid. (This does not apply in unlawful detainer cases. Special rules apply in family law cases and in guardianships and conservatorships. (Gov. Code, § 68637(d), (e); Cal. Rules of Court, rule 7.5.).

• **If you settle your civil case for $10,000 or more:** Any trial court-waived fees and costs must first be paid to the court out of the settlement. **The court will have a lien on the settlement in the amount of the waived fees and costs.** The court may refuse to dismiss the case until the lien is satisfied. A request to dismiss the case (use form CIV-110) must have a declaration under penalty of perjury that the waived fees and costs have been paid. Special rules apply to family law cases.

• **The court can collect fees and costs due the court.** If waived fees and costs are ordered paid to the trial court, or if you fail to make the payments over time, the court can start collection proceedings and add a $25 fee plus any additional costs of collection to the other fees and costs owed to the court.

• **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or earlier if a court finds that you or your ward or conservatee are not eligible for a fee waiver. If the case is a guardianship or conservatorship proceeding, see California Rules of Court, rule 7.5(k) for information on the final disposition of that matter.

• **If you are in jail or state prison:** Prisoners may be required to pay the full cost of the filing fee in the trial court but may be allowed to do so over time. See Government Code section 68635.

• **If you want a record made of your court hearing or trial:** There are various reasons why you may want a record of the hearing or trial. Among other reasons, you may want to have a record for an appeal if you disagree with a court order or judgment. If you receive a fee waiver and if the court is not electronically recording the proceeding, you may ask the court to have an official court reporter attend your hearing or trial at no cost to you, so there can be a record of the proceeding. You should use form FW-020 to make the request, which you should file at least 10 calendar days before a scheduled court date, or as soon as you can if the court date is set with less than 10-days' notice.

If you want a written transcript after the hearing or trial, you will need to pay the court reporter separately, or arrange to get the transcript in another way. To learn about ways to do that, talk with the court's Self Help Center or read the information about appeals on the self-help webpages at https://courts.ca.gov/selfhelp-appeals.htm.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **08.12.20** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent: Other Party:	
REQUEST FOR COURT REPORTER BY PARTY WITH FEE WAIVER	CASE NUMBER:

INSTRUCTIONS

If you have been granted, or are applying for, a waiver of court fees and costs, you may use this form to request the services of an official court reporter for a hearing or trial for which a court reporter is not otherwise provided and for which electronic recording is not provided.

- You should make a request 10 calendar days before any court date for which you want a reporter. If the court date is scheduled with less than 10-days' notice, you should file the request as soon as you can.
- If you do not file the request on time, the court may be unable to provide a court reporter on the date requested and may have to reschedule the hearing or trial.
- There will be no fee to you for the court reporter being at the hearing if you have a fee waiver.
- **Note***:* Having a court reporter does not guarantee the right to get a free transcript. To learn more about transcripts and records for an appeal, read the Self Help webpages for civil appeals, particularly courts.ca.gov/designating-record.

If you are eligible, the court will try to schedule a court reporter for the court proceeding but cannot guarantee that one will be available at that time.

REQUEST FOR COURT REPORTER

1. *(Name of party making request)*: _____

   ☐ a. has received a waiver of court fees and costs in this action.

   ☐ b. is filing a *Request to Waive Court Fees* (form FW-001 or FW-001-GC) with this form.

2. An official court reporter is requested for ☐ trial ☐ hearing on (*date*): _____.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME OF ATTORNEY OR PARTY WITHOUT ATTORNEY) (SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
FW-020 [New January 1, 2021]

Cal. Rules of Court, rules 3.55 and 2.956(c)
www.courts.ca.gov

SPR20-07

Civil Practice and Procedure: Court Reporters for Civil Proceedings (Amend Cal. Rules of Court, rule 2.956; approve form FW-020; revise form FW-001- INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
1.	ADZ Law, LLP San Mateo, CA By Raquel Ocon	NI	ADZ Law, LLP is a law firm which specializes in Family Law and Civil Litigation. We represent victims of domestic violence and sexual assault in civil claims against their abusers and third-party defendants. Our law firm appreciates this opportunity to speak on the importance of court reporter accessibility for survivors of abuse and low-income litigants. ADZ Law, LLP was founded in 2015. Since 2015, we have represented many clients and/or victims in the following cases: domestic violence restraining order, dissolution proceeding, pro-bono, civil sexual assault, child custody, and spousal/child support. We strongly believe that all victims should receive resources through the court and access to a court reporter regardless of their economic status. While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FYAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived. Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box	The committee appreciates the comments. The committee notes that to the extent the comment extolls the value of court reporters for all proceedings, the committee agrees that the ideal situation would be to provide court reporters or electronic recording in all cases. This proposal, however, is limited to a new process for indigent parties' requesting a court reporter when electronic recording is not available, and for court's providing a reporter in response to such a request. To the extent the comment asks for a rule that court reporters be provided automatically for all proceedings in all civil actions with indigent parties, that is outside the scope of this proposal and will be addressed by appropriate council advisory bodies as time and resources permit. Similarly, to the extent the comment asks for allowing a fee waiver to simply check a box on the fee waiver application to indicate that the party wants a court reporter in all proceedings, that is essentially the same as requiring courts to provide court reporters automatically for all proceedings in all civil actions with fee waiver recipients, which is outside the scope of this proposal.

			should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and domestic violence restraining order hearings are usually completed in less than a half-day hearing. <u>Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.</u> The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse. Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. Without a verbatim record of the unlawful detainer	As noted above, the committee agrees with the importance of access to verbatim records.

			proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and toremain housed. Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States. Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness. California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate. Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." *(Jameson, supra,* 5 Cal.5th at p. 608.)	

			<u>Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.</u> For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial. However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following: The party should file the request as soon as	The committee acknowledges the commenters support for new subdivision (c)(2). The committee has considered this comment but declines to follow the suggestion. The committee notes that the rule's 10-day timeline for filing a request for a court reporter is advisory rather than mandatory. The 10-days' advance notice is to give the court sufficient time to arrange for the presence of a court reporter on the scheduled hearing date, which is increasingly difficult to do with the shortage of court reporters, a shortage which has intensified with the COVID-19 pandemic. Making a request outside the desired time frame will not preclude an indigent party from obtaining a court reporter, although it may mean that a hearing will have to be continued in order to do so. That is noted on the request form.

			practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder. <u>Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.</u> Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice. Below, we answer each of the Committee's questions, with the above background in mind. **1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?** While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can - and we believe should - require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as	As noted above, the council is aware of this issue and will continue to consider it as time and resources allow. See first part of response above.

			opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter - as opposed to a mere calendaring or administrative matter that does not - would be a better use of court resources resulting in better access to justice for low-income litigants. Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self- represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter-and at the right time, and on a separate form-only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson.* It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson,* to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in	

			California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. *(Jameson, supra,* 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers. We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. For the domestic violence survivors and clients we work with, we attend their court hearings, depositions, short and long cause trials. It is extremely crucial to have a court reporter available and present during hearings, depositions, and trials. The court should be able to provide a court reporter when requested. **2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?** The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW- 020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either	The committee appreciates the comment and has made modified the information sheet in light of this comment.

			superior court fees or appellate court fees. This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④"What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and " Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter ' s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥. In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low- income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.	The court reporters fees are included among the fees to be waived if the request is granted, so need not be listed separately. As noted above, to the extent this comment is intended to have a request to waive court reporters fees be the equivalent of a request to provide a court reporter, that is essentially a request to automatically provide a court reporter in every hearing in every civil case in which a fee waiver recipient is a party, and is outside the scope of this proposal.
2.	Asian Americans Advancing Justice– Asian Law Caucus San Francisco, CA By Tiffany L. Hickey, Esq. Housing Rights Program	NI	Asian Americans Advancing Justice – Asian Law Caucus (AAAJ-ALC) submits this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta,* 5 Cal.5th 594 (2018). Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian Pacific	The committee appreciates this comment, which raises essentially all the points raised in the ADZ Law comment. See responses to the comment 1, by ADZ Law above. The committee also adds a specific response below to the one different point raised by this commenter.

			American communities. We focus on housing rights, immigration and immigrants' rights, labor and employment issues, student advocacy (ASPIRE), civil rights and hate violence, national security, and criminal justice reform. As a founding affiliate of Asian Americans Advancing Justice, we also help to set national policies in affirmative action, voting rights, Census, and language rights. Our housing advocacy focuses on gateway communities for new immigrants, such as San Francisco Chinatown, where large numbers of tenants and seniors are in danger of displacement due to gentrification and other economic pressures. Our clients are low-income, often live with disabilities, and have limited English proficiency. We believe that the proposed rules implementing *Jameson* will have a particularly significant impact on our clients facing eviction through unlawful detainer litigation. While we appreciate that the proposals address concerns raised by legal services organizations on the prior round of *Jameson* implementation measures, we strongly believe that the most efficient and effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings where a litigant has been granted a fee waiver. If not, the second best form of implementation would be to amend the existing fee waiver form to include a check box indicating that they are requesting a court reporter. Creating an additional form, while still preferable to having no state-wide system at all, increases the administrative burden for courts, gives discretion to courts to deny "untimely" requests, and creates an additional burden for low-income litigants who	

			often lack access to legal representation and do not know about the importance of a verbatim record. 1. The Court System Cannot Provide Meaningful Access to Justice for Low- Income Litigants Without Providing Verbatim Records. In *Jameson,* the California Supreme Court recognized "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.) Verbatim records are especially critical for our clients in unlawful detainer proceedings, where an unfavorable ruling means the loss of their home, community, and support network. Many end up homeless or are forced to move far from San Francisco because they cannot afford a market-rate unit. Even though San Francisco passed Tenant Right to Counsel, there are still not enough lawyers to represent every tenant facing eviction. Moreover, 90% of tenants facing the loss of their home across the state are unrepresented while almost all landlords have representation. Without a verbatim record of unlawful detainer proceedings, tenants are unable to create a record of their proceedings for appeal and such appeal is likely to be denied or dismissed without such a record. (*See Jameson*, *supra*, 5 Cal.5th at p. 608.) Lack of a record also makes it more difficult to seek other post judgment relief from eviction. 2. Proposed Changes to Rule of Court 2.956 Should Fully Protect Tenants	

			We support the proposal to amend Rule of Court 2.956(c)(2) to clearly establish that when a fee-waiver recipient requests a court reporter one must be provided by the court for free, and for the duration of the trial. However, we are concerned that the proposed 10-day timeline to request a court reporter may bar indigent litigants, particularly defendants in unlawful detainer matters, from accessing this vital service. Most tenants facing eviction are unrepresented or do not find legal representation until shortly before their trial. They are unlikely to know that they should request a court reporter without advice of counsel and will be disadvantaged due this strict 10-day timeline. Moreover, some motions in an unlawful detainer proceeding only require 5-day notice to the opposing party, such as a motion for summary judgment. It would then be impossible for any indigent litigant to comply with the proposed rule and obtain a record of the proceeding. Therefore, we recommend proposed rule 2956(c)(2)(B) should be amended to the following: *The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording, considering factors such as the amount of notice received, a litigant's disability, or other factors that may have affected the party's ability to timely make the request.* 3. A Court Reporter or Electronic Recording Should be Automatically Provided to Fee Waiver Recipients.	See responses to the comment above as to why the committee declines to follow this suggestion and instead will recommend the rule as proposed, to encourage parties to request a court reporter 10 days before a hearing. In addition, the committee concluded that there was no reason to provide factors for a court to consider in continuing a proceeding to provide a court reporter, because the court is *required* under *Jameson* to provide a court reporter if one is requested by an indigent party and no electronic recording is available. If that means that a continuance is needed to provide the court reporter, the court will have to provide such a continuance if the party desires it—the only factor to be considered is the party's request.

			Finally, while we commend that the Council's effort to seek more information about the fiscal effects of automatically providing court reporters for fee waiver recipients, the right to a verbatim record, without a request, should not be denied during this period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form or why a record is important, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms while facing short deadlines pursuant to the unlawful detainer process and the potential loss of their home. Below, we answer each of the Committee's questions, with the previous comments and concerns as background. **1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?** While this proposal is more consistent than the current individual court processes, it does not adequately ensure indigent litigants will have access to the verbatim records to which they are entitled. The proposed process also adds increased burden to the courts and self-help centers by creating another form and procedure. Instead, we believe the Council should require a court reporter, or at least an electronic recording in all courtrooms where a fee waiver recipient is a party. Moreover, the committee points out in the Executive Summary and Origin that this Council can	

			approve such a slight expansion of the *Jameson* holding as a matter of policy and we believe that the Council should take this action. (Invitation to Comment SPR20-07, p. 2) As cited above, the great majority of tenants facing eviction in California defend their homes without the benefit of legal representation. They are forced to navigate the court system and attempt to understand the rules and procedures on an expedited timeline alone. This can be a daunting enough task for someone who speaks English or has experience with the court system. However, the communities that AAAJ-ALC serves also often have limited English proficiency and come from cultures with vastly different court systems. Many have escaped serious abuse and suffered trauma or live with other disabilities that make navigating the court system even more difficult. For the majority who go unrepresented, the self-help centers in many counties are overwhelmed with the volume of need and cannot assist everyone. Imposing additional burdens on these individuals to 1) affirmatively request a court reporter, 2) at the right time, and 3) on a third and separate form specific to indigent litigants decreases the likelihood that they will be able to exercise their rights as outlined by the Supreme Court in *Jameson*. The proposed process adds yet another procedural hurdle for low-income litigants to scale when they are already in unfamiliar territory and the stakes are high – such as losing their home. We believe that many of these individuals will be unable to exercise their right to a record at all, resulting in the opposite result prescribed by the Supreme Court, "creat[ing] the type of restriction of meaningful access to the civil judicial process that the relevant California in	

			forma pauperis precedents and legislative policy render impermissible." (*Jameson*, *supra*, 5 Cal.5th at p. 598.) California can provide truly meaningful access to the courts by providing verbatim records to all litigants with fee waivers. Superior Courts' responses to a recent public records inquiry reveal that this approach is even feasible for courts in rural counties. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter. Mono County reports that it provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. Providing a mechanism for all indigent litigants to obtain a verbatim record of proceedings remains the most effective and efficient way to implement *Jameson.* **2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?** Adding this cross-reference does not make the list more confusing. However, it would be more clear to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." The use of the term "see" is legalese but does not make it clear to a lay person that this is the form to complete. As discussed above, we believe that this separate form will	

			make it more difficult for indigent litigants to exercise their right to a verbatim record and are concerned that many pro se litigants do not read the instruction sheet when filling out the fee waiver forms. Therefore, it is much simpler to allow litigants to see the option of the court reporter on the fee waiver application itself in the form of a check-box like the existing boxes for waiving superior court fees or appellate court fees. This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥. In conclusion, we believe the Council should create a process with fewer rather than more barriers for low-income litigants to exercise their right to verbatim recordings. This would better fulfill the spirit of the *Jameson* decision and the long line of access-to-justice cases that it follows. This is key to ensuring all low-income	

			Californians have access to justice, and for my clients, have a meaningful opportunity to defend their homes. Thank you for your time and consideration.	
3.	Bay Area Legal Aid San Francisco, CA By Ariella Hyman Director of Program Advocacy	NI	*While BayLegal commends the Judicial Council's steps to adopt a uniform state-wide implementation of *Jameson*, we strongly urge that a court reporter or electronic record be made available in all proceedings involving indigent litigants as a matter of right. This change would follow the California Supreme Court's sentiment in *Jameson* that litigants of limited means must have access to verbatim records to have meaningful access to the judicial system. In the alternative, we support adding a checkbox on the existing fee waiver form to permanently request a court reporter, so long as courts develop a plan to administratively identify cases where a *Jameson* request was made at the filing of FW-001. We are concerned the Judicial Council's proposed changes, as they currently stand, create additional burdens for low-income litigants and may create more administrative burden for the courts. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	The committee appreciates this comment, which is essentially the same as comment 1. See responses to comment 1.
4.	California Commission on Access to Justice Oakland, CA By Judge Mark A. Juhas, Chair	AM	The California Commission on Access to Justice appreciates the opportunity to comment on the Judicial Council of California's proposed amendment adding Rule 2.956 to the Rules of Court and revised form FW-001-INFO and form FW-020. The Access Commission supports Rule 2.956 and proposes additions to the forms to increase indigent litigants' understanding that they can make a request for a court reporter to be provided free of charge, why a court reporter is needed, and how to learn more about obtaining a transcript.	The committee appreciates the comments.

			In addition, the Access Commission supports future steps including providing a court reporter (or other means of generating an official record), without request, in appropriate circumstances as a matter of policy as well as further investigation of other ways of providing low-cost or free access to verbatim transcripts. For 23 years, the Access Commission has worked to advance access to justice for all Californians using broad-based strategies informed by diverse stakeholders. The Access Commission proposes innovative solutions and oversees efforts to increase resources and improve methods of helping the poor, those of moderate-income, and others struggling to address legal problems and vindicate legal rights. The Amicus Curiae Committee of the Access Commission) submitted a brief as amicus curiae in *Jameson v. Desta* (2018) 5 Cal.5th 594, supporting the recognition of a right of litigants to obtain a transcript of civil proceeding without imposition of a cost the litigant could not afford. The Access Commission supports full implementation of the *Jameson* decision, and continued and increased efforts by the courts to preserve a record of trial-court proceedings, and to generate a verbatim transcript of those proceedings for fee waiver recipients. **Support for Proposed Rule 2.956:** The proposed rule is consistent with the Supreme Court's holding in *Jameson.* (*See* 5 Cal.5th at 693.) Providing for the presence of a court reporter at the litigant's request without requiring payment from indigent litigants is a significant improvement. We note that the Judicial Council is studying proposals to make the provision of court reporters automatic in certain circumstances. The Access Commission supports this potential expansion as consistent with the public policy of facilitating equal access to the courts.	The committee acknowledges the commenter's support for the new rule for this process.

			Comments on Form FW-001-INFO and Form FW-020: Self-represented indigent litigants may not understand that they have a right to a court reporter or why they should exercise that right. As long as proceedings are not transcribed or recorded unless a litigant makes a request, fairness and due process require, at a minimum, that litigants with fee waivers be informed that they may make a request for a court reporter to be provided free of charge. They should also be told why they should make that request — because a transcript is most often essential for an effective appeal — and they should be told that they may need to take additional steps to obtain the transcript that the reporter creates. There is a statement at the bottom of page 2 of FW-001-INFO that: The fee for the court reporter being at your hearing will be waived (there will be no cost to you), <u>but note that having a court reporter does not guarantee the right to get a free transcript.</u> Similar language is in the FW-020 Form. These statements leave readers uncertain about what they may be required to do to obtain a transcript and how much it may cost. We recognize that no simple description can be given, under current procedures, of how litigants can obtain a	The committee notes that there are several reasons for wanting a record of a court hearing or trial, as outlined in the comments received from many commenters on this proposal. The ability to have a transcript for an appeal is just one of those reasons. However the committee agrees that it is an important reason, and so has added information regarding the advisability of having a record for an appeal to form FW-001-INFO. The committee decided not to add this suggested text to the request form, because of concern that the form would become too busy and difficult to understand.

			transcript if they cannot afford to pay the reporter's fee. Options to obtain or borrow a transcript exist, but differ for different circumstances. However, the forms should at least inform the reader about where to seek more information. We therefore suggest reducing the reading level of the explanation so that it is more understandable by indigent parties with limited literacy as follows: The court reporter's fee for being at your hearing will be waived. (You will not pay for the court reporter to attend the hearing). To get the transcript for an appeal, you may need to pay the court reporter's fee or get the transcript in another way. To learn about the ways to do that, talk with the staff of the court's Self Help Center or read the information at https://www.courts.ca.gov/12666.htm?rdeLocaleAttr. Form FW-001-INFO should include the following explanatory language, perhaps as an addition after the phrase "**If you want a record made of your court hearing or trial:**" a statement such as: "A party who wishes to appeal an order may need to provide a court reporter's transcript to prove to the court of appeal why the party believes the order was wrong—the law may require the court to deny an appeal if there is no transcript. The first step is that a court reporter must record the court hearing or trial." The same explanatory statement should also be added to form FW-020. We suggest another wording change to avoid confusion. Form FW-020 states that "you may use this form to request the services of an official court reporter for a hearing or trial for which a court reporter is not normally available. . . ." The underlined phrase is confusing and might be misunderstood as meaning that a request for a court reporter is not needed	The committee agrees and has added a sentence to both the request form and the information sheet as to how the party can obtain information about obtaining transcripts from either a court's self-help center or from the council's self-help webpages. As noted above, the form has been modified in light of this comment. Although the committee does not agree with the proposed language in full, the committee has modified the information form in light of this comment to reflect the importance of a record for purposes of an appeal. The committee has modified the language on form FW-020 in light of this comment, to state "not otherwise available" rather than "not normally available".

			for certain hearings where court reporters are typical and recommended, or, conversely, that the form is limited to certain proceedings that are not normally transcribed. Further, the language could be interpreted to mean the right to a free court reporter exists for proceedings, such as conferences regarding scheduling or settlement, in which a court reporter often does not participate because the proceeding has no bearing on an appeal. We believe that would be beyond the holding of *Jameson* and could impose unnecessary costs on the courts. Please consider deleting the underlined phrase. According to our suggestions, the relevant portion of FW-001-INFO would read: A party who wishes to appeal an order may need to provide a court reporter's transcript to prove to the court of appeal why the party believes the order was wrong—the law may require the court to deny an appeal if there is no transcript. The first step is that a court reporter must record the court hearing or trial. If you receive a fee waiver and if the court is not going to make an electronic recording of the hearing or trial, you may ask the court to have an official court reporter attend your hearing or trial at no cost to you. You should use form FW-020 to make the request, which you should file at least 10 calendar days before a scheduled court date, or as soon as you can if the court date is set with less than 10-days' notice. The court reporter's fee for being at your hearing will be waived. (You will not pay for the court reporter to attend the hearing). To get the transcript for an appeal, you may need, as a second step, to pay the court reporter's fee for the transcript or get it in another way. To learn about the ways to get a transcript for appeal, talk with the staff of the court's	See responses above to the suggested language changes.

			Self Help Center or read the information at https://www.courts.ca.gov/12666.htm?rdeLocaleAttr. According to our suggestions, the initial paragraph of FW-020 would read: A party who wishes to appeal an order may need to provide a court reporter's transcript to prove to the court of appeal why the party believes the order was wrong—the law may require the court to deny an appeal if there is no transcript. The first step is that a court reporter must record the court hearing or trial. If you have been granted a waiver of court fees and costs, and if the court is not going to make an electronic recording of the hearing or trial, you may use this form to request the services of an official court reporter for a hearing or trial for which a court reporter is not normally available and for which the court will not make an electronic recording. The final bullet point of FW-020 would read: Note: To get the transcript for an appeal, you may need to pay the court reporter's fee for the transcript or get it in another way. To learn about the ways to get a transcript for appeal, talk with the staff of the court's Self Help Center or read the information at https://www.courts.ca.gov/12666.htm?rdeLocaleAttr. **Response to a specific question:** You have asked whether it is helpful, or too confusing, to include in form FW-001-INFO the cross- reference to the new court reporter request form, FW-020. We think that cross-reference is helpful and does not make FW-001-INFO too confusing.	See responses above to the suggested language changes. The committee agrees, although the language has been modified somewhat in light of other comments.

			Suggestions for the future: The presence of a court reporter is not sufficient to vindicate the interests addressed in *Jameson*. Litigants also need to be able to obtain the official record, even if they are unable to pay for it. We recognize that this goal requires more than a change to the Rules of Court, and is beyond the scope of the current proposal. The Access Commission would support future measures as part of the Judicial Council's legislative agenda, such authorizing the use of electronic recordings of proceedings as the official record, increasing funding for the a Transcript Reimbursement Fund established by Business & Professions Code Section 8030.2, or other means for indigent litigants to actually obtain the official record, which is the unstated policy driver beneath the *Jameson* decision.	The committee acknowledges this suggestion and the fact that it is beyond the scope of this proposal.
5.	California Lawyers Association--Committee on Administration of Justice of the Litigation Section San Francisco, CA By Saul Bercovitch Director of Governmental Affairs Christopher Fredrich Committee on Administration of Justice	A	The Committee on Administration of Justice (CAJ) agrees with this proposal. CAJ notes that proposed form FW-020 is set up to be signed by a party only, and recommends that the form be modified to account for situations where a party with a fee waiver is also represented by an attorney.	The committee agrees with the suggestion and the form has been revised to provide for signatures of attorneys as well as parties.
6.	California Lawyers Association--Family Law Section of the California Lawyers Association (FLEXCOM) San Francisco, CA	A	FLEXCOM agrees with this proposal. As to the specific request for comment, on form FW-001-INFO, it might be helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees.	The committee agrees and the cross-reference will remain in the form.

	By Justin M. O'Connell FLEXCOM Legislation Chair Saul Bercovitch Director of Governmental Affairs			
7.	California Partnership to End Domestic Violence Sacramento, CA By Krista Niemczyk Public Policy Manager	NI	*The California Partnership to End Domestic Violence (the Partnership) greatly appreciates the opportunity to comment on the above listed rules, and forms proposed, each of which is discussed below: The Partnership is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups. With offices in Sacramento, the Partnership's diverse membership spans the entire state. Through our public policy, communications and capacity-building efforts, we align prevention and intervention strategies to advance social change. The Partnership believes that by sharing expertise, advocates and policy-makers can end domestic violence. Working at the state and national levels for nearly 40 years, the Partnership has a long track record of successfully passing over 200 pieces of legislation addressing domestic violence. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.
8.	Centro Legal de la Raza Oakland, CA By Monique Berlanga (Farris) Directing Attorney, Tenants' Rights Practice	NI	*Centro Legal de la Raza submits this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta,* 5 Cal.5th 594 (2018). Founded in 1969, Centro Legal de la Raza is a comprehensive legal services agency protecting	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

			and advancing the rights of low-income communities through bilingual legal representation, education, and advocacy for thousands of individuals and families each year throughout Northern California. Centro Legal de la Raza's Tenants' Rights Practice provides free legal services to low-income tenants in the Bay Area, including legal representation for tenants in unlawful detainer proceedings. In 2019, Centro Legal de la Raza's Tenants' Rights Program provided legal services to 1,724 low-income tenants in Alameda County. Our role as a direct legal services provider uniquely positions us to assess the impact of the Judicial Council's proposed changes to the court rules, particularly as they will apply in unlawful detainer litigation. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	
9.	Child Support Directors Association Sacramento, CA By Ronald Ladage Chair, CSDA Judicial Council Forms Committee Director/Chief Attorney, El Dorado County DCSS	NI	The Child Support Directors Association Judicial Council Forms Committee (Committee) has reviewed the proposal identified above. The Committee's feedback is set forth below. **SPR20-07 Civil Procedure and Procedure: Court Reporters for Civil Proceedings** By law, in California IV-D litigants are all exempted from paying court fees in IV-D matters. Unlike other civil matters, no fee waivers are required to be filed in IV-D cases. The proposed statewide process does not take into account IV-D cases in which fee waivers are not required. The proposed statewide process assumes that a fee waiver has been filed and granted by the court. It would be inefficient and unnecessarily time consuming for these parties to file a separate request for a fee waiver from the court for	Proposed form FW-020 has been revised to provide that an indigent party who has not previously received a fee waiver may request one at the same time as making the request for a court reporter. The *Jameson* decision provides that a court reporter be provided for a fee waiver recipient, and evaluation of the fee waiver request is the

			nonexistent fees. The proposed form to request a court reporter states that the party already has a fee waiver. The inherent requirements of the proposed process and form do not provide an efficient avenue for IV-D litigants to request a court reporter. Under this process, litigants would be required to file an unnecessary separate fee waiver in order to use the proposed Request For Court Reporter By A Party With A Fee Waiver form. Aside from the obvious inefficiency, this process will cause confusion and unnecessary work for litigants and court staff. Furthermore, an unsophisticated litigant may not have sufficient time or understanding to request a needless fee waiver in addition to a separate request for a court reporter. This could result in a burden on court facilitators, court clerk staff and cause unnecessary continuances. Without accounting for IV-D cases, some pro per litigants may not understand that they have a right to a court reporter and thus, the proposed process may limit their access to justice. In the short term, along with the change we propose to the language in Rule of Court 2.956 (see below), we suggest the proposed Request For Court Reporter By A Party With A Fee Waiver form be modified to allow for the concurrent filing of the Request To Waive Court Fees form. The long-term solution for this issue would be a change in statutory law that would allow electronic recording in all IV-D court hearings. The Committee respectfully request the Judicial Council explore the long-term option of statutory change. **Rule 2.956 –** The Committee recommends modifying the language as follows:	method by which courts generally determine indigency. The committee agrees with the short-term proposal and has so modified the form. The long-term solution of allowing electronic recording in Title IV-D court hearings is outside the scope of this proposal and the purview of this advisory committee, and is better raised with the Legislature. The issue will be referred to the Family and Juvenile Law Advisory Committee for consideration if appropriate for council recommendation, as time and resources allow.

			(c) (2) *A party may*, *i*n compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings. *I*f the party has been granted a fee waiver and ~~if~~ the court is not electronically recording the hearing or trial, *the court must provide the official reporter.* Additionally, we suggest the proposed form's caption box be modified to include "Other Parent". (See attached FW-020 draft example) Our proposed changes to both the Rule of Court and the form will provide for a greater efficiency and enhanced access to justice for litigants. Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.	The committee agrees with the suggestion to break the one long sentence at the beginning of subdivision (c)(2) into two sentences. "Other Party" has been added to the caption box in light of this comment, which can be used by parents and other third parties.
10.	Department of Child Support Services Sacramento, CA Shannon Richards, Attorney III	NI	The California Department of Child Support Services (department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the rules and forms with potential impacts to the department and its stakeholders follows. As written, the proposal does provide a statewide process for parties with fee waivers to apply for a court reporter. Although the department welcomes a unified process for all persons involved in litigation, and applauds the effort to create one, it is incumbent upon us to state that the proposed process does not assist in our cases in IV-D courts and the population we serve. Concerns arise with both the forms and the language of the proposed rule 2.956 which include:	The committee appreciates the comment.

			1. The forms presume a fee waiver has already been filed. The vast majority of IV-D case participants do not file fee waivers, so the forms are worded in a way that excludes them from using the form without first filing a fee waiver, which they do not need in a IV-D case. 2. In the early stages of a IV-D action, the parties are typically the local child support agency and the noncustodial parent. The custodial parent is not joined until after a Judgment is filed. [Family Code Section 17404(e)(1)] It appears that no process is available to these unjoined parents to request court reporters, since they aren't yet parties to a case in which to file a fee waiver or a request for a hearing, including one of the most fundamental hearings -- the motion for judgment on paternity. The proposed process leaves these parents without a methodology to obtain court reporters. 3. The modified language of proposed Rule 2.956 is a bit awkward at subdivision (c)(2). The department therefore proposes a slight change in the wording as follows: Instead of: "If the party has been granted a fee waiver, in compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings, whom the court must provide if the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial." Proposed Revision: *A party may, in compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings. If the party has been granted a fee waiver and the court is not electronically*	The form has been revised in light of this comment to allow a party asking for a court reporter to file a fee waiver request along with the court reporter request. It is outside the scope of this proposal to provide court reporters for non-parties. The issue will be referred to the Family and Juvenile Law Advisory Committee for consideration if appropriate for council recommendation, as time and resources allow. The committee agrees with the suggestion to break the one long sentence at the beginning of subdivision (c)(2) into two sentences.

			recording the hearing or trial the court must provide the official reporter. Again, this rule provides that a "party" may request a court reporter. As stated above, there are many unjoined persons involved in IV-D actions who may wish to obtain a court reporter but would be unable to do so under the present proposal. A large percentage of the IV-D courts are persons who are on state aid and would likely qualify for a fee waiver, but participants in IV-D courts do not typically file fee waivers. Parties to IV-D actions file their responses to these actions as well as motions solely to modify child support without a fee. [Government Code section 70672 allows local child support agencies to file actions without fees.] The confusion that may be created by providing fee waiver applications to persons in cases where fees are not required creates a bigger concern than a statewide process -- that the IV-D population will go unserved due to the confusion. The burden then, will fall to local child support agencies, family law facilitators and the courts to explain to the IV-D participants why they should participate, creating a labor intensive process where one previously did not exist. Absent an effort to educate the IV-D population many who may qualify for fee waivers and court reporters will likely not receive the services they are entitled to, as they will not file for fee waivers (as is done in the beginning of other types of civil cases who have filing fees). Ultimately, these litigants may attend hearings not understanding why they are not given court reporters or will have to hustle just ahead of a hearing, creating a challenging scheduling issue for courts, litigants, and reporters.	The suggestion of a separate process for Title IV-D proceedings or for allowing electronic recording in Title IV-D court hearings is outside the scope of this proposal and the purview of this advisory committee. As noted above, the issue will be referred to the Family and Juvenile Law Advisory Committee for consideration if appropriate for council recommendation, as time and resources allow.

			The department suggests the Council resolve these issues in the immediate future by having a separate process for those involved in courtroom activity in IV-D courts. This too, has its challenges and would create the labor intensive educational process outlined above. Given these challenges, the department believes it is time to revisit electronic reporting in IV-D cases. The long term solution may be provided by creating a rule of court and/or seeking statutory change to allow electronic recording in all IV-D courts. By doing so, IV-D courts will automatically be exempted from the proposed statewide process to apply for court reporters, there would be no confusion for IV-D litigants and both courts and local child support agencies would avoid the labor intensive process to educate IV-D litigants on why a fee waiver may be necessary in cases where no filing fees are taken. In addition, this option will free up the limited number of certified court reporters for other criminal and civil actions, while maintaining work for court reporters when transcripts are needed. We encourage the Judicial Council and its committees to explore this option for the benefit of the IV-D participants. Thank you for the opportunity to provide input, express our ideas, experiences, and concerns with respect to the proposed rules and form changes.	
11.	Desert Sanctuary Inc. Barstow CA By Peggi Fries, Executive Director	NI	*Desert Sanctuary Inc. is a domestic violence shelter program in the small, rural community of Barstow California. We have been providing shelter and all related services to victims of domestic violence and their children since 1982. We have very little access to attorneys, legal assistance or	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

			advice. The FVAP came into our lives a few years ago when the California Partnership to End Domestic Violence and Cal-OES had them provide a training to the field. Since that time, they have responded to each and every question we have asked. They have provided assistance to clients who felt completely unheard by the courts. They have helped us to understand how to respond to ICE, CFS, Law Enforcement and property managers/owners. Our ability to provide for our clients and to protect our agency has been improved exponentially due to the valuable relationship we have formed. We greatly appreciate the opportunity to support FVAP as they seek to further define the importance of the above referenced rules and forms proposed, each of which are discussed below. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	
12.	Eviction Defense Collaborative San Francisco, CA By Martina I. Cuculllu Lim Executive Director	NI	*The Eviction Defense Collaborative, San Francisco's Lead Agency for implementing its Right to Counsel for tenants in eviction cases law, greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below. As the lead agency implementing San Francisco's Right to Counsel law we assist tenants with pro per first responses while their cases are being referred to lawyers at one of the nine legal services agencies for full scope legal representation (including our own agency). Unfortunately, the funding for Right to Counsel has still not been enough to cover all litigants and about 1/3 of tenants have to proceed through their eviction cases without an attorney. This makes the need for the requesting of court reporters or electronic recordings for fee waiver clients to be something easy and simple.	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

			*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	
13.	Family Assistance Program Victorville, CA By Darryl Evey, Executive Director	NI	*Family Assistance Program is fortunate to have the opportunity to comment on the above-listed rules, and forms proposed, each of which is discussed below. Family Assistance Program was founded in 1985, formerly known as High Desert Domestic Violence Program, and has been providing shelter and advocacy services to individuals experiencing domestic violence. Through the years, the agency has grown. We now operate shelters, transitional housing, and have offices in Victorville, Hesperia, San Bernardino, Redlands, and Fontana. Family Assistance Program offers various classes (parenting, anger management, substance abuse, and domestic violence support groups), legal advocacy services, and a variety of other services. Our agency assists clients with initial requests for domestic violence restraining orders, provides court support and continuous support for our clients throughout the restraining order and/or child custody process. It is our goal and continued effort to build stronger families by offering services that can benefit all community members. Our agency will continue growing to meet the needs of the community as they arise. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.
14.	Family Violence Appellate Project	NI	*Family Violence Appellate Project (FVAP) greatly appreciates the opportunity to comment on the above-listed	The committee appreciates this comment, which contains all the points raised in the

	Oakland CA By Jennafer Dorfman Wagner, Esq. Director of Programs Joined by: Haven Women's Center of Stanislaus, CA MAITRI, Santa Clara, CA Monarch Services, Santa Cruz, CA and Shalom Bayit. Berkeley, CA		rules, and forms proposed, each of which is discussed below. We are joined in these comments by Haven Women's Center of Stanislaus, MAITRI, Monarch Services, and Shalom Bayit. (*Statements of Interest below.) FVAP was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Since its inception, FVAP has handled over 2,000 requests for assistance; has represented appellants and respondents in 51 civil appeals and writs; and has filed amicus briefs in 19 cases that raised significant issues of statewide concern for domestic violence survivors. These cases have, to date, resulted in 40 published decisions interpreting the Domestic Violence Prevention Act and other California statutes, including *Jameson v. Desta*, the 2018 Supreme Court decision that prompted these proposed rule changes. (5 Cal.5th 594.) *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	ADZ Law comment. See the committee's responses to comment 1.
15.	Harriett Buhai Center for Family Law Los Angeles, CA By Rebecca L. Fischer Staff Attorney	AM	Request for Specific Comments: • Does the proposal appropriately address the stated process? In general, yes. There is a slight inconsistency from the proposed rule to the proposed form in language. The proposed rule in (c)(2)(B) provides "The party *should* file the request [for a court reporter] 10 calendar days before the proceeding for which a	The committee appreciates the comment. The form has been revised to reflect the language of the rule, replacing the word "must" with "should".

			court reporter is desired, or as soon as practicable if the proceeding is set with less than 10-days' notice" (emphasis added) and the proposed revision to the information sheet is similar. However, but the proposed form says in the first bullet point, "You *must* make a request 10 calendar days before any court date for which you want a reporter. If the court date is scheduled with less than 10-days notice, you should file the request as soon as you can." The language should be consistent from rule to form. • On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? No comment	No response required.
16.	Legal Aid Association of California Oakland, CA By Salena Copeland Executive Director Community Legal Aid SoCal Kate Marr ,Executive Director Mental Health Advocacy Services Jenny Farrell, Executive Director The Public Interest Law Project Michael Rawson, Director	NI	* The Legal Aid Association of California (LAAC) greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below. LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

	Legal Aid Foundation of Los Angeles Barbara J. Schultz Director of Litigation & Policy Public Counsel Los Angeles, CA Cindy Pánuco, Vice President & Chief Program Officer San Diego Volunteer Lawyer Program Amy Fitzpatrick Chief Executive Officer Coalition of California Welfare Rights Organizations Kevin Aslanian, Executive Director California Advocates for Nursing Home Reform Patricia McGinnis, Executive Director California Rural Legal Assistance Ilene Jacobs Director of Litigation, Advocacy & Training Los Angeles Center for Law and Justice Jimena Vasquez, Directing Attorney		*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	

	California Women's Law Center Amy Poyer, Senior Staff Attorney			
17.	Orange County Bar Association By Scott B. Garner, President	A	The Judicial Council also asked for specific comments related to the following: **Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?** Yes, however, once a litigant has been approved a fee waiver request there does not seem to be a need to require the fee waiver recipient to further request a court reporter waiver. Due to the nature of being an unrepresented litigant it would seem most appropriate to place the onus on the court to apprise the litigant of their right to have a court reporter at no expense to them. **On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?** It is helpful.	The committee acknowledges the commenter's agreement with the proposal. This point addresses issues outside the scope of this particular proposal. See response to comment 1. The committee agrees and has retained the cross-reference.
18.	Public Law Center Santa Ana, CA By Leigh E. Ferrin Director of Litigation and Pro Bono	AM	PLC is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, veterans and health law. Additionally, PLC provides legal assistance to non-profits and low-income entrepreneurs. PLC regularly provides guidance to self-represented litigants in Superior	The committee appreciates this comment, which contains the points raised in the ADZ Law comment. See the committee's responses to comment 1.

			Court, as well as representing individuals who are eligible for a fee waiver. As a non-profit organization with particular funding concerns at this time, PLC does not have a budget to pay for court reporters or electronic records in all its cases. PLC was immensely grateful for the *Jameson* opinion. PLC has appealed from limited civil cases in Superior Court where the litigant had a fee waiver pre-*Jameson*. The judicial officer in one of those cases made inappropriate comments during the hearing, which we were unable to raise on appeal because we had to proceed with a settled statement, rather than with an official transcript. Based on this one case alone (as well as many others where we have faced similar challenges), we strongly support making it as simple as possible for litigants with a fee waiver to access court reporters/electronic reporting. From working with self-represented litigants, PLC also encourages the judicial council to consider defaulting to the provision of a court reporter/electronic recording, rather than requiring the litigant to affirmatively request it. It would be incredibly uncommon for a self-represented litigant to understand the consequences of not having a court reporter or electronic recording, which really only come when/if the litigant loses the case. PLC appreciates the opportunity to comment and looks forward to identifying a way to move forward that addresses the needs of the most vulnerable litigants and ensures access to justice.	
19.	Superior Court of Los Angeles County	AM	The proposed new section of the FW-001 reads:	In light of this and other comments, the language in that section has been modified.

	By Bryan Borys		"The fee for the court reporter being at your hearing will be waived (there will be no cost to you), but note that having a court reporter does not guarantee the right to get a free transcript." In contrast, proposed new form FW-020 reads, in the Instructions, "Note: Having a court reporter may not guarantee the right to get a transcript." To make the two passages consistent, simpler and more appropriate, we propose the following language in both places: "The fee for the court reporter being at your hearing will be waived by the court (there will be no cost to you) but note that any fees or costs for a transcript of the proceedings are NOT waived." • **Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?** Yes • **On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?** (See footnote 3.) As noted by the committee, such cross-references are avoided as they tend to confuse litigants. There should not be a cross-reference here. • **Would the proposal provide cost savings?** If so, please quantify. No.	Form FW-001-INFO now states they will need to pay for a transcript, and tells them how to get information about getting a transcript. And form FW-020 has a shorter version of the same information. The committee acknowledges the comment. In light of other comments received, the committee is recommending that the cross-reference be included on the form. The committee appreciates the information provided to these final questions.

			• 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? Courts that do not already have such a form in use would have to develop a procedure for handling them. **• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes.	
20.	Superior Court of Orange County—Family Law Division	NI	Comments **Rule 2.956 – Court reporting services in civil cases** No comments. **NEW – Request for Court Reporter By Party With a Fee Waiver – FW-020** For Family Law, it would be a new form that we would need to decide if we want to use. At this point we are providing Court Reporters if requested by a party that was granted a fee waiver. **REVISED – Information Sheet on Waiver of Superior Court Fees and Costs – FW-001-INFO** Form titles and numbers should be in bold letters for parties to easily identify forms needed. The new paragraph that was added at the end of the form should begin with "Court Reporter."	No response required. The committee appreciates the comments, but notes that if the council approves the form, the form must be accepted for filing by all courts. See Cal. Rules of Court, rule 1.35. The Judicial Council form style provides that form titles should be in italics, which is the style used in these forms. The committee considered but disagrees with the suggested paragraph title. It

			Request for Specific Comments: **Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?** Yes **On form -001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? (See footnote 3)** The Info Sheet itself is confusing. If there was an actual list of available forms and the description of the forms, the cross-reference would not be needed in the list of waived fees. This form needs to be revamped and maybe use the Information Mapping technique. This makes the form easier to read. **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.** No **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?**	considers the emphasis on obtaining a record more accurate. The committee agrees. The committee appreciates the comment, but it is outside the scope of this proposal. The committee will consider a full redesign of the form as time and resources permit. The committee appreciates the court's providing the information requested in these final questions.

			Our Court would update any Waiver of Fees procedure to add this new process. Event Codes for Case Manager would be created and submitted to IT for creation in the system and testing done. Once procedures and event codes are completed then training would be conducted. Identification of staff would be assessed, and training material created. Training itself would be around 1 to 2 hours. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, 3 months seems reasonable time for implementation. **How well would this proposal work in courts of different sizes?** I believe that this proposal would be able to work in any size court. The process does not seem that difficult.	
21.	Superior Court of Orange County--Training and Analyst Group (TAG) Team	NI	In March of 2019, OCSC adopted a local form for this same purpose. 1. **Does the proposal appropriately address the stated purpose of providing a consistent process for free waiver recipients?** Yes. 2. **On form FW-001-INFO, is it helpful to add a cross reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?** [ ] Yes, please note, near the bottom of page 2 on form FW-001-INFO it states, "You should use form FW-020…"; whereas,	The committee agrees. The committee agrees with keeping the cross-reference. The language noted in the

			form FW-020 states "you may use this form…". Consider revising FW-001-INFO to "may use this form…" to be consistent with the new form. **3. Would the proposal provide cost savings? If so, please quantify.** The proposal would provide cost savings only to the extent that continuances are reduced for parties who otherwise might have to ask for time to arrange for a court reporter. But some courts will see an increase in court reporter costs to the extent staff reporters are not available. 4. **What are the implementation requirements 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 system, or modifying case management system.** The local form will need to be replaced with the new JCC form. A system update will be required to configure the new form and add/modify docket codes in civil and probate. Procedures will need to be updated. Staff who will need to be informed/trained include legal processing specialists, courtroom clerks, court reporter staff, court reporters, management and judicial officers. Time and effort to implement should be minimal. 5. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes	information sheet is a summary of the rule: one should use form FW-020 if they desire to request a court reporter. The request form is pointing out that the party may request a court reporter by using this form. The committee appreciates the court's providing the information requested in these final questions.

			6. **How well would this proposal work in courts of different sizes?** The proposal would work well for courts that already have an established procedure and available court reporter resources, and not so well in those courts that do not have an established procedure and/or have a limited supply of court reporter resources, regardless of size.	
22.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	NI	**GENERAL COMMENTS:** **Rule 2.956(c)(2)(B)**: Propose the following change: "*The party ~~should~~ **must** file the request 10 calendar days before the proceeding for which a court reporter is desired…"* This is consistent with the instructions included on the proposed FW-020 and ensures that the court will be provided timely notice in order to secure a court reporter for the proceeding. **FW-001-INFO**: **If you want a record made of your court hearing or trial** (Page 2): Propose replacing "should" with "**must**" when, as indicated above, directing the litigant to make the request 10 days before the scheduled hearing. **FW-020:** **Instructions -** Propose the following changes: **Second sentence of the first bullet point**: "If the court date is scheduled with less than 10-days notice, you ~~should~~ **must** file the request as soon as you can."	The committee has considered this comment but declines to accept the suggested change. Ideally, the party will request the court reporter with 10-days' notice to the court, but that may not always be possible, especially with self-represented parties who may be unaware of the need to request a court reporter until closer to the hearing. The instructions on the form have been revised to reflect the rule that encourages, but does not mandate, the 10-day notice. See response above. See response above.

			Fourth bullet point: "Having a court reporter ~~may~~ **does** not guarantee the right to get a **free** transcript." As written, the note implies that a litigant is not guaranteed the right to obtain a transcript, rather than clarifying there is no guarantee a transcript will be provided for free. This change is consistent with the proposed revisions to the FW-001-INFO form. **Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?** Yes, with the proposed changes outlined. **On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?** Yes. By referencing the form, the litigant is notified that they need to submit a request to have a reporter present, rather than making an oral request. **Would the proposal provide cost savings? If so, please quantify.** No. **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**	The form has been modified in light of this comment. The committee agrees. The committee appreciates the court's providing the information requested.

			docket codes in case management systems, or modifying case management systems? Minimal training for staff. Our court adopted a local form in 2019 fee waiver litigants to request the presence of a court reporter. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update local packets and order printed stock. **How well would this proposal work in courts of different sizes?** It appears that the proposal will work for courts of various sizes.	
23.	Trial Court Presiding Judges Advisory Committee and Court Executive Advisory Committee Joint Rules Subcommittee	AM	The Joint Rules Subcommittee notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.). o The creation of a new form may impact Case Management Systems. The form will need to be added and mapped as events and possible work queue triggers, forms or notice generation. Online self-help or forms generators will need to be updated.	The committee appreciates this information.

			• Results in additional training, which requires the commitment of staff time and court resources. o Small amount of training and updates to training manuals and procedures • Increases court staff workload. o The additional request will require intake, routing to court reporter coordinator, scheduling, filing, scanning and other clerical work. Continuance of hearings or trials will require a tracking mechanism for this waiver. **Suggested modification(s):** • Form FW-020 should be mandatory. The optional form may set up a scenario where the petitioner uses a self-made declaration to request a reporter. This may not be recognized by the clerk and will cause delays in the proceedings. • The form should add that a "free" transcript is not guaranteed to match the instructions. • The form should add the time, and department of the hearing or trial to expedite routing for this short time frame to respond and locate a court reporter.	The committee has considered this comment, but declines to make the form mandatory. A self-represented party may not know to use the form, but, under *Jameson*, should still be provided with a court reporter if one is requested. The committee agrees and the form has been modified in light of this comment. The form includes the date of the hearing or trial. The committee has concluded that, with the case number and party name, that information should be sufficient for court response.
24.	Western Center on Law & Poverty,	NI	*Western Center on Law & Poverty and the undersigned organizations submit this letter in response to the Judicial	The committee appreciates this comment, which contains all the points raised in the

	Oakland, CA By Madeline Howard, Disability Rights California By Navneet Grewal, Fair Housing Advocates of Northern CA By Caroline Peattie, Public Law Center By Ugochi Nicholson, Legal Aid Foundation of Los Angeles By Denise McGranahan Legal Aid of Marin By Lucie Hollingsworth California Rural Legal Assistance By Ilene Jacobs, East Bay Community Law Center By Meghan Gordon		Council's invitation to comment on the proposed rules implementing *Jameson v. Desta,* 5 Cal.5th 594 (2018). Western Center advocates for transformative, systemwide, public policy solutions to end poverty in California. Our housing advocacy incorporates promotion of affordable and equitable housing development, protection of tenants' rights, and preventing displacement of low-income communities and communities of color. We also work to ensure equal access to courts for people with disabilities, people with limited English proficiency and low-income people. As explained in our prior comment letters on proposed rules implementing *Jameson*, our role as a legal services support center means that we are uniquely positioned to assess the impact of the Judicial Council's proposals on low-income litigants, particularly in unlawful detainer litigation. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	ADZ Law comment. See the committee's responses to comment 1.

Attachment A

From: Raquel Ocon
To: Invitations
Subject: Letter from ADZ Law, LLP re Comments on Civil Practice & Procedure
Date: Friday, May 29, 2020 4:01:55 PM
Attachments: image001.png
2020-05-29 ADZ Law, LLP Letter to Judicial Council of California.pdf

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To whom this may concern:

Please see attached letter on behalf of ADZ Law, LLP.

Sincerely,

Raquel Ocon, Office Manager/Legal Secretary
ADZ Law, LLP
2000 Alameda de las Pulgas, Suite 161
San Mateo, CA 94403
650-458-2300
www.adzlaw.com

COVID-19 Update EMAIL SERVICE: ADZ Law, LLP remains open, conducting business, and has no plans to close. Due to Shelter-in-Place orders, our physical office is currently closed to the public though a skeleton crew remains on-site. During the length of the Shelter-in-Place order, ADZ Law, LLP **will accept email service** of all case related documents, including pleadings, discovery, restraining order responses, and ex parte filings to the following address: service@adzlaw.com.

Tülin D. Açıkalın, Esq.
Jessica Dayton, Esq.*

*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization
**Licensed in FL and LA only

Aylin Açıkalın, Esq.**
Laura Alvarez, Esq.
Christelle Carlon, Esq.
Marian FitzGerald Stein, Esq.
Mallika Kaur, Esq.

May 29, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

ADZ Law, LLP is a law firm which specializes in Family Law and Civil Litigation. We represent victims of domestic violence and sexual assault in civil claims against their abusers and third-party defendants. Our law firm appreciates this opportunity to speak on the importance of court reporter accessibility for survivors of abuse and low-income litigants.

ADZ Law, LLP was founded in 2015. Since 2015, we have represented many clients and/or victims in the following cases: domestic violence restraining order, dissolution proceeding, pro-bono, civil sexual assault, child custody, and spousal/child support. We strongly believe that all victims should receive resources through the court and access to a court reporter regardless of their economic status.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on**

their fee waiver form indicating that they are affirmatively requesting a court reporter with fees waived.

Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and domestic violence restraining order hearings are usually completed in less than a half-day hearing.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. [1] Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States.[2] Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.[3]

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[1] *See* Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

[2] *See* ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), http://www.aclu.org/pdfs/dvhomelessness032106.pdf; *see also* U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf.

[3] Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied

court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. (*Jameson*, *supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. For the domestic violence survivors and clients we work with, we attend their court hearings, depositions, short and long cause trials. It is extremely crucial to have a court reporter available and present during hearings, depositions, and trials. The court should be able to provide a court reporter when requested.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

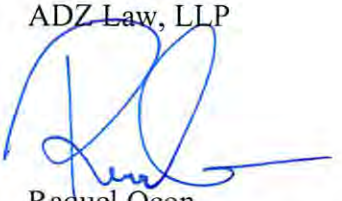
The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Sincerely,

ADZ Law, LLP



Raquel Ocon
Office Manager/Legal Secretary

ASIAN AMERICANS ADVANCING JUSTICE
ASIAN LAW CAUCUS

June 9, 2020

By Email invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Asian Americans Advancing Justice – Asian Law Caucus (AAAJ-ALC) submits this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta,* 5 Cal.5th 594 (2018). Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian Pacific American communities. We focus on housing rights, immigration and immigrants' rights, labor and employment issues, student advocacy (ASPIRE), civil rights and hate violence, national security, and criminal justice reform. As a founding affiliate of Asian Americans Advancing Justice, we also help to set national policies in affirmative action, voting rights, Census, and language rights.

Our housing advocacy focuses on gateway communities for new immigrants, such as San Francisco Chinatown, where large numbers of tenants and seniors are in danger of displacement due to gentrification and other economic pressures. Our clients are low-income, often live with disabilities, and have limited English proficiency. We believe that the proposed rules implementing *Jameson* will have a particularly significant impact on our clients facing eviction through unlawful detainer litigation.

While we appreciate that the proposals address concerns raised by legal services organizations on the prior round of *Jameson* implementation measures, we strongly believe that the most efficient and effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings where a litigant has

been granted a fee waiver. If not, the second best form of implementation would be to amend the existing fee waiver form to include a check box indicating that they are requesting a court reporter. Creating an additional form, while still preferable to having no state-wide system at all, increases the administrative burden for courts, gives discretion to courts to deny "untimely" requests, and creates an additional burden for low-income litigants who often lack access to legal representation and do not know about the importance of a verbatim record.

1. The Court System Cannot Provide Meaningful Access to Justice for Low-Income Litigants Without Providing Verbatim Records.

In *Jameson,* the California Supreme Court recognized "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.) Verbatim records are especially critical for our clients in unlawful detainer proceedings, where an unfavorable ruling means the loss of their home, community, and support network. Many end up homeless or are forced to move far from San Francisco because they cannot afford a market-rate unit. Even though San Francisco passed Tenant Right to Counsel, there are still not enough lawyers to represent every tenant facing eviction. Moreover, 90% of tenants facing the loss of their home across the state are unrepresented while almost all landlords have representation.[1] Without a verbatim record of unlawful detainer proceedings, tenants are unable to create a record of their proceedings for appeal and such appeal is likely to be denied or dismissed without such a record. (*See Jameson*, *supra*, 5 Cal.5th at p. 608.) Lack of a record also makes it more difficult to seek other post judgment relief from eviction.

2. Proposed Changes to Rule of Court 2.956 Should Fully Protect Tenants

We support the proposal to amend Rule of Court 2.956(c)(2) to clearly establish that when a fee-waiver recipient requests a court reporter one must be provided by the court for free, and for the duration of the trial. However, we are concerned that the proposed 10-day timeline to request a court reporter may bar indigent litigants, particularly defendants in unlawful detainer matters, from accessing this vital service. Most tenants facing eviction are unrepresented or do not find legal representation until shortly before their trial. They are unlikely to know that they should request a court reporter without advice of counsel and will be disadvantaged due this strict 10-day timeline. Moreover, some motions in an unlawful detainer proceeding only require 5-day notice to the opposing party, such as a motion for summary judgment. It would then be impossible for any indigent

[1] *See* Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

litigant to comply with the proposed rule and obtain a record of the proceeding. Therefore, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording, considering factors such as the amount of notice received, a litigant's disability, or other factors that may have affected the party's ability to timely make the request.

3. A Court Reporter or Electronic Recording Should be Automatically Provided to Fee Waiver Recipients.

Finally, while we commend that the Council's effort to seek more information about the fiscal effects of automatically providing court reporters for fee waiver recipients, the right to a verbatim record, without a request, should not be denied during this period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form or why a record is important, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms while facing short deadlines pursuant to the unlawful detainer process and the potential loss of their home.

Below, we answer each of the Committee's questions, with the previous comments and concerns as background.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While this proposal is more consistent than the current individual court processes, it does not adequately ensure indigent litigants will have access to the verbatim records to which they are entitled. The proposed process also adds increased burden to the courts and self-help centers by creating another form and procedure. Instead, we believe the Council should require a court reporter, or at least an electronic recording in all courtrooms where a fee waiver recipient is a party. Moreover, the committee points out in the Executive Summary and Origin that this Council can approve such a slight expansion of the *Jameson* holding as a matter of policy and we believe that the Council should take this action. (Invitation to Comment SPR20-07, p. 2)

As cited above, the great majority of tenants facing eviction in California defend their homes without the benefit of legal representation. They are forced to

navigate the court system and attempt to understand the rules and procedures on an expedited timeline alone. This can be a daunting enough task for someone who speaks English or has experience with the court system. However, the communities that AAAJ-ALC serves also often have limited English proficiency and come from cultures with vastly different court systems. Many have escaped serious abuse and suffered trauma or live with other disabilities that make navigating the court system even more difficult. For the majority who go unrepresented, the self-help centers in many counties are overwhelmed with the volume of need and cannot assist everyone. Imposing additional burdens on these individuals to 1) affirmatively request a court reporter, 2) at the right time, and 3) on a third and separate form specific to indigent litigants decreases the likelihood that they will be able to exercise their rights as outlined by the Supreme Court in *Jameson*.

The proposed process adds yet another procedural hurdle for low-income litigants to scale when they are already in unfamiliar territory and the stakes are high – such as losing their home. We believe that many of these individuals will be unable to exercise their right to a record at all, resulting in the opposite result prescribed by the Supreme Court, "creat[ing] the type of restriction of meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy render impermissible." (*Jameson*, *supra*, 5 Cal.5th at p. 598.) California can provide truly meaningful access to the courts by providing verbatim records to <u>all</u> litigants with fee waivers.

Superior Courts' responses to a recent public records inquiry reveal that this approach is even feasible for courts in rural counties. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter. Mono County reports that it provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. Providing a mechanism for all indigent litigants to obtain a verbatim record of proceedings remains the most effective and efficient way to implement *Jameson.*

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

Adding this cross-reference does not make the list more confusing. However, it would be more clear to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." The use of the term "see" is legalese but does not make it clear to a lay person that this is the form to complete.

As discussed above, we believe that this separate form will make it more difficult for indigent litigants to exercise their right to a verbatim record and are concerned that many pro se litigants do not read the instruction sheet when filling out the fee waiver forms. Therefore, it is much simpler to allow litigants to see the option of the court reporter on the fee waiver application itself in the form of a check-box like the existing boxes for waiving superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, we believe the Council should create a process with fewer rather than more barriers for low-income litigants to exercise their right to verbatim recordings. This would better fulfill the spirit of the *Jameson* decision and the long line of access-to-justice cases that it follows. This is key to ensuring all low-income Californians have access to justice, and for my clients, have a meaningful opportunity to defend their homes. Thank you for your time and consideration.

Sincerely,

Tiffany L. Hickey, Esq.
Housing Rights Program
Asian Americans Advancing Justice – Asian Law Caucus
55 Columbus Avenue | San Francisco | California 94111
(415) 237-3630 (google voice) | tiffanyh@advancingjustice-alc.org

From:	Ariella Hyman
To:	Invitations; Judicial Council
Subject:	Bay Area Legal Aid"s Comments to the Judicial Council
Date:	Tuesday, June 09, 2020 4:46:48 PM
Attachments:	BayLegal Comments on Civil Practice and Procedure.pdf BayLegal Comments on Judicial Training Regarding Bias.pdf BayLegal Comments Regarding Remote Supervised Visitation Final.pdf BayLegal Comments Opposing Early Discontinuation.pdf

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Dear Members of the Judicial Council,

Attached, please find four letters from Bay Area Legal Aid. Two of these provide comments in response to the Judicial Council's invitation for public comment on proposed changes to civil practice and procedure and forms. A third sets forth an additional proposal for your consideration concerning procedures governing supervised visitation during Covid. The fourth is in response to information we learned just today that the Judicial Council is considering early discontinuation of its emergency rules. (I emailed this a couple of hours ago but am including it again here so you have BayLegal's submissions all in one place.)

Thank you very much for the opportunity to provide our input on these matters.

Sincerely,

Ariella

Ariella Hyman | Director of Program and Advocacy | Bay Area Legal Aid | pronouns: she/her | 1800 Market Street, 3rd Floor, San Francisco, CA 94102 | 415-354-6364 (office) | ahyman@baylegal.org | www.baylegal.org

Genevieve Richardson
Executive Director

BAY AREA LEGAL AID

June 9, 2020

By email invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Bay Area Legal Aid's Comments on Civil Practice and Procedure:
Support for SPR 20-20;
Support and Recommendations for SPR20-19;
Support and Recommendations for SPR20-27; and
Recommendations for SPR 20-07

Dear Members of the Judicial Council:
Bay Area Legal Aid ("BayLegal") submits this letter in response to the Judicial Council's invitation to comment on several proposed changes to civil practice and procedure as well as Judicial Council forms.

BayLegal is the largest provider of free legal services to low-income residents of seven Bay Area counties, including Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, and San Mateo. BayLegal's mission is to provide meaningful access to the civil justice system through high quality legal assistance to low-income litigants regardless of location, language, or disability. Low-income litigants in general, and BayLegal clients in particular, are frequently individuals with limited English proficiency, individuals with limited literacy, survivors of domestic violence, people with disabilities, and individuals who are housing insecure. BayLegal provides legal services to roughly 10,000 low-income residents of the Bay Area annually. The large number of individuals we serve gives us a unique insight to assess the potential impact of the Judicial Council's proposed changes on low-income California residents.

I. BayLegal's Support for Proposed Changes Outlined in SPR 20-20

BayLegal supports the Judicial Council's adoption of SPR20-20, Family Law: Changes to Child Custody Evaluations Rule and Form. This proposed change affects among the most traumatizing and contentious of family law cases. BayLegal's Family Law practice exclusively represents survivors of domestic violence, sexual assault, and human trafficking. In 2019, we provided legal advice, limited services or full representation in approximately 849 family law cases, and assisted 1,027 survivors in *pro per* to apply for restraining orders. Based on the experiences of our clients, we see how the need for conformity in drafting of reports is vital to ensuring that judges can make custody decisions based on full information and knowledge. Often interviews of parents and children can span several months. The Judicial Council's proposed modifications will go far in ensuring that each case is given the same analysis and review. We support the creation of the new Judicial Counsel FL-329 and Rule 5.220.

II. BayLegal's Support and Recommendations Regarding SPR20-19

BayLegal supports the adoption of the proposals described in SPR20-19. The change incorporates recent case law into the statewide forms and organizes them in a way that is more user-friendly while mirroring existing statutes. The proposed reform of form FL-158 directly reflects the language of Family Code 4320 in a way that is easy for litigants to understand and complete, even if all of the factors do not apply to their case.

We propose adding a box on Form FL-345 to allow for easier enforcement post-judgment in family law cases. This box would be box 2(g) and would be at the bottom of the division of community property debts section. It would read: "each spouse will be assigned the obligations listed above as their sole and separate property. The parties must execute all necessary documents to remove the other party's name from their assigned obligations." This box would mirror the language of box 1(g) in the assets section, and would help if a post-judgment motion is necessary to remove a party's name from a debt. With this change, we support the adoption of the proposals in SPR20-19.

III. BayLegal's Support and Recommendations Regarding SPR 20-27

BayLegal supports the Judicial Council's efforts to modify forms MC-410 and MC-410-INFO to provide greater access to the courts for persons with disabilities. Specifically, BayLegal supports the Judicial Council's redesign of the MC-410 form so that it complies with the Web Content Accessibility Guidelines by editing for plain language, increasing font size, and adding additional white space to increase readability. We suggest several further changes to both forms to increase accessibility.

As to Form MC-410: Disability Accommodation Request, BayLegal makes the following suggestions:

1. That the courthouse provide a fillable version of the form that may be submitted through the court's website directly to the court's ADA Coordinator. This option would be in addition to the other options to submit the form via email, fax, in person, or by mail.
2. That the MC-410 form remove the mandatory deadline that requires individuals to submit the request at least five days before the individual needs the accommodation. We suggest that the MC-410 form be amended such that the statement "Make this request at least 5 days (when court is open) before you need the accommodation" includes the phrase "if possible". This amendment is consistent with MC-410-INFO form, which already includes the "if possible" language.
3. The Judicial Council's Invitation to Comment notes that one proposed revision is to include space for the court to "optionally" explain reason for denial of a request for reasonable accommodation. We suggest that explaining the reason for denial be mandatory such that the court would be required to provide a written statement of the reasons supporting its denial.
4. That rather than providing a space on the MC-410 form that allows the requester to include information of persons who have helped the requester fill out the form, the form instead include a space that gives a user the option to list a person other than the requester as the main contact for the request, such as an attorney, caregiver, or family member.

5. That the request form continue to provide the option of an "indefinite period" as the length for duration of the accommodation.

As to Form MC-410-INFO: How to Request a Disability Accommodation for Court, BayLegal makes the following suggestions:

1. That the MC-410-INFO Form include language that explains the interactive process, which persons with disabilities are entitled to regarding their requests. We further encourage courts to engage in the interactive process when making a denial and when proposing alternative accommodations.
2. That the MC-410-INFO Form include more information regarding how to submit a reasonable accommodation request by phone or email. We recommend that the MC-410-INFO form include a phone number or email address to make the request.
3. That MC-410-INFO include more examples of accommodations that individuals can request, such as allowing persons to bring emotional support animals to court or to request continuances.

IV. BayLegal's Recommendations Regarding SPR 20-07, the proposed rules and forms to implement *Jameson v. Desta*, 5 Cal.5th 594 (2018)

While BayLegal commends the Judicial Council's steps to adopt a uniform state-wide implementation of *Jameson*, we strongly urge that a court reporter or electronic record be made available in all proceedings involving indigent litigants as a matter of right. This change would follow the California Supreme Court's sentiment in *Jameson* that litigants of limited means must have access to verbatim records to have meaningful access to the judicial system. In the alternative, we support adding a checkbox on the existing fee waiver form to permanently request a court reporter, so long as courts develop a plan to administratively identify cases where a *Jameson* request was made at the filing of FW-001. We are concerned the Judicial Council's proposed changes, as they currently stand, create additional burdens for low-income litigants and may create more administrative burden for the courts.

A. Court Reporters should be provided without requiring litigants to complete an additional form.

The California Supreme Court made clear in *Jameson* that ensuring low-income litigants have access to a court reporter or electronic recording is essential for meaningful access to justice. Verbatim records are crucial for litigants to create reliable records and to preserve access to the appellate process.

Unfortunately, the Judicial Council's proposed new form, FW-020, will create additional hurdles for indigent litigants to overcome to have access to justice. Low-income litigants already experience a difficult time navigating the civil judicial system. Before obtaining legal counsel, most, if not all, of our clients were overwhelmed and confused by unfamiliar court rules and procedures, and by the sheer number of forms required to access the civil judicial system. Additionally, most low-income litigants do not have access to an attorney and therefore are not aware of the importance of verbatim records. Without the benefit of legal counsel, we believe

that many people will not file the additional form that the Judicial Council proposes because *pro se* litigants will not recognize the importance of doing so. Accordingly, requiring fee-waiver recipients to complete an additional form and to follow more procedures to request a court reporter adds yet another, and unnecessary, administrative burden for litigants with limited means.

The proposed changes will also increase administrative burdens on courts and their staff. Because most low-income litigants do not have access to legal counsel, the burden of helping low-income litigants make an affirmative request for a court reporter will fall on the already overburdened self-help centers. In family law matters in particular, low-income litigants often have multiple unrelated hearings. Requiring litigants to affirmatively file a form to request a court reporter or recording every time there is a hearing will also increase the strain on courts and court staff.

The best way to ensure meaningful access to justice is to require courts to provide a court reporter or electronic recording in all hearings, and to provide them at no cost for low-income litigants. However, if the Judicial Council will require litigants to affirmatively request a court reporter or electronic recording, we strongly recommend that the Judicial Council add check boxes to the already existing fee-waiver forms rather than require an additional form. Specifically, two new check boxes should be added to Form FW-001, subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥. These changes would allow low-income litigants to more easily request a court reporter when they file their request for other court fees and costs to be waived.

Requiring litigants to make a *Jameson* request ten days prior to every hearing is an unjustifiable burden to place upon them. When a litigant's fee waiver is approved, the court should flag or "code" cases in such a way that the court is alerted to the need for a court reporter at every subsequent hearing. By flagging or coding the case, the *Jameson* request would follow the case and the litigant so long as the fee-waiver is valid. This would ensure that when a low-income litigant has a hearing scheduled, a court report or electronic recording will automatically be provided because a fee-waiver (and *Jameson* request) is already on file.

B. Proposed Amendments to Cal. Rule of Court 2.956 Can and Should be Further Clarified to Protect Low-Income Litigants Rights.

We strongly support the amendments to Cal. Rule of Court 2.956(c)(2) which clearly explain the Court's mandatory duty to record hearings at no cost to a litigant if that person is a fee-waiver recipient and requests a court reporter. However, we are concerned about the 10-day timeline to file such a request.

Many litigants won't know or understand that an additional form is required until much closer to the hearing/trial date. Additionally, filing such a request 10 days prior is simply not possible for many hearings, such as unlawful detainers, Civil Harassment and/or Elderly or Dependent Adult Protective Orders, and other emergency hearings. As such, we reiterate our suggestion that the Judicial Council should require courts to automatically provide court reporters or electronic recordings at all hearings, at no cost to indigent litigants, as explained above. As noted above, the second-best option is to amend FW-001 and all other fee-waiver forms already in existence, as described above. Either option would be simpler and less administratively burdensome for both litigants and courts than requiring the processing of an additional form.

C. BayLegal's Responses to Judicial Council's Request for Specific Comments

Below, we answer the specific questions posed by the Judicial Council. Our responses reflect some support for the current proposals and some additional requests.

1. **Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?**

We acknowledge that the proposed changes will provide statewide consistency, however it will also add hurdles for low-income litigants, as described in detail above. Low-income litigants are frequently individuals with limited English proficiency and limited literacy, survivors of domestic violence, people with disabilities, insecurely housed individuals and people simply struggling to survive day-to-day. Requiring an additional form will present an unnecessary obstacle for indigent litigants to access their right to justice, and also pose an additional burden to the courts and self-help centers. Again, we strongly believe that the Judicial Council should mandate courts to provide court reporters or electronic recordings at all hearings for low-income litigants at no cost with no additional burden.

2. **On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?**

If the Judicial Council doesn't mandate that courts provide court reporters or electronic recordings for all hearing with indigent litigants, or simply add a checkbox to the standard Fee-Waiver Form (FW-001), we acknowledge that the addition of a cross-reference to the new court reporter request form does not make the list more confusing. It might be more helpful to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." However, we do not believe that many litigants can or do read the full instruction sheet before completing the fee waiver form. Depending on how they obtain forms for filing, they may never even know that an informational form exits. If they do know, they may not be literate or the form may not be in their language. As such, it will likely be far more useful to simply allow litigants to see and then mark a checkbox on the fee waiver form without an additional form.

In conclusion, we appreciate the efforts that the Judicial Council has taken to implement consistent state procedures regarding *Jameson*. We strongly recommend that court reporters or an electronic record be made available in all proceedings with indigent litigants. In the

alternative, we support adding a checkbox on the existing fee waiver form to request a court reporter and for courts to develop plans to easily identify those cases in their system.

Thank you for the opportunity to comment on these proposed rules.

Sincerely,

Ariella Hyman

Ariella Hyman
Director of Program Advocacy
Bay Area Legal Aid

From: invitations@jud.ca.gov
To: Invitations
Subject: Invitation to Comment: SPR20-07
Date: Tuesday, June 09, 2020 4:21:06 PM

Proposal: SPR20-07
Position: Agree if modified
Name: Christine Smith
Title: Public Policy Coordinator
Organization: California Partnership to End Domestic Violence
Comment on Behalf of Org.: Yes
Address: 1107 9th Street, Suite 910
City, State, Zip: Sacramento CA, 95834
Telephone: 9167439878
Email: christine@cpedv.org
COMMENT:
June 5, 2020

By email only: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

The California Partnership to End Domestic Violence (the Partnership) greatly appreciates the opportunity to comment on the above listed rules, and forms proposed, each of which is discussed below:

The Partnership is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups. With offices in Sacramento, the Partnership's diverse membership spans the entire state. Through our public policy, communications and capacity-building efforts, we align prevention and intervention strategies to advance social change. The Partnership believes that by sharing expertise, advocates and policy-makers can end domestic violence. Working at the state and national levels for nearly 40 years, the Partnership has a long track record of successfully passing over 200 pieces of legislation addressing domestic violence.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous Jameson implementation measures, we still strongly believe that the best and most effective way to implement Jameson is to provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form indicating that they are affirmatively requesting a court reporter with fees waived.

Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and domestic violence restraining order hearings are usually completed in less than a half-day hearing.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income

Litigants.

The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States. Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness. California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the Jameson court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (Jameson, supra, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the Jameson decision. We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2) to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court

reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.
Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in Jameson. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of Jameson, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. (Jameson, supra, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. For the domestic violence survivors we work with, their court appearances typically only involve a short (1-2 hour) domestic violence restraining order and/or appearing 1-2 times for custody decisions. Courts should easily be able to provide court reporters at these hearings with a little bit of advance planning.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same

suggested change to forms FW-001-GC; FW-001GCS, would be added under .

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the Jameson decision and the long line of access-to-justice cases upon which it rests. Full implementation of Jameson is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Should you have any questions or require any additional information, please contact me at krista@cpedv.org or (916) 444-7163.

Sincerely,

Krista Niemczyk
Public Policy Manager

From: Monique Berlanga
To: Invitations
Subject: Invitation to Comment SPR20-07
Date: Saturday, June 06, 2020 4:49:31 PM
Attachments: Centro Legal Comment RE Jameson v. Desta.pdf

Dear Members of the Judicial Council:

Attached, please find a comment letter from Centro Legal de la Raza in response to the Judicial Council's invitation to comment on the proposed rules implementing Jameson v. Desta, 5 Cal.5th 594 (2018). Please accept this letter as superseding our prior comment letter of May 18, 2020.

Thank you in advance for your time and consideration.

Sincerely,

Monique Berlanga

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CENTRO LEGAL DE LA RAZA

June 6, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Centro Legal de la Raza submits this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta,* 5 Cal.5th 594 (2018). Founded in 1969, Centro Legal de la Raza is a comprehensive legal services agency protecting and advancing the rights of low-income communities through bilingual legal representation, education, and advocacy for thousands of individuals and families each year throughout Northern California. Centro Legal de la Raza's Tenants' Rights Practice provides free legal services to low-income tenants in the Bay Area, including legal representation for tenants in unlawful detainer proceedings. In 2019, Centro Legal de la Raza's Tenants' Rights Program provided legal services to 1,724 low-income tenants in Alameda County. Our role as a direct legal services provider uniquely positions us to assess the impact of the Judicial Council's proposed changes to the court rules, particularly as they will apply in unlawful detainer litigation.

While we appreciate that the proposals include discussions of concerns raised by legal services agencies on the prior round of *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings with indigent litigants. If this approach is not adopted, the second best option would be to allow fee waiver applicants to check a box on the existing fee waiver form indicating that they are requesting a court reporter with fees waived. Creating an additional form, while preferable to having no system at all, creates an administrative burden for courts and a burden for low-income litigants who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As the California Supreme Court recognized in *Jameson*, the creation of a verbatim record is essential for meaningful access to justice. In particular, verbatim records are critical for

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tenants in unlawful detainer proceedings, where an unfavorable ruling results in the loss of the defendants' home and potential homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. [1] Without a verbatim record of the unlawful detainer proceedings, tenants, especially those without representation, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal incorrect decisions and to remain housed.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. We agree with the proposal to amend California Rules of Court, rule 2.956(c)(2) to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters from accessing a record. While unlawful detainer hearings may be scheduled more than 10 days in advance, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter until they obtain counsel. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

[1] *See* Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

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Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, the right to a record should not be denied in the interim period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter in all courtrooms where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2)

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*.

Adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. (*Jameson*, *supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

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2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful **to change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As we discussed in our comment last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥. While adding box to the general fee waiver form would result in a fee waiver litigant effectively requesting a verbatim record for all proceedings in their case, the majority of unlawful detainer cases only result in one or two hearings, so this would not create significant increased burden for the courts.

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular have a meaningful opportunity to remain in their homes. Thank you for the opportunity to comment on these proposed rules.

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CENTRO LEGAL DE LA RAZA

Sincerely,

Centro Legal de la Raza

Monique Berlanga (Farris)
Directing Attorney,
Tenants' Rights Practice

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Desert Sanctuary, Inc.
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June 3, 2020

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Desert Sanctuary Inc. is a domestic violence shelter program in the small, rural community of Barstow California. We have been providing shelter and all related services to victims of domestic violence and their children since 1982. We have very little access to attorneys, legal assistance or advice. The FVAP came into our lives a few years ago when the California Partnership to End Domestic Violence and Cal-OES had them provide a training to the field. Since that time, they have responded to each and every question we have asked. They have provided assistance to clients who felt completely unheard by the courts. They have helped us to understand how to respond to ICE, CFS, Law Enforcement and property managers/owners. Our ability to provide for our clients and to protect our agency has been improved exponentially due to the valuable relationship we have formed. We greatly appreciate the opportunity to support FVAP as they seek to further define the importance of the above referenced rules and forms proposed, each of which are discussed below.

FVAP was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Since its inception, FVAP has handled over 2,000 requests for assistance; has represented appellants and respondents in 51 civil appeals and writs; and has filed amicus briefs in 19 cases that raised significant issues of statewide concern for domestic violence survivors. These cases have, to date, resulted in 40 published decisions interpreting the Domestic Violence Prevention Act and other California statutes, including *Jameson v. Desta*, the 2018 Supreme Court decision that prompted these proposed rule changes. (5 Cal.5th 594.)

We applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar parties in domestic violence prevention and other restraining order cases from making a timely request. Domestic Violence Restraining Order petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a

victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2)

For the domestic violence survivors, we work with, their court appearances typically only involve a short (1-2 hour) domestic violence restraining order and/or appearing 1-2 times for custody decisions. Courts should easily be able to provide court reporters at these hearings with a little bit of advance planning.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese.

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Sincerely,

Peggi Fries

Executive Director

Desert Sanctuary Inc.

From:	Martina Cucullu Lim
To:	Invitations
Subject:	Comment on Civil Practice and Procedure: Court Reporters for Cicil Proceedings (SPR 20-07)
Date:	Thursday, June 04, 2020 12:57:13 PM
Attachments:	M.Cucullu Lim.EDC.comments to SPR20.07.pdf

To whom it may concern,

Attached please find EDC's comments on the proposed rules, forms, and standards (SPR 20-07).

Thank you,

Martina I. Cucullu Lim

Martina I. Cucullu Lim, Esq. (pronouns she/her)
Executive Director
Eviction Defense Collaborative | www.evictiondefense.org
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When I despair, I remember that all through history the way of truth and love have always won. There have been tyrants and murderers, and for a time, they can seem invincible, but in the end, they always fall. Think of it -- always. Mahatma Gandhi

Will you help us stay the course of truth and love?

June 4, 2020

By Email: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

The Eviction Defense Collaborative, San Francisco's Lead Agency for implementing its Right to Counsel for tenants in eviction cases law, greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below.

As the lead agency implementing San Francisco's Right to Counsel law we assist tenants with pro per first responses while their cases are being referred to lawyers at one of the nine legal services agencies for full scope legal representation (including our own agency). Unfortunately, the funding for Right to Counsel has still not been enough to cover all litigants and about 1/3 of tenants have to proceed through their eviction cases without an attorney. This makes the need for the requesting of court reporters or electronic recordings for fee waiver clients to be something easy and simple.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies—including LAAC, the Family Violence Appellate Project (FVAP), and the Western Center on Law & Poverty (WCLP)—to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants.** If that is not possible, the next best solution is to simply **allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived. Creating an additional form, while preferable to having no system at all, creates an *administrative burden for courts* and a *burden for low-income litigants* who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

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1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As the California Supreme Court recognized in *Jameson*, the creation of a verbatim record is essential for meaningful access to justice. The creation of a verbatim record is essential for proceedings resolving critical civil legal issues, including domestic violence and unlawful detainers (evictions), two immensely important areas of civil proceedings that have life-altering—and life-threatening—consequences in which access to a verbatim record is crucial to the administration of justice.

First, creating a verbatim record is essential for proceedings involving survivors of family violence. Verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Second, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.[1] Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

At the intersection of these issue areas, verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. For instance, FVAP is currently involved in an appeal where the court refused to issue jury instructions relating to the domestic violence defense to eviction found in Code of Civil Procedure, section 1161.3. Without a record, the appellate division could not possibly determine whether this is legal error. Domestic violence is already a primary cause of homelessness for women and children in the United States.[2] Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.[3] California has laws designed to prevent unnecessary

[1] *See* JUDICIAL COUNCIL OF CALIFORNIA, TASK FORCE ON SELF-REPRESENTED LITIGANTS: FINAL REPORT (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.
[2] *See* ACLU WOMEN'S RIGHTS PROJECT, *Domestic Violence and Homelessness* (2006), http://www.aclu.org/pdfs/dvhomelessness032106.pdf; *see also* U.S. CONFERENCE OF MAYORS, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf.
[3] Monica McLaughlin & Debbie Fox, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

We are concerned, however, that establishing a 10-day timeline to request a court reporter may *effectively bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record*. Legal aid organizations know all too well that low-income litigants often deal with these issues on a much shorter timeframe. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

> *The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.*

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with

all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide form and Rule will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin, this Council can—and we believe should—require a court reporter at all hearings where a fee waiver recipient appears, without any formal request (Invitation to Comment SPR20-07, p. 2). However, we recognize concerns that not all types of proceedings need reporters, and that it cannot merely be automatic. Nonetheless, placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter—as opposed to a mere calendaring or administrative matter that does not—would be a better use of court resources resulting in improved access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings.

As a practical matter, low-income and unrepresented litigants are not able to bear the burden and forcing them to take on the full burden is effectively eliminating implementation entirely. Adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals being unable to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish (*Jameson*, *supra*, 5 Cal.5th at p. 598). This result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

Finally, there is no reason to believe that small or rural courts cannot fully implement *Jameson* in this way, to good effect. For example, Mono County reports that it provides court reporters regularly, and a court reporter is typically provided regardless of whether a litigant requests one (Response to Public Records Act Request, on file with FVAP). As a second example, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter (Response to Public Records Act Request, on file with FVAP). Hence, small and rural courts are already doing it, and it is working fine.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese.

More pressingly, however, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As discussed in comments from the legal services community last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

4. Conclusion

In conclusion, the Eviction Defense Collaborative believes in the importance of *Jameson* and the principle that all court users—including low-income and unrepresented ones—deserve the opportunity to receive a verbatim record to utilize on appeal. Without making the request simple and clear for pro per litigants in eviction cases, there is a great chance they will lose their opportunity to make a record and they will lose their ability to appeal. Creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access to justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice and can obtain enforceable and appealable court decisions.

Sincerely,

Martina Cucullu Lim
Executive Director
Eviction Defense Collaborative

From:	Evelyn Magana
To:	Invitations
Cc:	Darryl Evey
Subject:	Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)
Date:	Monday, June 01, 2020 3:58:26 PM
Attachments:	FAPCommentsCourtReporter.pdf

Good afternoon,

I hope all is well. On behalf of Family Assistance Program, I am submitting the attached letter in regards to the following: *Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07).*

Respectfully,

Evelyn Magaña
Domestic Violence/ Legal Advocate
Direct Line: 760-205-1183
Family Assistance Program
16857 C St. Victorville, Ca 92395
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Family Assistance Program

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June 1, 2020

By Email Only invitations@jud.ca.gov

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455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Family Assistance Program is fortunate to have the opportunity to comment on the above-listed rules, and forms proposed, each of which is discussed below.

Family Assistance Program was founded in 1985, formerly known as High Desert Domestic Violence Program, and has been providing shelter and advocacy services to individuals experiencing domestic violence. Through the years, the agency has grown. We now operate shelters, transitional housing, and have offices in Victorville, Hesperia, San Bernardino, Redlands, and Fontana. Family Assistance Program offers various classes (parenting, anger management, substance abuse, and domestic violence support groups), legal advocacy services, and a variety of other services. Our agency assists clients with initial requests for domestic violence restraining orders, provides court support and continuous support for our clients throughout the restraining order and/or child custody process. It is our goal and continued effort to build stronger families by offering services that can benefit all community members. Our agency will continue growing to meet the needs of the community as they arise.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived.

Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and

domestic violence restraining order hearings are usually completed in less than a half-day hearing.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. [1] Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States.[2] Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.[3] California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

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[1] *See* Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

[2] *See* ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), http://www.aclu.org/pdfs/dvhomelessness032106.pdf; *see also* U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf.

[3] Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

Family Assistance Program

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Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

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Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. (*Jameson*, *supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. The domestic violence survivors that we serve and work with usually have a court appearance that typically involves a short (1-2 hour) domestic violence restraining order hearing and/or are appearing 1-2 times for child custody decisions. Courts should be able to provide court reporters at these hearings with some advance planning.

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2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Respectfully Submitted,

Family Assistance Program

Darryl Evey
Executive Director

June 9, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Family Violence Appellate Project (FVAP) greatly appreciates the opportunity to comment on the above-listed rules, and forms proposed, each of which is discussed below. We are joined in these comments by Haven Women's Center of Stanislaus, MAITRI, Monarch Services, and Shalom Bayit. (*Statements of Interest below.)

FVAP was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Since its inception, FVAP has handled over 2,000 requests for assistance; has represented appellants and respondents in 51 civil appeals and writs; and has filed amicus briefs in 19 cases that raised significant issues of statewide concern for domestic violence survivors. These cases have, to date, resulted in 40 published decisions interpreting the Domestic Violence Prevention Act and other California statutes, including *Jameson v. Desta*, the 2018 Supreme Court decision that prompted these proposed rule changes. (5 Cal.5th 594.)

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As FVAP explained in our amicus brief in *Jameson*, filed in June 2016, our comments and testimony before the Commission on the Future of California's Court System in February 2016, and in our comments to this body last February, the creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. [1] Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. For instance, FVAP is currently involved in an appeal where the court refused to issue jury instructions relating to the domestic violence defense to eviction found in Code of Civil Procedure, section 1161.3. Without a record, the appellate division could not possibly determine whether this is legal error. Domestic violence is already a primary cause of homelessness for women and children in the United States.[2] Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.[3] California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil

[1] *See* Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.
[2] *See* ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), http://www.aclu.org/pdfs/dvhomelessness032106.pdf; *see also* U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf.
[3] Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied

court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice. Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide form and Rule will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. (*Jameson*, *supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

There is no reason to believe that small or rural courts cannot fully implement *Jameson* in this way, to good effect. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter. (Response to Public Records Act Request, on file with FVAP.) And Mono County reports that it

provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. (Response to Public Records Act Request, on file with FVAP.)

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As we discussed in our comment last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Sincerely,

FAMILY VIOLENCE APPELLATE PROJECT

Jennafer Dorfman Wagner, Esq.
Director of Programs

* **Haven Women's Center of Stanislaus** provides intervention, prevention, and supportive services to over 2,000 survivors of domestic and sexual abuse each year. Originally founded as the Stanislaus Women's Refuge Center, Haven has been providing safe shelter and crisis intervention for domestic abuse victims in Stanislaus County since 1977.

MAITRI is a free, confidential, nonprofit organization based in the San Francisco Bay Area, that primarily helps families from South Asia (Bangladesh, India, Nepal, Pakistan, Sri Lanka among others) facing domestic violence, emotional abuse, cultural alienation, human trafficking or family conflict.

Monarch Services, empowering individuals, families and our communities to take action against violence and abuse since 1977, we currently serve approximate 1,500 victims of domestic violence and sexual assault each year. All of our crisis intervention and prevention services are available in Spanish and English and are culturally sensitive. Our outreach efforts have concentrated on poor Latino neighborhoods with residents that have several barriers to seeking services, including language, literacy and legal status issues, and cultural biases. We are extremely proud of our success in serving this special population.

Shalom Bayit is the Bay Area's center for domestic violence prevention and response within the Jewish community. We promote peaceful homes and families, teach skills for healthy relationships, and work to build a safe, vibrant Jewish community that is free from violence and abuse.

"The Unified Voice of Legal Services"

LAAC
Legal Aid Association of California

June 8, 2020

By Email: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

The Legal Aid Association of California (LAAC) greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below.

LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

While we are heartened that the proposals include discussions of concerns raised by LAAC and legal services agencies—including the Family Violence Appellate Project (FVAP) and the Western Center on Law & Poverty (WCLP)—to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants.** If that is not possible, the next best solution is to simply **allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived. Creating an additional form, while preferable to having no system at all, creates an *administrative burden for courts* and a *burden for low-income litigants* who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As the California Supreme Court recognized in *Jameson*, the creation of a verbatim record is essential for meaningful access to justice. The creation of a verbatim record is essential for proceedings resolving critical civil legal issues, including domestic violence and unlawful detainers (evictions), two immensely important areas of civil proceedings that have life-altering—and life-threatening—consequences in which access to a verbatim record is crucial to the administration of justice.

First, creating a verbatim record is essential for proceedings involving survivors of family violence. Verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Second, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.[1] Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

At the intersection of these issue areas, verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. For instance, FVAP is currently involved in an appeal where the court refused to issue jury instructions relating to the domestic violence defense to eviction found in Code of Civil Procedure, section 1161.3. Without a record, the appellate division could not possibly determine whether this is legal error. Domestic violence is already a primary cause of homelessness for women and children in the United States.[2] Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the

[1] *See* JUDICIAL COUNCIL OF CALIFORNIA, TASK FORCE ON SELF-REPRESENTED LITIGANTS: FINAL REPORT (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.
[2] *See* ACLU WOMEN'S RIGHTS PROJECT, *Domestic Violence and Homelessness* (2006), http://www.aclu.org/pdfs/dvhomelessness032106.pdf; *see also* U.S. CONFERENCE OF MAYORS, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf.

immediate cause of their homelessness.[3] California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

We are concerned, however, that establishing a 10-day timeline to request a court reporter may *effectively bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record*. Legal aid organizations know all too well that low-income litigants often deal with these issues on a much shorter timeframe. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statues as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

> *The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.*

[3] Monica McLaughlin & Debbie Fox, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide form and Rule will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin, this Council can—and we believe should—require a court reporter at all hearings where a fee waiver recipient appears, without any formal request (Invitation to Comment SPR20-07, p. 2). However, we recognize concerns that not all types of proceedings need reporters, and that it cannot merely be automatic. Nonetheless, placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter—as opposed to a mere calendaring or administrative matter that does not—would be a better use of court resources resulting in improved access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings.

As a practical matter, low-income and unrepresented litigants are not able to bear the burden and forcing them to take on the full burden is effectively eliminating implementation entirely. Adding another procedural hurdle to the maze of rules and procedures that low-income litigants

must attempt to follow will result in many individuals being unable to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish (*Jameson*, *supra*, 5 Cal.5th at p. 598). This result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

Finally, there is no reason to believe that small or rural courts cannot fully implement *Jameson* in this way, to good effect. For example, Mono County reports that it provides court reporters regularly, and a court reporter is typically provided regardless of whether a litigant requests one (Response to Public Records Act Request, on file with FVAP). As a second example, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter (Response to Public Records Act Request, on file with FVAP). Hence, small and rural courts are already doing it, and it is working fine.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese.

More pressingly, however, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

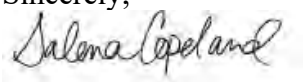
As discussed in comments from the legal services community last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

4. Conclusion

In conclusion, LAAC believes in the importance of *Jameson* and the principle that all court users—including low-income and unrepresented ones—deserve the opportunity to receive a verbatim record to utilize on appeal. Our members represent low-income clients who likely

otherwise would not receive representation, and who might not otherwise recognize the necessity of a record. Creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access to justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice and can obtain enforceable and appealable court decisions.

Sincerely,



Salena Copeland
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WESTERN CENTER
ON LAW & POVERTY

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June 8, 2020

By Email: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Western Center on Law & Poverty and the undersigned organizations submit this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta,* 5 Cal.5th 594 (2018). Western Center advocates for transformative, system-wide, public policy solutions to end poverty in California. Our housing advocacy incorporates promotion of affordable and equitable housing development, protection of tenants' rights, and preventing displacement of low-income communities and communities of color. We also work to ensure equal access to courts for people with disabilities, people with limited English proficiency and low-income people. As explained in our prior comment letters on proposed rules implementing *Jameson*, our role as a legal services support center means that we are uniquely positioned to assess the impact of the Judicial Council's proposals on low-income litigants, particularly in unlawful detainer litigation.

While we appreciate that the proposals include discussions of concerns raised by legal services agencies on the prior round of *Jameson* implementation measures, we still strongly believe that the most effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings where a litigant qualifies for a fee waiver. If this approach is not adopted, the second best option would be to allow fee waiver applicants to check a box on the existing fee waiver form indicating that they are requesting a court reporter. Creating an additional form, while preferable to having no system at all, creates an administrative burden for courts and a burden for low-income litigants who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

1. Verbatim records are essential to providing meaningful access to justice.

In *Jameson,* the California Supreme Court recognized "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.) Verbatim records are especially critical for tenants in unlawful detainer proceedings, where an unfavorable ruling results in the loss of the defendants' home and potential homelessness. Although the stakes for tenants facing eviction are extremely high, 90% of tenants are unrepresented while most landlords have representation.[1] Without a verbatim record of unlawful detainer proceedings, tenants, especially those without representation, are unable to create reliable records of their proceedings. The lack of record denies tenants a meaningful right to appeal and may make it more difficult to seek other post judgment relief from eviction.

2. Proposed changes to Rule of Court 2.956 should be modified to accommodate shortened timelines in unlawful detainer proceedings

We agree with the proposal to amend Rule of Court 2.956(c)(2) to state unequivocally that once a fee-waiver recipient has requested a court reporter, one must be provided by the court. However, we are concerned that establishing a 10-day timeline to request a court reporter may prevent defendants in unlawful detainer matters from exercising this right. While unlawful detainer hearings may be scheduled more than 10 days in advance, most defendants are unrepresented or do not find legal representation until shortly before their trial, and litigants without legal assistance will not know to request a court reporter until they obtain counsel. For that reason, we recommend revising proposed rule 2956(c)(2)(B) to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording.

3. Fee waiver recipients should be provided with a court reporter or electronic recording automatically

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, the right to a record should not be denied in the interim period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform

[1] *See* Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter in all courtrooms where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2)

Low-income litigants with fee waivers cannot afford to hire attorneys, and navigating unfamiliar court systems is an immense challenge for people with no legal expertise. Self-help centers in many counties face overwhelming demand. Many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it even more difficult for them to navigate the court system. Requiring these individuals to request a court reporter on a separate form makes it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*.

Superior Courts' responses to a recent public records inquiry reveal that providing court reporters for all indigent litigants is workable for courts in rural counties. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter. Mono County reports that it provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. Providing a mechanism for all indigent litigants to obtain a verbatim record of proceedings remains the most effective way to implement *Jameson.*

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, we suggest adding a check-box to the fee waiver application itself.

As we discussed in our comment last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ "What court's fees or costs are you asking to be waived." The text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥. While adding box to the general fee waiver form would result in a fee waiver litigant effectively requesting a verbatim record for all proceedings in their case, the majority of unlawful detainer cases only result in one court date for trial, so this would not create significant increased burden for the courts.

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular have a meaningful opportunity to remain in their homes. Thank you for the opportunity to comment on these proposed rules.

Sincerely,

Madeline Howard
Western Center on Law and Poverty

Navneet Grewal
Disability Rights California

Caroline Peattie
Fair Housing Advocates of Northern CA

Ugochi Nicholson
Public Law Center

Denise McGranahan
Legal Aid Foundation of Los Angeles

Lucie Hollingsworth
Legal Aid of Marin

Ilene Jacobs
California Rural Legal Assistance

Meghan Gordon
East Bay Community Law Center

Item number: 09

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: 8/20/2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Sealing Previously Filed Papers Under Code of Civil Procedure Section 367.3

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Ingrid Leverett, (510) 593-3327

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: No. 4
Project description from annual agenda: Assembly Bill 800 allows active participants in the Safe at Home address confidentiality program to participate in civil proceedings, as plaintiffs or defendants, under a pseudonym and provides other protections when that person is a party to the proceedings. Current forms will be revised or new forms or rules developed as appropriate to implement this bill.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
The current proposal is for two sets of forms, and one instructional sheet, that will facilitate an active participant in the Safe at Home address confidentiality program in requesting that a court seal any previously-filed documents that disclose the participant's true name or other identifying characteristics, as authorized under Code of Civil Procedure, section 367.3. The two sets of forms and the instructional sheet are:

1. Forms to move the court to retroactively seal previously-filed documents:
-Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-020)
-Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-022)
-Order on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-025)

2. Forms to apply to the court for shortened time for a hearing on the retroactive sealing motion:
-Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-030).
-Declaration Regarding Notice and Service of Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-032)
-Order on Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-035).

3. Instructions on the retroactive sealing motion and the ex parte application to shorten time (Instructions for Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-020-INFO))

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Civil Practice and Procedure: Sealing Previously Filed Papers Under Code of Civil Procedure Section 367.3

Rules, Forms, Standards, or Statutes Affected
Adopt forms SH-020, SH-022, SH-025, SH-030, SH-032; approve forms SH-035 and SH-020-INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 13, 2020

Contact
Ingrid Leverett
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ingrid.leverett@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends seven new forms for Judicial Council adoption and approval to help implement recently enacted Code of Civil Procedure section 367.3. That law provides that a person who is participating in the Safe at Home program (an address confidentiality program run by the Secretary of State) may appear pseudonymously in a civil action, and that the true name of the protected person as well as any other identifying characteristics are to be kept confidential by the court and other parties in the case. The new forms allow participants in the Safe at Home program who are proceeding pseudonymously in civil court actions to (1) request that a court place under seal any previously filed documents that disclose the participant's identifying characteristics, and (2) make an ex parte application that this request be heard on shortened time.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt the following forms:

   - *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020);

   - *Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-022);

   - *Order on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-025);

   - *Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-030); and

   - *Declaration Regarding Notice and Service of Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-032).

2. Approve the following forms:

   - *Instructions for Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020-INFO); and

   - *Order on Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-035).

The new forms are attached at pages 10–25.

Relevant Previous Council Action

The Safe at Home address confidentiality program administered by the Secretary of State is intended to protect the privacy and safety of individuals who have been subject to domestic violence, sexual assault, stalking, human trafficking, or elder or dependent abuse. (Gov. Code, § 6205.) Effective September 1, 2020, the Judicial Council adopted *Confidential Information Form Under Code of Civil Procedure Section 367.3* (form SH-001) as the first step in implementing new section 367.3 of the Code of Civil Procedure, which provides that a person who is an active participant in the Safe at Home program may appear in a civil action under a pseudonym and may exclude or redact from all documents filed in that action any identifying characteristics, including name, address, etc. Under that new statute, the form recently adopted by the council must be filed with the court by the pseudonymous filer and served on all other parties to the proceeding.

In response to the invitation to comment that circulated in connection with the confidential information form (SH-001) adopted during the winter rules cycle, multiple commenters

responded that forms should be developed to permit a retroactive motion to seal for previously filed documents. These responses gave rise to the current proposal.

Analysis/Rationale

Under Code of Civil Procedure section 367.3, anyone appearing in a civil action who is a Safe at Home participant (defined in the statute as a "protected person")—whether a plaintiff, defendant, petitioner, respondent, objector, or any other party—may proceed pseudonymously in order to protect the party's identity and address. When doing so, they must serve and file *Confidential Information Form Under Code of Civil Procedure Section 367.3* (form SH-001), in which the protected persons (1) attest to their active participation in the Safe at Home address confidentiality program, and (2) confidentially provide to courts and to the other parties in a civil action their true names and all other identifying characteristics redacted from their pleadings.

Once a party to a proceeding has been served with the confidential information form, that party and that party's attorneys must use the protected person's pseudonym in all pleadings and other documents thereafter filed or served in the action. All parties must redact or exclude any of the pseudonymous party's identifying characteristics from any documents thereafter filed in the case, and at the same time must provide the information in confidence by serving and filing the redacted documents in question with the confidential information form, form SH-001, which contains the redacted factual information. (Code Civ. Proc., § 367.3(b)(2).)

The confidential information form (form SH-001) only covers information contained in contemporaneously filed documents: its service and filing does not address a Safe at Home participant's identifying information that has been disclosed in documents previously filed by another party. A protected person who wishes to appear pseudonymously in a civil matter that has already begun faces a potential problem that a similarly situated plaintiff does not. Before the defendant or other party in a civil action has appeared or has had any opportunity to advise the court of the party's desire to proceed pseudonymously under the new law, the plaintiff will likely have publicly disclosed the defendant's (or other party's) identifying information in a complaint, petition, or other paper filed in court.

With the current proposal, the committee seeks to address the potential need to seal previously filed documents that disclose a protected person's identifying characteristics. The committee has concluded that the new law authorizes the proposed forms. Code of Civil Procedure section 367.3 expressly provides that any protected person may file a motion to seal all or part of a record in accordance with rules 2.500 and 2.551 of the California Rules of Court. (Code Civ. Proc., § 367.3(b)(4).) The committee has determined that this provision authorizes retroactively sealing the name and identifying characteristics of a protected party that have been included in court files accessible to the public. (See also Code Civ. Proc., § 367.3(e) [authorizing the Judicial Council to adopt rules and forms, as appropriate, to implement the new statute].)

The committee anticipates that many of those likely to take advantage of the pseudonymous filing provisions of the Safe at Home program under Code of Civil Procedure section 367.3 will

be self-represented litigants. In the committee's view, without forms and instructions, self-represented parties would likely find it confusing and difficult to avail themselves of the protections of Code of Civil Procedure section 367.3. Adoption and approval of the identified forms would facilitate a request by a protected person to remove identifying information from previously filed documents in a civil action, as authorized by Code of Civil Procedure section 367.3 and California Rules of Court, rules 2.550 and 2.551. Specifically, the proposed forms would permit a pseudonymous party to (1) identify previously filed documents that disclose the protected person's identifying characteristics, and request that they be sealed and replaced in the public file with redacted versions of those documents; and (2) seek shortened time for hearing this request via ex parte application if desired.

The protection of the new law may be invoked in all civil cases. For this reason, the forms list the types of parties as "plaintiff/petitioner," "defendant/respondent/objector," and "other party/parent" in the captions and in items asking for a party's identity. The proposal also includes an information sheet (form SH-020-INFO), consisting of comprehensive instructions tailored to a self-represented party on how to complete, file, and serve the forms, and on how to submit a redacted set of the previously filed documents that the protected person wants the court to retroactively seal (and which, if the request is granted, will become the public set).

The two sets of recommended forms are described below.

Forms for motion to retroactively seal previously filed documents (forms SH-020, SH-022, and SH-025)

Code of Civil Procedure section 367.3 expressly authorizes a protected person to file a motion to seal all or part of a court record (see Code Civ. Proc., § 367.3(b)(4)). The proposed motion forms are intended to be used by a protected person to move to retroactively seal documents already filed in a case. A protected person seeking to seal documents already in the public file—typically, but not always, a defendant—would serve and file the *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020) and the *Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-022) to ask the court to seal, and to maintain as confidential, previously filed documents that disclose the protected person's true name and identifying characteristics. Such documents might include a complaint or petition, a summons, a civil cover sheet, a proof of service, etc. The documents to be retroactively sealed would be listed on the motion form, which includes a checklist of the most likely types.

- ***The forms may be used by any party.*** Although the new forms—the motion (form SH-020) and the supporting declaration (form SH-022)—would likely be used primarily by defendants or respondents seeking to seal documents previously filed by plaintiffs or petitioners, plaintiffs or petitioners may also have occasion to use them. Such would be the case if, for example, a plaintiff joins the Safe at Home program and becomes a protected person only *after* filing a complaint. The new forms accommodate the possibility that the party filing them may be any party in a civil action.

- ***Status as an active participant constitutes "specific facts" sufficient to support the motion.*** Rule 2.550 of the California Rules of Court requires that the court "specifically state the facts" that support its findings to place a document under seal. (Cal. Rules of Court, rule 2.550(e).) The committee concluded that the applicant's status as an active participant in the Safe at Home program under Code of Civil Procedure section 367.3, itself, constitutes the "specific facts" supporting the motion necessary to retroactively seal documents.

- ***The new forms allow for a request to change the public register of actions to replace the protected party's true name with a pseudonym.*** The new motion (form SH-020) and the *Order on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-025) both prompt the moving party and the court, respectively, to request or order that the public register of actions be changed to replace the pseudonymous party's true name with a pseudonym.

- ***Ordering that previously filed documents be sealed.*** The order form (form SH-025) includes an item in which the court may order that previously filed documents be placed under seal. It also includes a separate item in which a court may order that the redacted versions of documents submitted by the protected party replace the sealed documents (see bullet point immediately below).

- ***The protected party would submit redacted versions of documents to be sealed.*** The protected person would, while filing the motion to seal, also prepare, serve, and lodge with the court redacted versions of the previously filed documents that the party is requesting be sealed. If the motion to retroactively seal is granted, the court clerk would then substitute the redacted versions for the originals of those documents in the public file and place those original documents under seal.

Forms for ex parte application to shorten time (forms SH-030, SH-032, and SH-035)

Unless the moving party applies for an ex parte order shortening time to hear the motion to retroactively place documents under seal, the hearing on the sealing request could take place weeks or even months after the motion to seal is filed. During that period, the protected person's identifying characteristics would be a matter of public record.

For this reason, the committee proposed forms that would facilitate a protected person's ex parte request to shorten time on the hearing for the sealing motion. These ex parte application forms—an application, declaration of notice, and order form—track California Rules of Court, rules 3.1203–3.1207 (rules governing ex parte applications). The court's ex parte order (assuming it is granted and an expedited hearing is set) would serve as notice of the hearing on the retroactive sealing motion. The applicant would need only to arrange to have the ex parte order served on the other parties along with the motion papers.

Instructions for Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) (form SH-020-INFO)

The instructions provide detailed guidance on how a protected person should complete, serve, and file both an ex parte application shortening time and the underlying motion to seal previously filed documents. The instructions are stated in plain terms so that a self-represented litigant can understand them. A separate sheet of instructions is warranted given that a protected person will need to redact documents and submit them to the court in addition to filing and serving multiple documents.

Policy implications

Section 367.3 of the Code of Civil Procedure expressly authorizes any party to an action who is a protected person under the Safe at Home program to proceed in a civil action using a pseudonym, and keep all identifying characteristics included in the papers in such an action confidential and out of the public record. The law also authorizes a court to order that any record or part of a record in such an action be sealed on the motion of the protected party. This proposal has no separate policy implications; it merely implements the policy already set by the Legislature.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the spring rules cycle. The committee received comments from 10 entities including three courts, the Superior Courts of San Diego, Los Angeles, and Orange[1] Counties; the California Department of Child Support Services; the Child Support Directors Association; the Family Violence Appellate Project; the Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee; the Public Law Center; and the Orange County Bar Association.[2] The committee also received comments relevant to this proposal indirectly from commenters who were responding to the invitation to comment on the proposal for the confidential information form (SH-001) circulated over the 2019–2020 winter rules cycle.[3]

The commenters that answered the questions posed in the invitation to comment all supported the proposal and indicated that it appropriately addressed the stated purpose, and that the public-

[1] Two divisions of the Superior Court of Orange County commented separately.

[2] All comments received in connection with this proposal and the advisory committee's responses to them are included in the comment chart provided with this report.

[3] In response to the invitation to comment that circulated in connection with the confidential information form (SH-001) adopted during the winter rules cycle, multiple commenters responded that forms should be developed to permit a retroactive motion to seal for previously filed documents. These responses gave rise to the current proposal. Other comments on the confidential information form (form SH-001) relevant to this proposal were as follows:

- That all forms relevant to the Safe at Home address-confidentiality program should bear the "SH-" prefix (multiple commenters); and
- That participants in the Safe at Home program should have the opportunity to obtain a court order that the register of actions be amended to substitute the protected party's name with a pseudonym (Public Law Center).

facing forms (forms SH-020, SH-022, SH-030, and SH-032) should be mandatory. The courts indicated that implementation efforts may be extensive and will require significant staff training efforts as well as changes to courts' case management systems.

The committee considered all comments. Discussed below are the most significant issues raised by the comments.

General comments

Suggesting that the proposal does not comply with federal law.

The California Department of Child Support Services (CDCSS) pointed out a potential conflict between federal law and California law relating to information relevant in child support matters. Specifically, CDCSS explained that title 42 of the United States Code section 666, subdivision (c)(1)(G) requires that all states permit the state agency responsible for enforcement of child support obligations (in California, CDCSS) to secure a child support obligor's assets on an expedited basis, i.e., "without the necessity of obtaining an order from any other judicial or administrative tribunal." (42 U.S.C. § 666(c)(1).) The commenters asserted that the referenced requirement of the federal law may conflict with Code of Civil Procedure section 367.3 and the sealing provisions in California Rules of Court, rules 2.550 and 2.551 insofar as the California statute and rules make no provision for expedited relief to CDCSS from any sealing order that a court may enter under Code of Civil Procedure section 367.3 in an action that may involve an obligor's assets. The committee concluded that any potential conflict between state and federal legislation is outside the scope of this proposal, but that it will refer the issue to the Family and Juvenile Law Advisory Committee for consideration as to whether to recommend any amendments to relevant California statutes or rules of court.

Suggesting consolidation of the forms.

The Family Violence Appellate Project (FVAP) suggested that all of the forms intended for use by a protected party (forms SH-020, SH-022, SH-030, and SH-032) be consolidated into a single form, and that the two orders (forms SH-025 and SH-035) similarly be consolidated into one form. FVAP contended that navigating the six forms underlying the present proposal would be unduly burdensome for a self-represented Safe at Home participant, and pointed out that a number of form sets currently in use in family law and domestic violence cases incorporate a declaration supporting an emergency request within the motion form.

The committee considered but rejected the suggestion to consolidate the forms. The committee concluded that the multiple separate forms are necessitated by the detailed and exacting notice requirements of the ex parte application process (reflected on the ex parte declaration, form SH-032), along with the detailed requirements of the declaration supporting the motion to seal (reflected in form SH-022), which are set out in rule 2.550 and based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. The committee concluded that the existing separate forms would actually be less burdensome for a self-represented party than a single long form that includes all the required information, and that the instructional form (form SH-020-INFO) explains clearly and in detail how an unrepresented party should complete, file, and serve the forms.

Comments on specific forms
Based on the comments received, the committee revised the forms following circulation as follows:

- On all the forms: revised the captions to add an item for "other party/parent" to make it easier to use in family law cases.

- Form SH-020 INFO: revised and broadened the definition of "civil cases" on the instructional form to ensure all applicable cases are included, and expanded the instructions for appearing telephonically at the hearing.

- Form SH-020: shortened the title of the form, expanded the definition of "pseudonymous party," moved the item in which the Doe name is selected closer to the beginning of the form, and expanded the space for listing documents to be redacted.

- Form SH-022: clarified language in the declaration so that self-represented parties could better understand the interests at stake.

- Form SH-025: made the order form mandatory to ensure uniformity and to make the forms easily identifiable, and added a finding that the protected party is a participant in the Safe at Home program.

The committee declined to follow the suggestions from the Department of Child Support Services (CDCSS) that the order form (form SH-025) include findings as to whether support orders had been entered and ordering that the clerk transmit certain documents to the CDCSS, and that the CDCSS have access to all records sealed under the order. Such modifications are not authorized or contemplated by Code of Civil Procedure section 367.3 or any other authority of which the committee is aware. As noted above, the concerns of CDCSS will be referred to the Family and Juvenile Law Advisory Committee for potential future actions as appropriate and as time and resources allow.

Alternatives considered
The committee considered the option of not recommending any forms, but rejected it quickly because it would be extremely difficult for self-represented parties—which Safe at Home participants frequently are—to obtain the benefits of the new law otherwise. Even lawyers can find the complexities of sealing documents challenging. Self-represented parties are unlikely to meet all the requirements, especially for retroactively sealing documents, without assistance.

In addition to considering all the alternatives suggested in the comments addressed above, the committee also considered but rejected not recommending forms for an ex parte application to shorten time. However, without such forms, the applicant would have to be instructed on the complexities of how to file such an application, including complying with the detailed provisions of rules 3.1203–3.1207 of the California Rules of Court. The committee concluded that forms

dedicated to this purpose would simplify matters for self-represented parties in particular, and, presumably, also for courts.

Fiscal and Operational Impacts

This proposal for new forms is intended to assist parties and courts in complying with new procedures authorized by statute. Because of the new statute, clerks, judicial officers, and court legal services and self-help offices will require training on the new pseudonymous filing process permitted for participants in the Safe at Home program, on the level of confidentiality to be accorded to certain information relating to such parties, and on verifying with the Secretary of State that the party submitting the proposed forms is a participant in the Safe at Home program. The recommended forms are intended to ease this impact.

Attachments and Links

1. Forms SH-020, SH-020-INFO, SH-022, SH-025, SH-030, SH-032, and SH-035, at pages 10–25
2. Comment chart, at pages 26–58

(Party without an attorney should provide this information on Confidential Information Form *(form SH-001))* ATTORNEY NAME: STATE BAR NUMBER: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **07-029-2020** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	
MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)	CASE NUMBER:

Before completing this form, read instructions for how to apply to the court to place documents under seal (make them confidential) if you are under the Safe at Home address confidentiality program; the instructions are found on the information sheet entitled Instructions for Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) *(form SH-020-INFO).*

A Confidential Information Form *(form SH-001) must be filed with this form.*

1. The person filing this motion *(Doe name that you select in item 2 of this form):* _____ (pseudonymous party) is an active participant in the Secretary of State's address confidentiality program (Safe at Home) and is a *(check one):*
   a. ☐ Plaintiff/Petitioner
   b. ☐ Defendant/Respondent/Objector
   c. ☐ Other party/parent *(specify):*

   in this action.

2. The pseudonymous party requests that the court change the public register of actions to replace pseudonymous party's true name with pseudonym *(check all that apply):*
   a. ☐ John Doe
   b. ☐ Jane Doe
   c. ☐ Doe
   d. ☐ If more than one party is using a Doe name, designation of the Doe in question (for example, Doe A or Doe B, etc.):

   _____

Form Adopted for Mandatory Use
Judicial Council of California
SH-020 [New January 1, 2021]

Code of Civil Procedure, § 367.3;
Cal. Rules of Court, rules 2.550, 2.551
www.courts.ca.gov

(Use Doe name where appropriate)	CASE NUMBER:
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT/ESTATE OF:	
OTHER PARTY/PARENT:	

3. Pseudonymous party requests that the court place under seal (make confidential) the following documents that were previously filed in this action *(check all that apply):*

   a. ☐ Complaint
   b. ☐ Petition
   c. ☐ Summons
   d. ☐ Proof of Service
   e. ☐ Civil Cover Sheet
   f. ☐ Notice
   g. ☐ Order
   h. ☐ Other document *(specify by document name and, if applicable, by form number):*

☐ Continued on attachment *(if you need more space, attach form MC-025).*

4. The purpose of this motion is to ask the court to maintain the confidentiality of the pseudonymous party's name and identifying characteristics on documents that have already been filed in the court, as provided by Code of Civil Procedure section 367.3.

5. The facts that support this motion to place the documents checked above under seal are stated in the *Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-022), filed with this document.

6. Pseudonymous party has prepared a redacted version (a version with true names and identifying characteristics blacked out) of each of the documents checked above and is lodging it with the court. The information redacted from these documents is limited to the pseudonymous party's true name and identifying characteristics as defined in Code of Civil Procedure section 367.3(a).

7. Pseudonymous party requests that the redacted versions of the documents identified above be placed in the public court file in place of the original documents that the pseudonymous party is asking the court to place under seal.

Date:

(TYPE OR PRINT NAME)
(*Party without attorney should use Doe name*)

▶ _____
(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)
(*Pseudonymous party should sign with Doe name*)

INSTRUCTIONS FOR MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)

*(**Note:** This form may be used only in cases in which one or more parties are enrolled in the Safe at Home program and using a pseudonym under Code of Civil Procedure section 367.3.)*

1. **Applicable Law.** The Safe At Home program is an address confidentiality program run by the Secretary of State. Active participants in that program who are parties in a civil court proceeding (a civil court case—any court case or proceeding that is not a criminal case) may use a pseudonym (Jane Doe, John Doe, or Doe) in place of the party's true name in the civil court proceeding. Pseudonymous parties (parties using a Doe name in a civil court proceeding) may exclude or redact (black out) their true names and identifying characteristics (defined below) from documents they file in court, as provided in Code of Civil Procedure section 367.3 by using the *Confidential Information Form* (SH-001) to provide the information to the court confidentially.

2. **Purpose of Motion to Seal.** The purpose of the *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020) is to enable a person who is an active participant in the Safe at Home address confidentiality program and who wishes to appear under a pseudonym (a Doe name) in a civil court case—any court case or proceeding that is not a criminal case—but whose name is already in the case files, to have the person's name and identifying characteristics removed from the public record by sealing documents that have already been filed in that case. If the court grants the motion, documents that were previously filed with the court and that disclose the Safe at Home participant's name and identifying characteristics will be replaced by versions of those documents with that information redacted (blacked out).

   Important: Form SH-020 and related papers are not to be used when a party is filing the party's own documents, because the party can redact the party's name and other information from the documents to be included in the public file and use a *Confidential Information Form* (form SH-001) to provide the information in confidence to the court and keep it out of the public files. If at the time the pseudonymous party is filing documents, the party wants to have such documents sealed as well (as permitted under the statute), the party must follow the procedures stated in California Rules of Court, rules 2.550 and 2.551. Form SH-020 and related papers are to be used only when a pseudonymous party wants the court to seal documents that were *previously* filed.

3. **What Documents Should Be Sealed.** Documents that may have already been filed in court and that are likely to disclose the pseudonymous party's name and identifying characteristics may include any or all of the following:

   - Complaint or petition
   - Summons
   - Civil cover sheet
   - Order or notice from the court
   - Proof of service

   This list gives only some possible examples of documents that could be in the public court file and disclose your true name and identifying characteristics. There may be other documents also, not listed here, that fit this description and so should be sealed. "Identifying characteristics" that the party using the pseudonym may keep confidential include, but are not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to another party, race or ethnic background, telephone number, email address, social media profiles, online identifiers, contact information, or any other information, including images of the party using a pseudonym, from which that party's identity can be discerned. (Code Civ. Proc., § 367.3(a)(1).) (See Code Civ. Proc., § 367.3(a)(2) for a list of "online identifiers.")

4. **How to Ask the Court to Seal the Documents.** To ask the court to seal the documents, the pseudonymous party needs to complete the following:

   - *Confidential Information Form* (form SH-001). The pseudonymous party will write on this form the party's true name and any identifying characteristics that the party is redacting (blacking out) on any of the other forms or documents to be filed because the party wishes to keep that information confidential.
   - *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020). The pseudonymous party should use the pseudonym (Doe name) and should not include any identifying characteristics on this form, including when identifying the plaintiff/petitioner or the defendant/respondent at the top of the form. The party should sign the form using the pseudonym.
   - *Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-022). The pseudonymous party should use the pseudonym (Doe name) and should not include any identifying characteristics on this form, including when identifying the plaintiff/petitioner or the defendant/respondent at the top of the form. The party should sign the form using the pseudonym.
   - *Redacted versions of the documents.* The pseudonymous party must create copies of the documents the party wants the court to seal because they disclose identifying characteristics, including the party's true name. On these copies, the party must redact (black out) identifying characteristics, including the party's true name. If the court grants the motion to seal, the redacted versions of the documents submitted by the party will be substituted in the court's file for the original versions of those documents. The original versions of the documents that disclose the party's identifying characteristics will be confidential and will not be available to the public.

Form Approved for Optional Use
Judicial Council of California
SH-020-INFO [New January 1, 2021]

Code of Civil Procedure, § 367.3;
Cal. Rules of Court, rules 2.550, 2.551
www.courts.ca.gov

5. **How to Ask the Court to Seal the Documents as Soon as Possible.** To remove the name and identifying characteristics from the public record as quickly as possible, the pseudonymous party should ask the court to schedule a hearing sooner than is normally done. To do so, the party should file an *Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-030) asking the court to set an early date for a hearing on the motion to place the documents under seal. Steps for filing the ex parte application to shorten time are as follows:

   - The ex parte application to shorten time must be filed in the court where the case has been filed. The applicant can determine which court this is from the documents that have already been filed in the case.
   - The applicant must check with that court for local rules as to when and where the applicant must appear for the court to consider the ex parte application for an order shortening time.
   - The applicant must follow the rules relating to ex parte applications that are set out in California Rules of Court, rules 3.1203--3.1207. These rules describe the following requirements:
     - **Notice of the ex parte application to shorten time.** The applicant must let the other party or parties in the civil court proceeding know that the applicant is filing an ex parte application to shorten time for a hearing on the *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020). Notice to the other party or parties may be given in person or by phone, fax, overnight mail, or email (if emailed notice is permitted in the case already). The other party or parties must be informed by 10 a.m. the day before the court is to consider the ex parte application to shorten time, unless there is a good reason such notice could not or should not be given.
     - **Service of papers.** Copies of the ex parte application to shorten time and all related papers must be given to the other party or parties in the civil court proceeding as soon as reasonable, and before the ex parte court appearance, if possible.
     - **Appearance at court.** The applicant must appear in court at the time and place specified in the court's local rules for ex parte applications.

6. **Forms to Complete for Ex Parte Application.** Before the time the court is scheduled to hear the ex parte application to shorten time, the pseudonymous party must complete and file the following forms with the court:

   - *Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-030); and
   - *Declaration Regarding Notice and Service of Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-032).

   Wherever the forms ask for the pseudonymous party's name, the party should use the pseudonym (Doe name) and should not include any identifying characteristics---including the party's true name. If the pseudonymous party is not represented by an attorney, the party should sign the forms using the pseudonym.

7. **Filing With the Court.** The completed ex parte application forms should be filed with the court clerk. When filing the ex parte application forms, the applicant may (but is not required to) attach the completed forms requesting sealing of documents (listed in instruction 4) to the ex parte documents described in instruction 6. (The court will not file the forms requesting sealing until after the court has scheduled a hearing on the motion to seal (form SH-020).)

   There will be a filing fee unless the party is eligible for a fee waiver. (If the party cannot afford the fee and has not already received a fee waiver, the party may file a *Request to Waive Court Fees* (form FW-001) with the other forms.)

   The applicant should take the original of each of the forms to be filed to the court clerk, along with two extra copies of each form. The clerk will file the original forms and will stamp and give back the copies.

8. **What to Do After Court Makes an Order.** When the court decides on the applicant's ex parte application to shorten time for a hearing on the motion to place previously filed documents under seal (form SH-030 and related papers), the court will usually make a written order.

- ***If the court's order sets a hearing date*.** If the parties to the case are present at the ex parte application hearing, the order and copies of all the documents for the motion to place documents under seal (forms SH-020, SH-022, and SH-025) may be given to them at that time. If some or all parties are not present at the ex parte hearing, the applicant must arrange for another person to serve (deliver to) the absent parties a copy of the court's written order and the papers listed in instruction 4. The person serving the documents must be over 18 years old and cannot be a party to the court proceeding. The person serving the documents must fill out and sign a proof of service, which may be done using the form *Proof of Service—Civil* (form POS-040). The proof of service must be filed with the court, typically by the applicant.
- ***If the court's order does not set a hearing date.*** The court's order may not set a hearing date on the motion to seal documents (form SH-020 and related papers). If this is the case, the pseudonymous party will have to ask the court clerk's office for a date, time, and location on the court's regular law and motion hearing calendar for a hearing on the motion to place documents under seal (form SH-020). The pseudonymous party will also need to prepare a notice of hearing in accordance with California Rules of Court, rule 3.1110, and arrange to have someone serve the notice of hearing on the other parties in the case, along with the other documents listed in instruction 4. Finally, the pseudonymous party will need to arrange for someone else to serve these documents on (deliver them to) the other parties. The person serving the documents must be over 18 years old and cannot be a party to the court proceeding. The person serving the documents must fill out and sign a proof of service, which may be done using the form *Proof of Service—Civil* (form POS-040). The proof of service must be filed in court, typically by the pseudonymous party.
- On the date the court sets for the hearing on the motion to place documents under seal (form SH-020), the pseudonymous party should appear at the hearing either in person or by phone. If by phone, notice must be given in advance to the court and the other side. There are different ways to give that notice:
  - In civil and probate cases, serve on all parties (as described above) and file with the court a completed *Notice of Intent to Appear by Telephone* (form CIV-020) at least two work days before the hearing.
  - In child support cases in which a governmental agency is involved, serve on all parties (as described above) and file with the court a completed *Request for Telephone Appearance* (form FL-679) at least 12 work days before the hearing (you must ensure that it is delivered to the other parties no later than the day after you file it).
  - In all other family law cases, parties should check the court's local rules to see what type of notice is required to appear by telephone.
- Once the court makes an order on the motion to place documents under seal (form SH-025 or an order prepared by the court), the pseudonymous party should arrange for someone to serve the other parties with this order as soon as possible.
- If the court determines that the pseudonymous party is not an active participant in the Safe at Home program and denies the motion to place documents under seal, then those documents and the name of the party who made the motion to place documents under seal will be available in the public record.

(Party without an attorney should provide this information on Confidential Information Form *(form SH-001))*	*FOR COURT USE ONLY*
ATTORNEY NAME: STATE BAR NUMBER: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **07-29-2020** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	
DECLARATION IN SUPPORT OF MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)	CASE NUMBER:

This form must be filed any time a Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) *(form SH-020) is filed.*

I declare as follows:

1. I have personal knowledge of the facts stated in this declaration and could and would testify competently to those facts.
2. I am an active participant in the Secretary of State's confidential address program, Safe at Home.
3. I am seeking to have the court place under seal (make confidential) the documents identified on the *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020).
4. Facts showing that there is an overriding interest in my safety or confidentiality that overcomes the right of public access to the records in this proceeding and that this overriding interest supports placing the documents under seal in this proceeding are as follows *(specify):*
   a. I am participating in the Safe at Home program.
   b. Because of my participation, Code of Civil Procedure section 367.3 authorizes my name and identifying characteristics to be kept confidential in any civil action.
   c. ☐ Other *(specify):*

☐ Continued on Attachment 4 *(If you need more space, attach form MC-025.)*

Form Adopted for Mandatory Use
Judicial Council of California
SH-022 [New January 1, 2021]

Code of Civil Procedure, § 367.3;
Cal. Rules of Court, rules 2.550, 2.551
www.courts.ca.gov

(Use Doe name where appropriate)	CASE NUMBER:
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT/ESTATE OF:	
OTHER PARTY/PARENT:	

5. Facts showing that there is a substantial probability that the overriding interest in my safety or confidentiality described in item 4 will be prejudiced (harmed or impaired) if the records in this proceeding are not sealed (made confidential) are *(specify):*

☐ Continued on Attachment 5. *(If you need more space, attach form MC-025.)*

6. The fact showing that an order sealing the records in this action is narrowly tailored to protect that overriding interest is that the versions of the documents that pseudonymous party has lodged (submitted) with the court redact (black out) only the pseudonymous party's identifying characteristics as provided under Code of Civil Procedure section 367.3.

7. The fact showing that there is no less restrictive means to protect that overriding interest than placing the record under seal is that the versions of the documents that the pseudonymous party has lodged (submitted) with the court do not redact (black out) any information other than the pseudonymous party's identifying characteristics as provided under Code of Civil Procedure section 367.3.

☐ The number of pages attached is:

(The pseudonymous party must sign here)

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct. I agree that when I sign this declaration using my Doe name, I sign as the party identified on the *Confidential Information Form* (form SH-001).

Date:

(TYPE OR PRINT DOE NAME)

▶ (SIGN DOE NAME)

(Use Doe name where appropriate) ATTORNEY NAME: STATE BAR NUMBER: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **07-29-2020** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	
ORDER ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)	CASE NUMBER:

1. The motion was duly considered
   a. ☐ at the hearing on *(date)*: in Department: of the above-entitled court.
   b. ☐ without hearing.

THE COURT FINDS

2. a. As to whether the following factors apply to the documents for which placement under seal has been requested,
      (1) an overriding interest that overcomes the right of public access to the record ☐ does ☐ does not exist.
      (2) the overriding interest ☐ does ☐ does not support sealing the record.
      (3) a substantial probability ☐ does ☐ does not exist that the overriding interest will be prejudiced if the record is not sealed.
      (4) the proposed order to seal this record ☐ is ☐ is not narrowly tailored.
      (5) a less restrictive means to achieve the overriding interest ☐ does ☐ does not exist.
   b. The pseudonymous party ☐ is ☐ is not an active participant in the Safe at Home program.
   c. ☐ Other findings or orders *(if any):*

THE COURT ORDERS

3. ☐ The motion to place documents under seal is **denied.**

Form Approved for Mandatory Use
Judicial Council of California
SH-025 [New January 1, 2021]

ORDER ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)

Code of Civil Procedure, § 367.3;
Cal. Rules of Court, rules 2.550, 2.551
www.courts.ca.gov

(Use Doe name where appropriate)	CASE NUMBER:
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT/ESTATE OF:	
OTHER PARTY/PARENT:	

4. ☐ The motion to place documents under seal is **granted.**

   a. The following documents must be placed under seal and kept confidential:

   1. ☐ Complaint
   2. ☐ Petition
   3. ☐ Summons
   4. ☐ Proof of Service
   5. ☐ Civil Cover Sheet
   6. ☐ Notice
   7. ☐ Order
   8. ☐ Other document *(specify by document name and, if applicable, by form number):*

   b. ☐ Redacted versions of the documents identified above, and submitted to the court by the pseudonymous party, must be placed in the public court file in place of the original documents that the pseudonymous party has asked the court to seal.

5. The register of actions ☐ must ☐ must not be revised as necessary to replace the pseudonymous party's true name with the pseudonym (the Doe name) *(check all that apply):*

   a. ☐ John Doe
   b. ☐ Jane Doe
   c. ☐ Doe
   d. ☐ If more than one party is using a Doe name, designation of the Doe in question (for example, Doe A or Doe B, etc.) and to indicate that specified materials have been placed under seal.

6. ☐ Other orders *(if any):*

Date: _____

_____
JUDICIAL OFFICER

(Party without an attorney should provide this information on Confidential Information Form *(form SH-001))*	*FOR COURT USE ONLY*
ATTORNEY NAME: STATE BAR NUMBER: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **07-29-2020** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	
EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)	CASE NUMBER:

Read Instructions for Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home) *(SH-020-INFO) before filing this application. That instruction sheet describes the requirements for giving notice of this application.*

1. The person filing this motion (*Doe name*): _____ (pseudonymous party) is an active participant in the Secretary of State's address confidentiality program (Safe at Home) and is a *(check one):*
   a. ☐ Plaintiff/Petitioner
   b. ☐ Defendant/Respondent/Objector
   c. ☐ Other party/parent *(specify):*

   in this action.
2. Applicant requests a court order shortening time for a hearing on *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020) and related papers.
3. Applicant is an active participant in the Safe at Home address confidentiality program and is appearing in this case under a pseudonym (Doe name) under Code of Civil Procedure section 367.3.
4. Certain documents currently in the court's public file disclose the applicant's true name and/or other identifying characteristics of a protected person who has the right to keep this information confidential under Code of Civil Procedure section 367.3.
5. The applicant intends to file a *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020) in order to have the protected person's true name and/or other identifying characteristics removed from the public court file.

Date: _____

_____
(TYPE OR PRINT NAME)
(*Party without attorney should use Doe name*)

▶ _____
(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)
(*Pseudonymous party should sign with Doe name*)

Form Adopted for Mandatory Use
Judicial Council of California
SH-030 [New Jan. 1, 2021]

EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)

Code of Civil Procedure, § 367.3
www.courts.ca.gov

(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	CASE NUMBER:

Declaration by Pseudonymous Party

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct. I agree that when I sign this declaration using my Doe name, I sign as the party identified on the *Confidential Information Form* (form SH-001).

Date: _____

_____ ▶ _____

(TYPE OR PRINT DOE NAME) SIGN DOE NAME

(*Party without an attorney should provide this information on* Confidential Information Form *(form SH-001)*)	*FOR COURT USE ONLY*
ATTORNEY NAME: STATE BAR NUMBER: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **07-29-2020** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	
DECLARATION REGARDING NOTICE AND SERVICE OF EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)	CASE NUMBER:

This form must be filed any time an ex parte application (form SH-030) is filed.

1. I am *(select all that apply):* ☐ attorney for ☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Objector ☐ Other *(specify):*

2. I ☐ did ☐ did not give notice that papers will be submitted to the court on the date, time, and location below asking a judicial officer to shorten time for (expedite) a hearing on a *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020), which is supported by applicant's *Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-022).

   a. Date: Time: ☐ Dept.:
   b. Address of court: ☐ same as noted above ☐ other *(specify):*

3. **NOTICE** *(If you gave notice, complete item 3a. If you did not give notice, complete item 3b or 3c.)*
   a. ☐ I gave notice as described in items (1) through (5):
      (1) I gave notice to *(select all that apply):*
      ☐ Plaintiff/Petitioner
      ☐ Defendant/Respondent/Objector
      ☐ Attorney for Plaintiff/Petitioner
      ☐ Attorney for Defendant/Respondent/Objector
      ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
SH-032 [New January 1, 2021]

Code of Civil Procedure, § 367.3;
Cal. Rules of Court, rules 3.1203-3.1207
www.courts.ca.gov

(Use Doe name where appropriate)	CASE NUMBER:
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT/ESTATE OF:	
OTHER PARTY/PARENT:	

3. a. (2) I gave notice on *(date):* at: ☐ a.m. ☐ p.m.
   - ☐ personally at *(location):* , California.
   - ☐ by telephone using telephone no.:
   - ☐ by fax using fax no.:
   - ☐ by voicemail using voicemail no.:
   - ☐ by electronic means *(if permitted) (specify electronic service address of person):*
   - ☐ by overnight mail or other overnight carrier *(specify address of delivery):*

   (3) I gave notice *(select one):*
   - ☐ by 10 a.m. the court day before this ex parte appearance.
   - ☐ after 10 a.m. the court day before this ex parte appearance because of the following exceptional circumstances *(specify):*

   (4) I notified the person in 3a(1) that an order shortening time is being requested for a hearing on the applicant's *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020).

   (5) The person in 3a(1) responded as follows:

   (6) I ☐ do ☐ do not believe that the person in 3a(1) will oppose the ex parte application.

b. ☐ **Request for waiver of notice.** I did not give notice about the ex parte application for order shortening time. I ask that the court waive notice to the other party for the following reasons *(identify the exceptional circumstances):*

☐ Attachment 3b

c. ☐ **Unable to provide notice.** I did not give notice about the ex parte application for order shortening time. I used my best efforts to tell the opposing party when and where this hearing would take place but was unable to do so. The efforts I made to inform the other person were *(specify below):*

☐ Attachment 3c

(Use Doe name where appropriate)	CASE NUMBER:
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT/ESTATE OF:	
OTHER PARTY/PARENT:	

4. ☐ **SERVICE OF FORMS**

a. An unfiled copy of *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020) and related documents were served on:

- ☐ Plaintiff/Petitioner
- ☐ Defendant/Respondent/Objector
- ☐ Attorney for Plaintiff/Petitioner
- ☐ Attorney for Defendant/Respondent/Objector
- ☐ Other *(specify):*

b. Documents were served on *(date):* at: ☐ a.m. ☐ p.m.

- ☐ personally at *(location):* , California.
- ☐ by fax using fax no.:
- ☐ by electronic means *(if permitted) (specify electronic service address of person):*
- ☐ by overnight mail or other overnight carrier *(specify address of delivery):*

c. ☐ **Documents were not served on the opposing party** because of the circumstances specified in:
☐ 3b ☐ 3c ☐ below:

(If the pseudonymous party is signing this form, sign here.)

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct. I agree that when I sign this declaration using my Doe name, I sign as the party identified on the *Confidential Information Form* (form SH-001).

Date:

(TYPE OR PRINT DOE NAME)

▶ (SIGN DOE NAME)

(If someone other than the pseudonymous party's attorney is signing this form, sign here.)

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

(Use Doe name where appropriate) ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **07-29-2020** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
(Use Doe name where appropriate) PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT/ESTATE OF: OTHER PARTY/PARENT:	
ORDER ON EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)	CASE NUMBER:

1. Applicant applied ex parte for an order shortening time for a hearing on *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (form SH-020).

2. The court, having reviewed the application, makes the following ruling.

3. ☐ **Application Denied.** The court denies the application.
   a. ☐ The application is incomplete.
   b. ☐ The application did not meet the requirements for providing notice or service of the application.
   c. ☐ Other:

4. ☐ **Shortening Time.** The court finds that delay in ruling would result in prejudice to the applicant's rights under Code of Civil Procedure section 367.3. A hearing will be held on the application, as follows:
   a. The hearing will be on the date, time, and location indicated below:

Date:	Time:	☐ Dept.:	☐ Room:
Address of court: ☐ same as noted above	☐ other *(specify):*		

   b. Applicant must serve this order and the *Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (SH-020), and related papers, including the *Declaration in Support of Motion to Place Documents Under Seal Under Code of Civil Procedure Section 367.3 (Safe at Home)* (SH-022), on all other parties by *(date):* .

   c. Any papers in opposition must be served on all other parties and filed by *(date):* .

Form Approved for Optional Use
Judicial Council of California
SH-035 [New January 1, 2021]

ORDER ON EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO PLACE DOCUMENTS UNDER SEAL UNDER CODE OF CIVIL PROCEDURE SECTION 367.3 (SAFE AT HOME)

Code of Civil Procedure, § 367.3
www.courts.ca.gov

(Use Doe name where appropriate)	CASE NUMBER:
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT/ESTATE OF:	
OTHER PARTY/PARENT:	

5. **Other Rulings.**

Date: _____

_____
JUDICIAL OFFICER

SPR20-08
Civil Practice and Procedure: Sealing Previously Filed Papers Under Code of Civil Procedure Section 367.3

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Subcommittee Responses
1.	California Department of Child Support Services By Leslie Carmona, Attorney IV	AM	*IV-D Child Support Program Access to Court Records as Mandated by Federal Law* Under federal law, any court procedure adopted to remove sensitive information from public court records must ensure the IV-D child support program in its state continues to have access to the information without having to file a motion with the court to get the information needed to administer the IV-D program. (See Title 42, United States Code (USC), §666(c)(1)(G).) It is noted that SPR20-08 does not identify the IV-D child support program as an entity that has a legal right to access to this information notwithstanding any order made by the court to seal it under Code of Civil Procedure section 367.3. As such, we are concerned that this proposal: (1) Lacks necessary specificity; (2) Does not protect the Department's ability to secure prompt, reliable, and uniform statewide access to any such information in court records; and (3) Is vulnerable to being implemented by local courts in a manner that conflicts with federal law. Federal law gives the IV-D child support program this critical access for two main reasons. The principal reason is that the child support program needs to know whether any parentage and support	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter. Although this comment does not affect or require changes to the proposed forms under section 367.3, the committee acknowledges that the referenced requirement of federal law may conflict with section 367.3 and the sealing provisions in California Rules of Court, rules 2.550 and 2.551, insofar as section 367.3 and rules 2.550 and 2.551 make no provision for expedited relief to CDCSS—the agency empowered to secure a child support obligor's assets in California—from any sealing order a court may enter under section 367.3 in an action that involves the assets of a child support obligor. The committee acknowledges this potential conflict and has referred this issue to the Family and Juvenile Law Advisory Committee for consideration as to whether changes to California statutes or rules of court may be necessary. The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			orders have already been established for a child—to get support to children timely, to avoid the entry of conflicting judgments, and to ensure a child does not lose the right to receive support because a void support order was issued in error. Second, it has an obligation to enforce any support order obtained effectively, and therefore also needs to know if there are any other court proceedings in the state that involve persons ordered to pay support where monies may be paid to them that could be used to bring them current in their court-ordered support obligation. *Both the Department and the Local Child Support Agencies Have a Legal Right to Collect Court Case Information* By law, the Department specifically has both a legal right to collect information about all support orders issued in California and a duty to maintain a statewide index to locate any court cases in which child support orders have been issued. (See Cal. Fam. Code §17391 et seq that implements federal requirements found at Title 42, USC, §§653, 663, and 654a as clarified by Title 45, Code of Federal Regulations (CFR), §§303.21, 303.69, 303.70, and 307.11.) The Department is provided information by courts and the court case participants in order to create and maintain said statewide index under current law. (See Cal. Fam. Code §4014 and 17391 et seq. as well as California Rules of Court, rule 5.330.)	The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			The Department is also required to make this centralized information available to in-state local child support agencies doing the day-to-day IV-D case work in California, to similarly situated out-of-state IV-D child support agencies, and to other authorized persons recognized under federal law when appropriate. (See Cal. Fam Code §§17391 et seq and 17506 implementing federal requirements found in Title 42, USC, §§653, 663, and 654a as clarified by Title 45, Code of Federal Regulations (CFR), §§303.21, 303.69, 303.70, and 307.11.) This centralized information is used by local child support agencies in a variety of ways to discharge their own separate statutory IV-D duties that require them to independently research and collect information about support obligations for those families they are helping from all appropriate in-state sources (including courts) that are statutorily mandated to cooperate with them under various provisions of state law that include, but are not necessarily limited to, Family Code sections 17505 and 17512 before initiating any administrative or judicial legal action to establish or enforce support. (See Cal. Fam. Code §§17400, 17406, and17526(c).) Local child support agencies also regularly need to research and access other court records that are governed by this procedure to enforce support for families by locating potential assets that may be distributed to persons ordered to pay support in unrelated civil lawsuits and probate proceedings.	The committee acknowledges the comment and thanks the commenter.

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			As proposed, there is nothing in the procedure that requires the sealed case-specific information to be shared with the Department and the local child support agencies or that expressly recognizes that the court clerk must still give this information to any person acting on behalf of the IV-D program upon request in the event it is needed without further relief of court. As such, the Department, is respectfully requesting that this Committee encourage the Judicial Council to, at a minimum, make amendments to specified forms. It would also encourage the Committee to considering amending California Rules of Court, Rule 2.551 as well. Suggested edits to forms are found in Attachment 1 to this letter. *[The letter from the California Department of Child Support Services and Attachment 1 are submitted with this comment chart. Attachment 1 proposes edits to three forms, only one of which (the final one shown in Attachment 1) is involved in the present proposal. The relevant Attachment 1 item proposes adding additional items to the order (form SH-025). The proposed additions are: • Inserting a new item 2.b. prompting the court to indicate whether a previous sealing order has been entered in the case; • Inserting a new item 2.c. that asks the court to indicate whether support orders have been made in California for children of any of the parties to the action; • Adding a new item 6 stating that "[a]ll parties identified in 2.c. are hereby ordered to file a State Case Registry Form (FL-191)	The committee declines to adopt the suggested changes to the proposed order form (form SH-025) shown in the attachment to the commenter's letter because the suggested changes would impose burdens on judicial officers and court staff that are not authorized or contemplated by Code of Civil Procedure section 367.3 or any other authority of which the committee is aware.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			with the court within ten (10) days when a local child support agency is not involved in securing support for any of their children; • Adding a new item 7 stating that the court clerk must transmit *the Confidential Information Form* (SH-001) filed with the court in the action to the California Department of Child Support Services when "it is the first such order made in this case and the court has found in 2.c. that support order(s) have been made in California for any of their child(ren)." • Adding a new item 8 stating "Any person discharging IV-D child support services for the California Department of Child Support Services or any local child support agency, as defined in Family Code section 17304, is authorized to inspect and copy all record(s) sealed under this order upon request without need for further leave of court."] The proposed amendment to Rule 2.551 is to: • Add a new subsection (i) that provides, as follows: (i) Notwithstanding subsection (h), any person discharging IV-D child support services for the California Department of Child Support Services or any local child support agency, as defined in Family Code section 17304, is authorized to inspect and copy any and all records(s) sealed by the court under Code of Civil Procedure section 367.3 and shall be given access to this	This suggestion goes beyond the scope of the current proposal. As noted above, the identified potential conflict between title 32 United States Code, section 666(c)(1)(G) and section 367.3 have been referred to the Family and Juvenile Law Advisory Committee.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			information by the court clerk upon request without any further leave of court. **The Department's Responses to the Committee's Specific Solicitations** *The Department believes the court captions for all the Code of Civil Procedure Section 367.3 Safe at Home forms should be revised to include other parent.* When the local child support agencies seek to establish support in court under Family Code section 17400, the name of the parent that applied for aid or asked for support services needs to be listed on the caption even when they have not been made a party to the case. As such, the caption on all these proposed forms to implement Assembly Bill (AB) 800 should be revised to include the "Other Parent" reference that is found on the captions for all Family Law-Governmental Child Support FL-600-699 Forms. *The Department concurs with the Committee's assessment that all the forms promulgated by the Judicial Council to implement AB 800 should be adopted for mandatory statewide use.* As the Committee has explained, as part of this proposal and its W20-04 proposal, all the forms implementing AB 800 are intended to allow people who could not otherwise safely access the courts before to do so, and the persons to be protected under the new law can ask for this type of protection	The committee agrees with this comment from multiple commenters and has adopted this suggestion. The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			in family law and probate matters—proceedings which, overall, tend to include a very high number of unrepresented litigants. Based on our vast experience working with unrepresented family law litigants, we have found that where, as here, the procedural rules for seeking relief in court are highly complex and specialized they are not able to satisfy them on their own-thereby denying them access to the courts in situations like this one where they really need it. The Department also believes that adopting these forms for mandatory use is necessary in order to ensure the orders entered by the court granting this type relief are uniformly entered in a manner that conforms with all the mandates imposed by both federal law and California Rule of Court, Rule 2.251, subd. (e)(3). *The Department would encourage the Committee to consider making further revisions to the AB 800 "Safe at Home" forms for purposes of helping a protected party in any case type understand that they can use the forms.* Since unrepresented persons in family law proceedings are one of at least two new groups identified by the Committee as being eligible for such relief in its prior proposal (W20-04), the Department would encourage the Committee to consider expressly stating which cases types qualify for this type of relief on the following proposed forms:	. The committee thanks the commenter for these comments. See responses below to comments regarding the specific forms identified.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			(1) The *Instructions for Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe at Home)*-(SH-020 Info) in the "Applicable Law" section;	The committee agrees and has added the following language at items 1 and 2 of form SH-020-INFO after the existing text "civil court case": "—any court case or proceeding that is not a criminal case."
			(2) *Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe at Home)*-(SH-020) in the instructional box immediately under the court case caption; and	The committee declines to adopt this suggestion to form SH-020 because the instructional box at the top of the form already directs protected parties to the instructions on form SH-020-INFO, which now include (at items 1 and 2) the requested clarifying language (see comment immediately above).
			(3) *Confidential Information Form Under Code of Civil Procedure Section 367.3* (SH-001) in the instructional box immediately under the court case caption.	The committee thanks the commenter for this suggestion, which the committee will consider as a potential future revision to form SH-001, the *Confidential Information Form*.
			While the use of the term "civil action" throughout the proposed forms is legally accurate, it has been our experience that unrepresented persons in family law proceedings, in particular, typically do not readily understand when they can and/or must use other civil forms to ask the court for what they need. And, as such, there is a risk that some parties in need may not know they can use them to protect their families.	The committee agrees and has revised the forms in an effort to make it clear that unrepresented persons in any case or proceeding that is not a criminal case may use the proposed forms.
			The Department believes that, overall, this proposal appropriately achieves its intended purpose to adopt forms for use in all civil case types where the new AB 800 "Safe at Home" relief is available within the strict time constraints imposed by statute.	The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			Given the strict implementation timeframe, the Department fully appreciates that the Committee may, in the future, also want to explore the following: (1) Adopting a new rule in Title 2 that codifies the procedures for these forms that are captured in "The Instructions for Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe at Home)-(SH-020 Info)," using a format similar to that found in California Rule of Court, Rule 5.92, as that model has worked well for this population; (2) Investigating at that time whether there would be any other added benefits to adopting a form set for this purpose that is more similar to that being used under the Request for Order (FL-300) process applicable to proceedings under the Family Code; and (3) Soliciting additional information from stakeholders about whether a separate AB 800 form set should be adopted by the Judicial Council for proceedings initiated under the Family Code.	The committee will refer proposal (3) to the Family and Juvenile Law Advisory Committee for future consideration.
2.	Child Support Directors Association Judicial Council Forms Committee By Ronald Ladage, Chair	AM	The Committee generally agrees with the proposed changes to the forms and believes the proposals appropriately address the stated purpose. However, the Committee recommends modifying the language on the forms as follows:	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			• SH-020, SH-020 INFO, SH-022, SH-030, SH-030, SH-032 and SH-035 – The form's caption box be modified to include "Other Parent." (See attached SH-020, SH020 INFO, SH-022, SH-030, SH-032 and SH-035 draft example).	The committee agrees with this suggestion from multiple commenters and has added a party title of "other party/ parent" in the caption on all the forms included in this proposal.
			• SH-025	
			o The form's caption box be modified to include "Other Parent."	The committee agrees with this comment as noted above.
			o On page 1 of 2 footer change "Approved for Optional Use" to "Adopted for Mandatory Use."	The committee agrees with this comment from multiple commenters and has adopted this suggestion.
			o On page 2 of 2 change existing number 6. to number 7.	The committee declines to make this change. Please see the response immediately below.
			o Add a new 6 with the following language: "The court clerk shall send a copy of the order granting the motion to seal and the completed Confidential Information Form SH-001 to the California Department of Child Support Services to maintain for future proceedings pursuant to state and federal law." (See attached SH-025 draft example)	The new statute does not provide authority for court clerks to send a copy of orders on form SH-025 or completed form SH-001 to the California Department of Child Support Services. Because the statute requires that the information be kept confidential, the committee declines to make this change.
			These proposed changes will allow the form to be used in IV-D cases, most all of which require the "Other Parent" to be identified in the caption box. In addition, it is important for the Department of Child Support Services (DCSS) be able to identify any cases where the protected person is involved for many reasons, including the safety of the protected	See response above; the committee agrees with this comment from multiple commenters and has added a selection for "other party/parent" to the captions on all of the public-facing forms. The committee also agrees that form SH-025 should be made mandatory, as noted above.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			litigant. The reason we suggest the SH-025 form be adopted for mandatory use, instead of approved for optional use, is for clarity and uniformity and so the form is easily identifiable to DCSS. We are also suggesting that the SH-025 form be required to be sent to California DCSS. Without that provision in the order, DCSS will have no way of easily tracking and properly protecting these litigants. DCSS is required by state and federal law to take specific action to establish and enforce support obligations. In order to properly undertake those responsibilities, DCSS must be able to identify all cases in which the parent in our caseload is involved. Otherwise, DCSS could obtain conflicting judgments and orders when unaware of the other cases. Also, without notice of the order sealing the case information, DCSS may be unaware of the parent's protected person status and may take action that it would not otherwise take. Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes. If you have any questions or concerns regarding this matter, please contact Ronald Ladage at 530-642-7375.	The new statute does not provide authority for court clerks to send a copy of orders on form SH-025 to the California Department of Child Support Services. Because the statute requires that the information be kept confidential, the committee declines to make this change. The committee acknowledges the comment and thanks the commenter.
3.	Family Violence Appellate Project By Cory Hernandez, Staff Attorney	AM	We support the idea behind SPR20-08, but think **significant modifications are needed**. [Emphasis in original.] SPR20-08 proposes creating seven new court forms (SH-020, SH-022, SH-025, SH-030,	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter. The Committee considered, but declines to adopt, the suggestion that the two sets

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			SH-032, and SH-035) and one new informational form (SH-020-INFO). However, only two new court forms (SH-020 and SH-025) and one new informational form (SH-020-INFO) are, in practical reality, needed. Reducing the number of forms means less work for the Council and the courts, less training needed for judicial officers and court staff, and less time and energy a survivor of domestic violence (or another Safe at Home program-qualifying crime) needs to spend on making one request. The fewer hurdles for litigants accessing the courts, the better.	of forms be consolidated into two forms—a single public-facing form and a single order form. Consolidating the motion, the declaration supporting the motion, the ex parte application and the declaration showing notice of the ex parte application into a single form would result in lengthy form that would necessarily be more confusing and more difficult for an unrepresented party to navigate than the two separate sets of forms proposed. This added complexity would make an already intimidating process even more difficult for an unrepresented litigant to understand, let alone complete, and would make errors in the process more likely.
			Forms SH-022, SH-030, and SH-032 should be combined into one form, form SH-020. A lot of the same information is requested on these four forms. Much of the stated language on form SH-022 (such as items 1, 2, 4(b), 4(c), 6, and 7) is generally good and can simply be moved over to form SH-020, with checkboxes that allow the requestor to check to ensure all statements apply to them. The additional information requested on form SH-022 can be moved over to form SH-020. Item 3 on form SH-022 is unnecessary if the form is moved into form SH-020. Item 4 on form SH-020 can be modified to provide space for a declaration of supporting facts, as is done on extant forms DV-100, DV-115, DV-160, and FL-300. And items 4 and 5 on form SH-022 are quite difficult to understand, even to someone trained in the law; here is suggested alternative language: “Facts showing	The primary reason for the separate set of ex parte forms (SH-030, SH-032 and SH-035) is the exacting and detailed ex parte notice requirements of California Rules of Court, rule 3.1204. This complexity is reflected on the ex parte declaration (SH-032). The committee believes that the instructions on form SH-020-INFO are sufficiently detailed and clear to enable most self-represented litigants to understand, adequately complete, file, and serve the forms. The committee agrees that language in the declaration in support of retroactive sealing, form SH-022, at items 4 and 5, is difficult to understand. The committee has revised item 4 to state: “Facts showing that there is an overriding interest in my safety or confidentiality that overcomes the right of public access . . . .” The

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			there is an interest greater than the right of public access to these records, and this greater interest supports putting the documents under seal *(specify)*:"	committee has also revised item 5 to state: "Facts showing that there is a substantial probability that the overriding interest in my safety or confidentiality described in item 4 will be prejudiced . . . ."
			Moreover, ***item 4(a) on form SH-022 is absolutely unnecessary and may deter requestors from completing the form, as they may not want to disclose why they are registered in the Safe at Home Program. No law or rule requires a requestor disclose their reason for being registered before they can take advantage of AB 800.***	The committee agrees and has adopted this suggestion.
			Additionally, form SH-030 does not solicit any information that is not already gathered on form SH-020. Form SH-020 should be modified to include an additional item with a checkbox that lists out items 2-5 on form SH-030. While form SH-032 solicits some new information, it is only needed if the requestor is seeking an order shortening time, so that can be added to form SH-020 with an explanatory note that the requestor can skip that item if it does not apply. Already we see initial request forms contain a separate item to request an order shortening time, such as extant forms DV-100 and FL-300. Thus, only one request form, SH-020, is needed, and additional information found on other forms should simply be moved to form SH-020.	See the first response to the commenter, above; the committee declines to consolidate the forms for the reasons stated. Consequently, some redundancy is unavoidable for the sake of each form's completeness.
			Form **SH-020**, itself, could also be improved in at least five ways.	

SPR20-08
Civil Practice and Procedure: Sealing Previously Filed Papers Under Code of Civil Procedure Section 367.3

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			First, the name of the document is confusing and somewhat misleading: "Declaration in Support of Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe at Home)." We suggest changing the second "Under" to "for" or "due to." Having two "under"s so close together makes it harder to read for the average user. And the motion to place the documents under seal is technically under AB 800, not under the Safe at Home program, so the title is a bit misleading.	The committee agrees and has changed the name of the form to "*Motion to Place Documents Under Seal Under Code of Civil Procedure section 367.3 (Safe at Home)*."
			Second, the italicized language between the caption and item 1 on form SH-020 is good and useful but the second sentence, "A Confidential Information Form (form SH-001) must be filed with this form," is slightly buried and can be hard to miss (I missed it when I first read it, for instance). This should be bolded and/or place on a separate line to emphasize the information.	The committee agrees and has adopted this change.
			Third, we suggest considering using "requesting party" or something similar instead of "pseudonymous party," since it seems likely the average user will not know what "pseudonymous" means. Perhaps "Doe party" would be best, because that is clear and understandable and would signal to the user the need to use the "Doe" name instead of their actual name. While there may be multiple "Doe" parties in a given case, any potential confusion should be mitigated or eliminated by the fact that an SH-001 form must accompany each request here. Plus, the same potential confusion could arise using "pseudonymous party" because in	The committee declines to make this change. The term denotes a protected party under Code of Civil Procedure section 367.3 who is invoking the statute's pseudonymous filing provisions by way of these forms under Code of Civil Procedure 367.3(b)(1) ("A protected person who is a party in a civil proceeding may proceed using a pseudonym[.]"). The term "pseudonymous party" is defined within the forms themselves, including in item 1 of the motion form (SH-020) and item 1 of the information form (SH-020-INFO) (to which the motion form refers users in the instructional box immediately above item 1). The definition of "pseudonymous party" in item 1 of the motion

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			that same example, each of those "Doe" parties would also be a "pseudonymous party."	form further appears in a parenthetical ("pseudonymous party") appearing immediately after the blank for the protected party to identify themselves using their "Doe name." (The provided blank is followed by the parenthetical "(pseudonymous party).") For further clarity, however, the committee has modified item 1 on the motion (form SH-020) which asks the protected person to fill in the provided blank with "(Doe name)". The committee has inserted the following language inside the parenthetical after "Doe name": "that you select in item 2 of this form." (The referenced item 2 of form SH-020—which was formerly item 6 of that form—asks the protected person to select a Doe name from a checklist consisting of "John Doe," "Jane Doe," "Doe" or other (where more than one party is using a Doe name).)
			Fourth, item 1 on form SH-020 is confusing when it asks for "The person filing this motion *(Doe name)*," because it seems to be asking for whether the requestor is using John Doe, Jane Doe, or Doe, but then that same form does not always specify whether it is asking for the Doe name elsewhere, such as in the caption ("Attorney for *(name)*"). In fact, it might be simplest to have a universal instruction on form SH-020, in bold at the top, saying to never use the real name on this form and only use the Doe name. After all, although some parts of the caption say, "Use Doe name where appropriate," a self-represented litigant is not likely going to know when it is and is not "appropriate" to use the Doe name, especially since they have not been to court yet on	See comment immediately above. The committee has modified item 1 as described to address this comment.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			their request, and form SH-020-INFO is dense and difficult to read. Plus, it is not until item 6 that the requestor even knows what the options are for selecting a pseudonym; item 6 should be one of the first items on form SH-020.	
			Fifth, as stated above, item 4 on form SH-020 should be modified to allow for a declaration of supporting facts for the request. Requiring someone to use multiple forms to make one straightforward request is unnecessary and likely to result in some applicants failing to complete all the necessary forms. A multitude of other request forms already allow for space to support the request, such as extant forms FL-300, DV-100, DV-115, DV-160, and DV-700. Yes, form SH- 020 will be longer, but it is much better to have one longer form than multiple short forms.	The committee declines to make this change for the reasons described in the first response to this commenter, above. Consolidating the declaration form (SH-022) and the motion form (SH-020) would result in an overly complex single form likely to confuse or overwhelm an unrepresented party.
			Form SH-035 should be combined into form ***SH-025.***	The committee declines to adopt this suggestion given that, for the reasons previously explained, it is declining to consolidate the two sets of forms, i.e., SH-020, SH-022, SH-030 and SH-032.
			If the above suggestion is heeded, then the order form for the order shortening time (SH- 035) should be combined with the order form for the order on the request (SH-025). Examples of extant forms that combine these types of orders include forms FL-300, DV-109, and DV-116.	
			Moreover, item 6 should say "Other orders" instead of "Other findings" because item 6 is for orders and item 2 is for findings; item 2(b) specifically already asks for "Other findings," and no other item asks for "other orders."	The committee has revised form SH-025 at former item 6 (now re-numbered as item 7) to state: "Other orders."

SPR20-08
Civil Practice and Procedure: Sealing Previously Filed Papers Under Code of Civil Procedure Section 367.3

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Subcommittee Responses
4.	Orange County Bar Association By Scott B. Garner, President	A	• The proposal appropriately addresses the stated purpose, as it will provide a method for protecting Safe at Home participants if their names or information are disclosed in public filings.	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter.
			• It is unclear whether the forms would work satisfactorily in probate and family law cases; there are no obvious differences about these types of cases that would require modification to the proposed forms or procedures.	The committee has revised the instructional form, SH-020-INFO, at items 1 and 2 to include language clarifying that a "civil case" is any court case or proceeding that is not a criminal case.
			• The forms should be mandatory. If the goal is to protect the applicants, then having one way to have the information sealed and be able to proceed under a pseudonym will minimize chances of any confusion by court staff or the applicants when filing the forms.	The committee appreciates the comment and thanks the commenter.
			Additional Comments: • The OCBA is concerned about the redaction procedures for pro se parties who are members of the Safe At Home program. The Judicial Council recognizes that it will often be pro se parties completing these forms. Nevertheless, the Council proposes that as part of the forms, the pro se party must file redacted versions of the documents sought to be sealed. This seems contradictory, as many pro se parties will have no idea or ability to redact documents properly using electronic means (it seems unlikely that the courts would allow a party to print a document, redact information with a marker,	The committee declines to adopt this suggestion. The instructions form (form SH-020-INFO) instructs protected parties as to how they should redact copies of previously filed documents and provide those as part of the motion. Those redacted copies are what will be scanned by the courts and made part of the public record, while the previously scanned ones will be made confidential by the courts. The commenter recommends imposing a requirement on courts that the new statute does not authorize. Code of Civil Procedure section 367.3(b)(3) states: "This

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			and then have the document re-scanned as the public version of the document). The OCBA recommends modifying the form to have a space for the parties, if appearing pro se, to identify the documents and places within the documents that need to be redacted. This would impose a burden on the court staff, but, given the interest at issue, seems appropriate. • The OCBA is also concerned that the documents containing the personal information for the Safe At Home participant will remain available to the public while the application to seal the documents is pending. Under the current sealing rules outside this context, parties are permitted to file documents conditionally under seal. Given the interests to be protected here, and that disclosure of a Safe at Home participant's address could cause substantial, immediate harm, it is appropriate to have the identified documents placed conditionally under seal upon the participant filing the motion. Once the court rules on the requests, the documents would either be sealed or publicly available again. It is problematic to afford more protections for confidential business information or trade secrets than for parties who may be under an actual threat of violence.	section does not require the court to review pleadings or other papers for compliance." The committee declines to adopt this suggestion because the documents at issue will already be in the public file. The provisions in California Rules of Court, rule 2.551, permitting parties to submit records conditionally under seal during the pendency of a motion to seal, apply only to documents not yet in the public record. The new law (Code of Civil Procedure section 367.3) does not give courts the authority to conditionally seal documents that have already been filed. The committee is unaware of authority that would permit (let alone require) a party to conditionally remove documents from public access.
5.	Public Law Center By Leigh E. Ferrin, Director of Litigation and Pro Bono	AM	PLC appreciates that the Council rejected the ex parte process due to complexity concerns. That would have been the focus of our comments had the ex parte process been adopted.	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			While we do support the use of a mandatory form, we have concerns that self-represented litigants may not understand the full requirements. PLC encourages an educational component to accompany the implementation of this rule such that if a self-represented litigant[] requests sealing not on the mandatory form, that the judicial officer provides the litigant an opportunity to refile on the mandatory form, rather than outright rejecting the request.	The committee is confident that judges entertaining motions to retroactively seal documents made by Safe at Home participants under Code of Civil Procedure section 367.3 will not deny such motions with prejudice on the ground that the protected person failed to use the mandatory form. However the committee will make sure that the Committee on Judicial Education and Research is made aware of the new procedure and the likelihood of its use by self-represented parties, so that appropriate education can be considered.
6.	Superior Court of Los Angeles County	A	• Does the proposal appropriately address the stated purpose? Answer: Yes. • Would the proposed forms—and particularly the forms' captions—work satisfactorily in probate and family law cases in which a protected person files under Code of Civil Procedure section 367.3? If not, how should they be revised? Answer: Yes. • The forms (other than the order forms) are proposed as mandatory forms. Should they be optional instead and, if so, why? Answer: They should be mandatory. Many will be filled out by unrepresented litigants, who are likely to omit pertinent information without a	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter. The committee acknowledges the comment and thanks the commenter. The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			mandatory form. The forms include important instructions that filers must follow. • 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? Answer: Training for judicial officers and staff; changes to case management systems. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Answer: No. In the current environment, 6 months should be allowed.	The committee acknowledges the comment and thanks the commenter. Given that Code of Civil Procedure section 367.3 has been in effect since January 1, 2020, the committee believes these forms are necessary to provide access to the new relief and that three months provides sufficient time for implementation.
7.	Superior Court of Orange County Family Law Division By Vivian Tran	AM	*Confidentiality Program (Safe At Home)* ***(Form SH-020):*** • Item #2 - Lists the various filings that may be redacted. In Family Law, there are multiple forms that may have been previously filed in a case after case initiation or previously filed in a case before a party has become a member in the Safe at Home	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter.

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			Program. These may need to be redacted as well as they also list the name of the party and/or identifying characteristics besides the usual forms like petition/response, summons and proof of service. Just to name a few for example: -Notice of Related Cases (form L-1120), -Decl. under UCCJEA (form FL-105), -Requests for Orders/Motions (form FL-300 and attachments), -Income and Expense Declaration (form FL-150)/Financial Statement (Simplified) (form FL-155), -Responsive Declaration to Request for Order (form FL-320).	
			As shown on the current draft, there may not be enough space afforded to Item# 2.h. for the listing of all the additional documents needing redaction. Recommend adding a box for an attachment or giving more space in Item 2.h. to identify/specify more "other documents" if needed.	The committee agrees and has modified both (1) form SH-020, item 3 (formerly item 2) and (2) form SH-025, item 4 to state, in the final item listed, "Other document (*specify* ***by document name and, if applicable, by form number***)," followed by additional space to permit a protected party to specify other filings, and an advisement (on form SH-020) that the applicant may use an attachment to list additional documents. The committee declines to list any additional documents that may have been previously filed (and that may contain the applicant's identifying information), however, because there are too many such documents to easily list on the form, and the exclusion of any particular document or form could give a protected party the erroneous impression that the document or form is excluded

	Commenter	Position	Comment	DRAFT Subcommittee Responses
				from the protections of Code of Civil Procedure section 367.3.
			NEW Form - Instructions for Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe At Home) **(Form SH-020-INFO)**:	
			• **Item #1 – Applicable Law**. **2nd Sentence "**… Active participants in that program who are parties in a civil court proceeding (a civil court case) …" Recommend that if this is a form geared towards self-represented parties, they might not be able to identify that a probate or family law case is also "a civil court proceeding". Adding these types of cases may help the parties to understand that this request/motion may also be filed in these cases as well. Recommended revision: (a civil, probate or family law court case)	The committee agrees and has modified the term "a civil court case" with this clarifying language: "—any court case or proceeding that is not a criminal case."
			• **Item #8 – If the court's order sets a hearing date – first bullet - last sentence.** "The proof of service must be filed in court, typically by the applicant." Recommend changing "must be filed in court" to "must be filed with the court" as this may represent that the proof of service must only be filed in the courtroom or at the time of the hearing when there are other options for filing the proof of service prior to the hearing date (i.e., mailing, filing in the clerk's office, eFiling, etc.)	The committee agrees and has made this change.
			• **Item #8 - Third bullet – only sentence** - "The pseudonymous party should appear at the hearing in	The committee agrees and has modified the third bullet of item 8 accordingly. The new language

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			person or by phone (if by phone, notice must be given in advance to the court or the other side.)" For Family Law cases, there is a process to request a telephonic appearance at court and it typically includes the filing of a mandatory Judicial Council Form, *Request for Telephone Appearance* (form FL-679). **Recommend adding this form information to this sentence.** NEW Form - Declaration in Support of Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe At Home) (Form SH-022) • No comments. NEW Form - Order on Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe At Home) (Form SH-025) • No comments. NEW Form - Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents under Seal Under Address Confidentiality Program (Safe at Home) (Form SH-030): • No comments. NEW Form - Declaration Regarding Notice and Service of Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe At Home) (Form SH-032)	explains that the way an applicant should request a telephone hearing depends on the type of civil case in question, and that the form CIV-020 should be used in general civil and probate cases, form FL-679 in governmental child support cases, and that the applicant should check the court's local rules for any direction as to how to give notice of a telephone appearance in other types of family law cases. The committee thanks the commenter for reviewing forms SH-022, SH-025, SH-030, SH-032 and SH-035.

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			• No comments. NEW Form - Order on Ex Parte Application for Order Shortening Time for Hearing on Motion to Place Documents Under Seal Under Address Confidentiality Program (Safe At Home) (new Form SH0-035) • No comments. *Request for Specific Comments* *Comments on the proposal as a whole:* This proposal is a welcome addition for even more security for the members of the Safe at Home Program. The issue of redacting identifying information is an important issue afforded in the addition of Code of Civil Procedure section 367.3. Rule 2.551 (rule for sealing of records) and CCP section 367.3 do not really address the sealing/redacting of past filings/register of actions in a case nor the expediting of the sealing/redacting of these past court filings/records. I am so glad that Judicial Council has realized the need to also include the interpretation that previously filed filings or the court's register of actions are also vulnerable if left unredacted. It is imperative that previously filed documents and/or the court's public register of actions, with identifying names and/or characteristics, be blocked from public view at the earliest time possible! Without this extra protection in effect and a chance to expedite the retroactivity redaction process, Safe at Home program members might have their identifying information available	The committee appreciates the responses to the specific questions included in the Invitation to Comment. The committee also acknowledges and appreciates the comments on the proposal as a whole.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			for public viewing which can lead to unforeseen dangerous and/or harmful circumstances for them. Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose. This proposal provides new forms that will make it easier and more efficient for the Safe at Home program members to understand the process and to be awarded these additional critical protections from the court. Would the proposed forms – and particularly the forms' captions – work satisfactorily in probate and family law cases in which a protected person files under Code of Civil Procedure section 367.3? If not, how should they be revised? In Family Law, some case captions may include a selection for an Other Parent/Party**.** The Case Caption for these new SH forms could be revised to work in the family law cases with an additional "Other Party" selection. Some of these new SH forms actually list an "Other" selection in Item #1 of the form. Proposed Case Caption for all new SH forms: *[As an example, the commenter inserts screenshot exemplars of (1) a case caption in a family law case, which lists "Petitioner," "Respondent," and **"Other Party,"** and	The committee agrees and has added to the caption on all fillable forms (i.e., to forms SH-020, SH-022, SH-025, SH-030, SH-032 and SH-035) a selection for "other party/parent "

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			(2) a hypothetical/suggested case caption on the forms that adds **"Other Party."**] The forms (other than the order forms) are proposed as mandatory forms. Should they be optional instead and, if so, why? Since the new forms are so specific to the Safe at Home program, I feel they should be mandatory forms. The new forms are easily identifiable for self represented parties and the language is representative of the issues from Code of Civil Procedure section 367.3. With all the hundreds of available forms, especially for Family Law cases, it is nice to have these forms separated from the rest. If the goal of the proposal is to create less confusion and difficulty for the Safe at Home program members, I believe that these new forms should be mandatory to accomplish this goal. What would the implementation requirements be for courts, for example: training staff (positions and hours), revising procedures and process (describe), changing docket codes in case management system, or modifying case management systems: This may be an extensive implementation process as training will need to reach most of Orange County Superior Court Family Law Division courtroom and case processing staff including judicial officers, legal research staff and self help staff. It will mean adding new event codes to the	The committee appreciates the commenter's responses to the specific questions included in the Invitation to Comment. The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			Odyssey case management system and new macros to Odyssey Clerk Edition. A few procedures on Confidential Addresses and Domestic Violence filings will need to be revised as the program is reflected in them or it may have to become a new procedure just for the new Safe at Home Program processes/forms. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation:	
			Yes, 3 months should be enough time for implementation. Orange County Superior Court's leaders have been working diligently to ensure this court will be able to continue to request changes to our case management systems and resume training, remotely, even if the court does not go back to a "normal" way of conducting business after this proposal has been approved. How well would this proposal work in courts of different size:	The committee acknowledges the comment and thanks the commenter.
			Orange County Superior Court – Family Law Division currently does not see a large volume of Safe at Home filings. Even though we have the Domestic Violence Assistance Program (DVAP) office as an official enrolling agency for the program, we also have a process in place that allows victims of domestic violence to keep their addresses confidential on these filings without having to be a member of the Safe	The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			at Home Program. I would like to think that there will not be any issues in other courts, but I cannot attest to the volume of Safe at Home program filings or the number of current members in the program within those counties.	
8.	Superior Court of Orange County, Training and Analyst Group Team	AM	1. Does the proposal appropriately address the stated purpose? Yes 2. Would the proposed forms—and particularly forms' captions—work satisfactorily in probate and family law cases in which a protected person files under Code of Civil Procedure section 367.3? If not, how should they be revised? Yes, but maybe adding a line/box on SH-020 (Motion form) in #2 under "Other" where the party can mark, "Continued on Attachment (*if you need more space, attach form MC-025*)," if the party is requesting to make additional documents that were filed in the case confidential, like an Ex Parte, or another Motion, and all of its supporting documents.	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter. The committee agrees and has modified both (1) form SH-020, item 3 (formerly item 2) and (2) SH-025, item 4 to include state, in the final item listed,"Other document (*specify* ***by document name and, if applicable, by form number***)," followed by additional space to permit a protected party to specify other filings, and an advisement (on form SH-020) that the applicant may use an attachment to list additional documents.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			3. The forms (other than the order forms) are proposed as mandatory forms. Should they be optional instead and, if so, why?	
			No, the forms should be mandatory to make things easier for the self-represented parties.	The committee appreciates the responses to the specific questions included in the Invitation to Comment.
			4. What are the implementation requirements 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 system, or modifying case management system.	
			Procedures will need to be updated/written. The case management system will need to be configured to the new forms. Legal processing and courtroom staff will need to be informed/trained on the new forms, what to look for, and the resulting impacts. Setting aside a few hours to review and discuss with staff should be sufficient to emphasize the importance of keeping information deemed confidential on the order, confidential. Most staff are familiar with similar processes and Safe at Home orders, so this should be straight forward.	The committee acknowledges the comment and thanks the commenter.
			5. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	
			Yes	The committee acknowledges the comment and thanks the commenter.
			6. How well would this proposal work in courts of different sizes?	

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			This proposal should work well in courts of different sizes but will have more of an impact on larger courts. Larger courts may be more likely to see these documents due to the volume of filings. Also, since forms are being created to assist litigants, it will make it easier for parties to file under these circumstances.	The committee acknowledges the comment and thanks the commenter.
9.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC) Joint Rules Subcommittee (JRS)	AM	The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following impact to court operations: *Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.).* The case management impacts for courts that are still using legacy case management systems (CMS) may be substantial. Legacy CMS's frequently do not allow the courts to make code changes or programming modifications. Courts with legacy CMS's may need to turn to the CMS vendor to modify their CMS and/or change coding to allow for the creation of a pseudonym field. Courts with newer CMS's usually will have the ability to reprogram their CMS to create a pseudonym field to please John Doe or Jane doe designation. In either legacy or newer CMS, courts will need to reprogram their CMS's to create confidential data fields for true name and identifying information which will need to	The Civil and Small Claims Advisory Committee appreciates the comments and thanks the commenter. The committee appreciates the responses to the specific questions included in the Invitation to Comment.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			be kept confidential from any public portal viewing of court CMS. Assuming that a court makes civil case record information available to justice partners, courts would also have to find a way to program their justice partner portal to keep confidential from justice partner viewing the true name and identifying information for "Safe at Home" active program participants. *Results in additional training, which requires the commitment of staff time and court resources.*	
			Staff will need to be trained on a number of steps required to implement the confidentiality. Staff will have to be trained on how to verify with the Secretary of State that the petitioner is an active participant in the Safe at Home program. Staff will have to be trained to process applications and motions related to "safe at home" confidentiality. Staff will also need to be trained on reviewing the redacted documents submitted by the petitioner to assure that the text the petitioner is seeking to redact can be redacted pursuant to CCP 367.3. *Increases court staff workload.*	The committee acknowledges the comment and thanks the commenter.
			The proposals will generate a substantial amount of new work for court staff. However, the assumption is the number of persons petitioning under CCP 367.3 will not be a substantial amount. In addition to the work generated by the steps described above that will require significant training, courts that have not digitized their court files will have considerable amount of work generated by the need to locate all	The committee acknowledges the comment and thanks the commenter.

	Commenter	Position	Comment	DRAFT Subcommittee Responses
			documents that the petitioner has redacted, remove the original and insert the redacted copy. For courts that have digitized their records, they will need to take the hard copy version of the documents the petitioner has redacted and scan the redacted documents into their digital case management system. The number of documents and the number of pages that court staff would need to scan and then enter into the case management system could be a voluminous even for just one application and motion. Finally, court staff will need to review and revise the register of action to redact the protected party's name and identifying information. *Impact on local or statewide justice partners.* An important requirement for the court to order the protection of a petitioner's true name and identifying information is the petitioner's active participation in the Safe at Home program administered by the Secretary of State. Each court will need to work out with the Secretary of State a means of verifying a petitioner's participation in the Safe at Home program. *Suggested modification(s):* In regard to the proposed forms working satisfactorily for both probate and family law cases, there are many more filings and documents in the family law area that a petitioner would need to identify that are not on the list of documents stated in SH-020 and SH-025. We would recommend the following modification, the creation of a family law	The committee acknowledges the comment and thanks the commenter. The committee declines to adopt this suggestion because the number of potential family law forms/filings that could have been previously filed (and contain the applicant's identifying information) is large and would likely require a separate attachment to forms SH-020 and SH-025 containing a checklist of all family law filings.

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			document check-off list attachment for SH-020 and SH-025. The attachment would have a check-off list of family law filings and documents to add to the documents listed on SH-020 and SH-025. It is likely that a substantial number of petitioners will be pro pers, the creation of such a list will make it easier for them to identify the documents to be sealed.	Nevertheless, the committee has modified these forms (see SH-020, item 3 and SH-025, item 4 (see comment above from Superior Court of Orange County, Family Law Division) to state, in the final item listed, "Other document (*specify* ***by document name and, if applicable, by form number***)," followed by additional space to permit a protected party to specify other filings, and an advisement (on form SH-020) that the applicant may use an attachment to list additional documents.
			In regard to SH-025, we recommend two modifications. We recommend that 2.a. (1) and (2) be combined. There is a redundancy in the two sections.	The committee declines to make the suggested change to 2.a.(1) and (2). The five findings in item 2 are the five express factual findings required to seal records under rule 2.550, based on *NBC Subsidiary (KNBC-TV) Inc. v. Superior Court* (1999) 20 Cal.4th 1178.
			We also recommend the addition of a new court finding "2.a.(6) The petitioner is an active participant in the Safe at Home program.	The committee agrees that the order (form SH-025) should include a court finding at item 2.b. that the protected party is an active participant in the Safe at Home program. The committee has revised the form accordingly.

INFORMATION ONLY
NO MATERIALS

Item number: 11

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Collaborative Justice: Notification of Military Status
Revise forms MIL-100

Committee or other entity submitting the proposal:
Collaborative Justice Courts Advisory Committee

Staff contact (name, phone and e-mail): Carrie Zoller, 415-865-8829, carrie.zoller@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Approved by Executive and Planning: April 24, 2020
Project description from annual agenda: Collaborative Justice Courts Advisory Committee Annual Agenda: Item 1: MIL-100: Revise the Notification of Military Status (form MIL-100), which informs the court that a party in a court case is or was in the military. The revisions to the current form will enable courts to improve early identification of court litigants in all case types who have a military affiliation, will assist courts in complying with Penal Code section 858 requirements, and will make the form easier to use and file.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-135
For business meeting on: September 24–25, 2020

Title
Collaborative Justice: Notification of Military Status

Rules, Forms, Standards, or Statutes Affected
Revise form MIL-100

Recommended by
Collaborative Justice Courts Advisory Committee
Hon. Richard Vlavianos, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 19, 2020

Contact
Carrie Zoller, 415-865-8829
carrie.zoller@jud.ca.gov

Executive Summary

The Collaborative Justice Courts Advisory Committee recommends revising *Notification of Military Status* (form MIL-100), which informs the court that a party in a court case is or was in the military, to include additional clarifying and instructional information. The revisions to the current form will enable courts to improve early identification of court litigants in all case types who have a military affiliation, and will assist courts in complying with Penal Code section 858 requirements.

Recommendation

The Collaborative Justice Courts Advisory Committee recommends that the Judicial Council, effective January 1, 2021, revise *Notification of Military Status* (form MIL-100) to:

1. Clarify that that the form can be used by both former and current members of the state and federal armed services, including the reserves, by adding "Veteran/Reserve/Active" to the title of the form.

2. Provide information as to when and how often the form may be filed.

3. Indicate that no filing fees apply to this form by adding "No Filing Fee. No filing fee or court costs are to be charged for this form" to the bottom of the form.

4. Provide information on the form's purpose by adding clarifying language to page 2, including the statement "Filling out the MIL-100 form is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be filled out at any time."

5. Ensure understanding that disclosure of one's military status is optional by including additional language and the statement in bold "You do not have to provide this information to the court" to the top of page 2 of the form, and stating "Giving this information to the court is voluntary" in the instructions.

6. Make the form easier to complete by removing unnecessary items asking for entry date and status of duty.

7. Make minor wording and structural changes to improve grammar and readability.

The proposed changes seek to improve form clarity and better inform users of the broad applicability of the form, while retaining all required notifications and information for parties in criminal cases. The revised form is attached at pages 6–7.

Relevant Previous Council Action

The Judicial Council adopted form MIL-100 effective January 1, 2014, at the recommendation of the Collaborative Justice Courts Advisory Committee. The committee recommended adoption of the form to facilitate courts' ability to address legal issues implicated by a party's military service status and to comply with alternative criminal sentencing considerations for current and former military service members under Penal Code section 1170.9.

The Judicial Council adopted revisions to form MIL-100, effective July 1, 2015. These revisions responded to legislation directing the Judicial Council to revise the military service form to include information explaining the rights of individuals who have active duty or veteran status under Penal Code section 1170.9 and related statutes, and to include a space for the local court to provide contact information for the county veterans service office.

Prior circulation

A proposal to revise form MIL-100 was circulated for public comment. The proposed revisions were intended to make form MIL-100 easier to use in noncriminal cases, as well as to ensure consistent information by making the form mandatory. Due to the feedback received from commenters, the proposal to revise form MIL-100 was deferred from the spring 2019 cycle and recirculated in the winter 2020 cycle. In order to fully consider the comments received the committee elected to delay this report and bring to the council with spring 2020 items. This allowed the committee to incorporate changes suggested by commenters such as honing the

informational language on the form for clarity and comprehension, including language to clarify that there was no filing fee, and providing information in the invitation to comment on the effect of changing the form from optional to mandatory. Due to these suggested changes, the committee also wanted to allow for a period of additional public comment.

Analysis/Rationale

Senate Bill 1110 (Jackson; Stats. 2014, ch. 655) amended Penal Code section 858, effective January 1, 2015, to direct the Judicial Council to revise the military service form to include information explaining the rights of individuals who have active duty or veteran status under Penal Code section 1170.9 and related statutes, and to include a space for the local court to provide contact information for the county veterans service office. Revisions to the form incorporating these changes went into effect July 1, 2015. After the revised form was in use, some litigants expressed confusion about the case types for which the form should be used. Although the military or veteran status of a party may be relevant in many kinds of court cases, the 2015 revisions made to be responsive to the requirements of Penal Code sections 858 and 1170.9 unintentionally gave the appearance that form MIL-100 was for use solely in criminal cases. Concerns were also raised that the form requested information that was not needed by the court, making the form unnecessarily difficult to complete. To address these issues, the committee recommends adopting the proposed revisions to form MIL-100.

Policy implications

The recommended revisions promote several Judicial Council policy objectives. The revision of form MIL-100 promotes access to the courts by making the form easier to complete and by better explaining that past or present servicemembers may have rights as a result of their service. The revisions to the form also improve the quality of justice and service to the public by making clear that the form can be used in all case types. Encouraging litigants to declare their military status early in a case will enable judicial officers to handle cases more effectively and efficiently.

Comments

This proposal circulated for comment as part of the winter 2020 invitation-to-comment cycle from December 11, 2019, to February 12, 2020, to the standard mailing list for proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, self-help center staff, legal services attorneys, and other criminal, juvenile, and family law professionals. Four organizations and one individual provided comment: four agreed with the proposal and one agreed if modified. No commenters opposed the proposal. The invitation to comment asked specific questions about whether the form should be mandatory or remain optional, and whether the form should indicate different case types. Discussion of those issues is below.

A chart with the full text of the comments received and the committee's responses is attached at pages 8–14.

Status as an optional form

As circulated for comment, the form was proposed to become mandatory. This aspect of the proposal brought mixed reactions. Two commenters were in favor of the change. While one commenter in agreement with changing the form's status did not expound upon the reason, the other commenter expressed the belief that making the form mandatory would help inform servicemembers of their rights and thereby make it more likely that they would provide the court with their service information. However, three commenters were opposed to making the form mandatory. While one commenter did not articulate a reason, other commenters expressed concern for procedural issues that may arise in court and burdens on litigants that may occur as a result of making completion of form MIL-100 required for those who wished to declare their military status. One commenter also raised the issue of costs associated with making the form mandatory, including the need to train court staff. While the committee acknowledges that there are significant benefits to making form MIL-100 mandatory, it also understands the expressed concerns about creating additional requirements for court litigants and imposing burdens on courts during a period when they are facing substantial challenges. Thus, at this time, the committee recommends keeping the form optional.

Identification of case type

The committee also sought feedback on whether the form should include identification of different case types. The committee believed that including a listing of different types of cases for which the form may apply could promote use of the form in all case types, but also recognized that litigants may not always know the appropriate category for their case, thus creating an additional hurdle for filing the form. While one commenter indicated that including the information could be helpful for case management systems, another commenter indicated that the information contained in the form was already sufficient to inform users of the broad applicability of the form. Recognizing the potential additional costs for courts to add and train staff on this information, as well as the desire to keep the form as simple as possible, the committee is not recommending adding specific case types on the form.

Alternatives considered

The committee considered not amending the form, but rejected that option since the confusion expressed by litigants about applicability of the form in noncriminal case types would remain unaddressed. It would also hinder access to justice by not providing the additional clarifying information to servicemembers that the proposed form contains.

Fiscal and Operational Impacts

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of implementing the revised form. Nor does the committee anticipate any requirements for implementation or fiscal and operational impacts on the courts. There is the potential for cost savings: if the court is aware at an early stage of the proceeding that a party to the action has a military affiliation that is relevant to the case, it reduces the chance of needing additional hearings to address this issue once it is discovered at a later time.

Attachments and Links

1. Form MIL-100, at pages 6–7
2. Chart of comments, at pages 8–14

PERSON COMPLETING THIS FORM:	FOR COURT USE ONLY
NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: STATE BAR NUMBER (IF APPLICABLE):	**DRAFT** **Not approved by the Judicial Council** **MIL-100.v8.072720.cz.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTIFICATION OF MILITARY/VETERAN/RESERVE/ACTIVE STATUS	CASE NUMBER:

1. This form is about *(name):* who is a party in this case.

2. The person listed in item 1 is:
   - ☐ A current member of the state or federal armed services or reserves.
   - ☐ A veteran of the state or federal armed services or reserves.
     Discharge Date:

3. I am
   - ☐ the person listed in item 1.
   - ☐ an attorney in the above entitled case.
   - ☐ other *(specify):*

I am providing this notification to the court based on information and belief.

Date:

(TYPE OR PRINT NAME OF PERSON FILING THIS FORM)

▶ (SIGNATURE)

Notice

This form can be filed in any case type. If this form is being submitted in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.

Local County Veterans Services Office Information (to be provided by local court):

For court use only

No Filing Fee

No filing fee or court costs are to be charged for this form.

Form Approved for Optional Use
Judicial Council of California
MIL-100 [Rev.January 1, 2021]

Penal Code, §§ 858, 1001.80, 1170.9, 1170.91
50 U.S.C. §§ 3901–4043
www.courts.ca.gov

YOU SHOULD TALK WITH YOUR ATTORNEY (IF YOU HAVE ONE) ABOUT THE FOLLOWING INFORMATION

If you are a current or former member of the state or federal armed services or reserves, you may be entitled to certain rights under the law. Filling out form MIL-100 is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time. Giving this information to the court is voluntary. The MIL-100 only needs to be filled out with the court one time per case.

NONCRIMINAL CASES

If you are a party to a noncriminal case (i.e., civil, family, juvenile, etc.), be sure to complete all the appropriate forms needed for your case.

For example, filing of this form does not substitute for the filing of other required forms or petitions in cases where you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043).

Please see *Notice of Petition and Petition for Relief From Financial Obligation During Military Service* (form MIL-010) and *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

CRIMINAL CASES

If you are a party to a criminal case, you are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.

If you are a current or former member of the state or federal armed services or reserves who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be eligible for certain rights under the law. Some examples of benefits of a defendant in a criminal case who is a veteran or is on active duty or in the reserves include possible consideration for alternative sentencing, restoration relief such as sealing your record, and diversion in misdemeanor cases.

Below is a brief description of possible rights and protections under the following California laws:

California Penal Code section 1170.9
- Treatment instead of prison or jail time for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes;

California Penal Code section 1001.80
- Pretrial diversion program instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program;

California Penal Code section 1170.91
- The court must consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.

If you submit this form in a criminal case, you must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.

Winter 20-06

Notification of Military Service: Revise form MIL-100 (Revise form MIL-100)

All comments are verbatim unless indicated by an asterisk(*)

	Commenter	Position	Comment	Committees Response
1.	Hon. Donald Currier Superior Court of Sacramento County	A	In almost every area of law, the options available to the Court change when one of the parties is a veteran or service member. Many times litigants don't understand the significance of their service to their status as a civil or criminal litigant. Mandatory use of this form will assist trial judges in better understanding the litigants appearing before them.	While the committee agrees that there are significant benefits to making the MIL-100 mandatory, it also understands the concerns expressed by commenters about creating additional requirements for court litigants and imposing burdens on courts. Thus, the committee recommends keeping the form optional.
2.	Public Law Center By: Leigh E Ferrin	AM	Public Law Center (PLC) is a 501(c)(3) not-for-profit organization that provides free civil legal services to low-income individuals and families across Orange County. The civil legal services that we provide include consumer, family, immigration, housing, veterans, community organizations, and health law. PLC appreciates the opportunity to comment on Invitation W20-06, the proposal to revise form MIL-100. PLC works closely with the veteran community and recognizes many of the challenges faced by the community often exacerbate the legal challenges they face. To this end, it is appreciated that the Court is approaching this issue with sensitivity and understanding. PLC's concern about making MIL-100 mandatory instead of optional is the following: what happens if a veteran or servicemember uses a different format to submit this information? What if a self-represented veteran	No response required No response required The committee has modified the proposal and is not seeking to make the form mandatory.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committees Response
			uses a declaration, pleading paper or even a more informal submission? Would the Court still be able to accept such an offer? We are particularly thinking of self-represented veterans in the civil, family law and probate context. In the criminal context, it is much more likely that the form would be used.	
			We would encourage the Court, if the form is made mandatory, to provide education to the bench that if a litigant asserts his or her status as a veteran or servicemember, it should be considered as if the litigant has submitted form MIL-100, and the Court can provide the form to the veteran at that time. However, the veteran should not be punished for not initially being able to complete form MIL-100.	The committee appreciates the recommendation that education be provided to the bench concerning the MIL-100 and the disclosure of military status, and will continue to support education on this topic.
			PLC also would be interested in proposing a possible legislative fix, whereby a party to civil litigation would be required to honor a statement by any party that they are a servicemember or a veteran (or a person who has served in the U.S. Military – see below). Once that statement is made, the legislation could create a presumption that the person making the claim is a servicemember or veteran, and then the additional information could be collected at that point.	A legislative fix creating a presumption of veteran status upon the statement of an individual is beyond the scope of the proposed revisions of this MIL-100 and the committee at this time.
			The language used in the form is potentially problematic as well. PLC encounters clients	The committee agrees with the suggestion to include additional language on the form to

	Commenter	Position	Comment	Committees Response
			who have served in a branch of the military but do not necessarily identify themselves as a "veteran." This can be due to the character of discharge, the lens through which the individual views his or her service, or just general preference to not be considered a "veteran" considering some of the stereotypes (good or bad) that may come with that word. PLC suggests using a longer, but more neutral description: "Served in the United States military, in any branch, at any time," or something similar.	describe those individuals with military service, and has modified the proposal.
			Another question that comes up is about the timing of filing. This could be a clarification with the Rules of Court, but is a veteran of servicemember able to submit a form MIL-100 or equivalent at any time during litigation? Is there a requirement that if the form or equivalent information is not submitted within a certain time period, then any future claims are waived? PLC would urge the Court to not enact such a requirement, but instead allow a veteran or servicemember to assert his or her military status at any point during litigation. There are many reasons why a veteran or servicemember may not want to disclose his or her status at one point, but may later change his or her mind.	The committee appreciates this comment and has modified the proposal to include additional language to clarify that the form can be used in any case type and filled out at any time.
			PLC sees some issue with the form MIL-100 being sent to the Veterans Administration and/or the Veterans Service Officer. If the goal	The committee appreciates this comment but the requirement that the MIL-100 be sent to the Veterans Service office for verification is

	Commenter	Position	Comment	Committees Response
			to try to connect the veteran to services, we wonder if there is a better way to do that. Or at least, maybe make the sending of the form to the VA or the VSO optional so that the veteran can choose whether or not he or she would like their information shared. There also could be an opportunity to refer the veteran to self-help and legal services organizations, at least for civil legal needs, since this form is specifically used for veterans in court proceedings.	mandated by Penal Code §858 and thus not within the committee's purview to change.
3.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	Do the revisions to the form appropriately address the stated purpose? Yes. Should the form include identification of different case types (Civil, Criminal, Family, Juvenile)? The form already identifies different case types in the information section on page 2 of the form. Further identification does not appear to be necessary. Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status? Optional. Are any additional revisions recommended? No	No response required. The committee agrees with this comment and is not seeking to add case type information. The committee has modified the proposal in response to comments received and will not seek to make the form mandatory. No response required.
4.	Superior Court of Los Angeles County By: Bryan Borys	A	The advisory committee also seeks comments from *courts* on the following cost and implementation matters:	

	Commenter	Position	Comment	Committees Response
			• Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) or revising processes and procedures (please describe)? New procedure, new case management code, training for clerical, supervisors, Judicial Assistants and Judicial Officers. Training time estimate is 3 hours.	The committee takes note of these impacts and will include them in the report to the council.
			Do the revisions to the form appropriately address the stated purpose? Yes	No response required.
			• Should the form include identification of different case types (Civil, Criminal, Family,Juvenile)? Yes, due to multiple case management systems.	The committee considered this comment but also received feedback that the information currently on the form as to case type is sufficient. Since adding case type information may increase

	Commenter	Position	Comment	Committees Response
				implementation costs to the court and require information a litigant may not know, the committee is not recommending adding this information.
			• Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status? We believe it should be optional. If it becomes mandatory and an active duty member of the military in an active war zone and they were to notify the court on a handwritten pleading, and not on the mandatory form, would the court accept this notification? If not, would the court be out of compliance with the Servicemember Relief Act which requires that a default judgment not be entered against an active duty litigant?	The federal requirements of the Servicemembers Civil Relief Act preempt state law. Thus if the MIL-100 were to be mandatory, a judge in a local Superior Court must still accept and consider any forms related to the SCRA regardless of whether the litigant has completed the MIL-100. However, after consideration of the expressed concerns and potential for burdens placed on courts and litigants by making the form mandatory, the committee agrees that the form should be kept optional at this time.
			• Are any additional revisions recommended? None	No response required.
5.	The Executive Committee of the Family Law Section of the California Lawyers Association	A	Do the revisions to the form appropriately address the stated purpose? Yes. Should the form include identification of different case types (Civil, Criminal, Family, Juvenile)? Yes.	No response required. The committee appreciates this input but based on feedback and concerns about increasing implementation costs to the court and the potential

Winter 20-06

Notification of Military Service: Revise form MIL-100 (Revise form MIL-100)

All comments are verbatim unless indicated by an asterisk(*)

	Commenter	Position	Comment	Committees Response
				for confusion by litigants, the committee is not recommending adding this information.
			Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status? Mandatory.	While the committee agrees that there are significant benefits to making the MIL-100 mandatory, it also understands the concerns expressed by commenters about creating additional requirements for court litigants and imposing burdens on courts. Thus, the committee recommends keeping the form optional.
			Are any additional revisions recommended? No.	No response required.

Item number:12

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 20, 2020

Title of proposal: Criminal Procedure: Felony Waiver and Plea Form

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise form CR-101

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: October 28, 2019
Project description from annual agenda: Review enacted legislation that may have an impact on criminal court administration and propose rules and forms as may be appropriate for implementation of the legislation.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Criminal Procedure: Felony Waiver and Plea Form

Rules, Forms, Standards, or Statutes Affected
Revise form CR-101

Recommended by
Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 6, 2020

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revising the felony plea form to conform to multiple statutory changes that have added or changed relevant sentencing requirements and advisements, and to avoid the use of gendered pronouns.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021, revise *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) to:

1. Add references to restitution fines for the revocation of postrelease community supervision and mandatory supervision, to reflect statutory changes to Penal Code section 1202.45;
2. Delete the advisement on narcotics addiction confinement to reflect the repeal of Welfare and Institutions Code sections 3041 and 3201;
3. Revise the provision on imposition of a one-year enhancement of a prison term so that the additional one-year term is imposed solely for each prior separate prison term served for a conviction of a sexually violent offense, to reflect statutory changes to Penal Code section 667.5(b);

4. Delete the requirement for certain defendants to register as narcotics offenders with a local law enforcement agency to reflect the repeal of Health and Safety Code section 11590; and
5. Avoid the use of gendered pronouns.

The revised form is attached at pages 5–11.

Relevant Previous Council Action

The Judicial Council approved for optional use *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101), effective January 1, 2007, to promote increased uniformity in felony plea waiver forms used throughout the state. The form was substantially revised in 2012 in response to criminal justice realignment legislation, and was most recently revised effective January 1, 2020.

Analysis/Rationale

Form CR-101 is designed to include all necessary waivers, a notice of the direct consequences of a plea, and common advisements. However, several bills added or changed relevant sentencing requirements and information, requiring the following proposed form revisions:

- Senate Bill 1210 (Stats. 2012, ch. 762) (see Link A) amended Penal Code section 1202.45 (see Link B) to include restitution fines for the revocation of postrelease community supervision and mandatory supervision. The prior version of the statute addressed parole and probation revocation restitution fines only. The committee recommends revising the provision on parole and probation revocation restitution fines to include references to these additional fines (item 2f of proposed form CR-101).

- Former sections 3051 and 3201 of the Welfare and Institutions Code permitted the sentencing court to order the confinement of a defendant to a narcotic detention, treatment, and rehabilitation facility. Senate Bill 1021 (Stats. 2012, ch. 41) (see Link C) prohibited new confinements as of July 1, 2012, made these two statutes inoperative as of April 1, 2014, and repealed them as of January 1, 2015. The committee recommends deleting the provision on narcotics addiction confinement to reflect the repeal of these code sections.

- Previously, the sentencing court was required to impose a one-year enhancement of a prison term for each prior separate prison term or county jail felony term, except under specified circumstances. Senate Bill 136 (Stats. 2019, ch. 590) (see Link D) amended Penal Code section 667.5(b) (see Link E) so that the additional one-year term is imposed solely for each prior separate prison term served for a conviction of a sexually violent offense. The committee recommends revising the provision on imposition of a one-year enhancement of a prison term to reflect this statutory change (item 3g of proposed form CR-101).

- Former Health and Safety Code section 11590 required certain defendants to register as narcotics offenders with a local law enforcement agency. Assembly Bill 1261 (Stats. 2019, ch. 580) (see Link F) repealed this statute as of January 1, 2020. The committee recommends deleting the requirement for certain defendants to register as narcotics offenders with a local law enforcement agency to reflect the repeal of the code section.

- The committee recommends revising two court findings to avoid the use of gendered pronouns (items 1 and 3 of the court's findings and orders section of proposed form CR-101).

The revisions are recommended to delete outdated provisions, conform to statutory changes in sentencing, and avoid the use of gendered pronouns.

Policy implications

The revisions are recommended so that the felony plea form reflects existing statutory provisions and is accurate and useful. No further policy implications were discussed by the committee.

Comments

This proposal circulated for comment from April 10 through June 9, 2020, and received comments from two superior courts and one local bar association. All three commenters agreed with the proposal.

Alternatives considered

Given the recent revision of the form, the committee discussed postponing further revisions, but decided to move forward in order to delete outdated provisions and conform the form to statutory changes. The committee also discussed whether to amend the form based on the upcoming change, effective January 1, 2021, to sex offender registration from lifetime to tiered—with mandatory minimum registration periods based largely on the offense—under Senate Bill 384 (Stats. 2017, ch. 541) (see Link G). After discussion, the committee concluded that the existing advisement of lifetime registration would remain appropriate, because the lifetime registration requirement will not automatically terminate when the provisions of SB 384 take effect. Instead, the defendant-petitioner will be required to initiate, and the court to grant, a request for termination.

Fiscal and Operational Impacts

As an optional form, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Form CR-101, at pages 5–11
2. Chart of comments, at pages 12–13

3. Link A: Senate Bill 1210 (Stats. 2012, ch. 762), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1210*
4. Link B: Penal Code section 1202.45, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1202.45&lawCode=PEN*
5. Link C: Senate Bill 1021 (Stats. 2012, ch. 41), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1021*
6. Link D: Senate Bill 136 (Stats. 2019, ch. 590), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB136*
7. Link E: Penal Code section 667.5, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=667.5&lawCode=PEN*
8. Link F: Assembly Bill 1261 (Stats. 2019, ch. 580), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1261*
9. Link G: Senate Bill 384 (Stats. 2017, ch. 541), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB384*

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**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

INSTRUCTIONS: (1) Fill out this form only if you want to plead guilty or no contest.
(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. INITIALS ☐

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
				AGGREGATE MAXIMUM TIME OF IMPRISONMENT			

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for INITIALS ☐
(1) ☐ years and months or
(2) ☐ Not less than ☐ years and ☐ months and/or not more than ☐ years and ☐ months.
(3) ☐ Other *(specify):*

b. **Probation** for years under conditions to be set by the court, including: ☐
☐ days in the **county jail** or
☐ up to days in the **county jail.**

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

2. c. **Split Sentence (1170(h)(5)(B)):** years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence. ☐

d. **Open Plea**

1. ☐ I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order. ☐
2. ☐ I understand that I am not eligible for probation.
3. ☐ I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

e. **Restitution, Statutory Fees, and Assessments**

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the $); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing: ☐

1. ☐ $ **to the Victim Restitution Fund**
2. ☐ $ **restitution to actual victims**
3. ☐ $ **restitution to the State of California, Victims of Crime Fund**
4. ☐ $ **court operations assessment**
5. ☐ $ **court facilities assessment**
6. ☐ $ **base fine plus any applicable penalties, assessments, and surcharges**
7. ☐ $ **other** *(specify):*
8. ☐ $ **other** *(specify):*
9. ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

f. **Fines for Revocation of Parole, Postrelease Community Supervision, Mandatory Supervision, or Probation** ☐

I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine or a postrelease community supervision revocation fine, which will be collected only if my parole or postrelease community supervision is later revoked. I also understand that if I am granted probation or mandatory supervision, the court **will** impose a probation revocation fine or mandatory supervision revocation fine, which will be collected only if my probation or mandatory supervision is later revoked.

g. **Dismissal of Other Counts** ☐

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea. ☐

h. **Other Terms *(specify):*** ☐

3. **CONSEQUENCES OF MY PLEA** INITIALS

a. **No Contest ("Nolo Contendere") Plea** ☐

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

b. **Parole and Postrelease Community Supervision** ☐
I understand that if I am sentenced to **state prison**
(1) I will be placed on parole or postrelease community supervision for up to years after my release.
(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases** ☐
I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration** ☐
I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender
(2) ☐ a gang member
(3) ☐ a sex offender **(this registration is a lifelong requirement)**
(4) ☐ other *(specify):*

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples** ☐
I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony** ☐
(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my convicion in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15%.
(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.
(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count is such an offense.

g. **Prior Prison Term for Sexually Violent Offense** ☐
I understand that if I am sentenced to serve a state prison term for this sexually violent offense, as defined in Welfare and Institutions Code section 6600(b), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture** ☐
I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

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3. i. **Immigration Consequences**
I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. ☐

j. **Firearms**
I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life. ☐

k. **Other Consequences** *(specify):* ☐

4. **RIGHT TO AN ATTORNEY**
I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. ☐

I hereby give up my right to be represented by an attorney. ☐

5. **OTHER CONSTITUTIONAL RIGHTS**
I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial**
I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection. ☐

b. **Right to a Court Trial**
I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty. ☐

c. **Right to Confront and Cross-Examine Witnesses**
I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them. ☐

d. **Right to Remain Silent and Not to Incriminate Myself**
I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify. ☐

e. **Right to Produce Evidence and to Present a Defense**
I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf. ☐

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney** ☐

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

(1) The facts of my case;
(2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
(3) Any defenses that I may have;
(4) My constitutional and statutory rights and waiver of those rights;
(5) The consequences of this plea, including the immigration consequences; and
(6) Anything else I think is important to my case.

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6. b. **Questions**
I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form. ☐

c. **Stipulation to Commissioner**
I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commmissioner, sitting as a temporary judge, take my plea and sentence me. ☐

d. **Medications or Controlled Substances**
I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following: ☐

e. **Court Approval of Plea Agreement**
I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.) ☐

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**
I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial. ☐

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS** ☐
I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA** ☐
I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:** ☐

(a) ☐ Preliminary hearing transcript
(b) ☐ Police report
(c) ☐ Probation report
(d) ☐ Welfare investigator's declaration
(e) ☐ Court documents regarding any alleged prior offenses
(f) ☐ Other *(specify):*
(g) ☐ (Specify facts):

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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) ☐

10. **AFTER THE PLEA**

a. **Surrender**
I understand that the court is allowing me to surrender at a later date to begin serving time in custody. ☐

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law. ☐

b. **Sentencing Court**
I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me. ☐

c. **Sentencing Date**
I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date. ☐

11. **MANDATORY WARNING** ☐
I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

(SIGNATURE OF DEFENDANT) _____ DATE _____

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the ☐ police report ☐ preliminary hearing transcript ☐ probation report ☐ other *(specify):* (*People v. West* (1970) 3 Cal.3d 595.)

(ATTORNEY'S SIGNATURE) _____ DATE _____

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other *(specify):*

(INTERPRETER'S SIGNATURE) DATE

(TYPE OR PRINT INTERPRETER'S NAME) (CERTIFICATION NUMBER)

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I ☐ agree ☐ do not agree with the terms of the plea agreement and the indicated sentence.

(ATTORNEY'S SIGNATURE) DATE

COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The initialed items in this form have been read by or read to the defendant, and the defendant understands each of them.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives the constitutional and statutory rights associated with this plea.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West*.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

(SIGNATURE OF JUDICIAL OFFICER) DATE

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

SPR20-11

Criminal Procedure: Felony Waiver and Plea Form (Revise form CR-101)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Scott B. Garner, President	A	No specific comment	No response required.
2.	Superior Court of Orange County	A	*Does the proposal appropriately address the stated purpose?* Yes *Would the proposal provide cost savings? If so, please quantify.* No cost savings are noted. *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 not require any refresher training; however, courts may need to update and/or remove related items/verbiage indicated in procedures, job aids, case management systems, or other reference material. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes	 No response required. No response required. No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-11
Criminal Procedure: Felony Waiver and Plea Form (Revise form CR-101)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? I don't think the size of the court is relevant, more so, whether or not the court uses the judicial council form CR-101, in which resources, procedures, and training may be needed. If courts used alternate forms, they would need to be in agreement with verbiage on the CR-101.	The committee appreciates this input.
3.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment	No response required.

Item number:13

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Multicounty Incarceration and Supervision
Amend Cal. Rules of Court, rule 4.452

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Amend California Rules of Court, rule 4.452, to further clarify procedures related to multicounty incarceration and supervision under Penal Code section 1170(h).

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Criminal Procedure: Multicounty Incarceration and Supervision

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.452

Recommended by
Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 30, 2020

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends amending California Rules of Court, rule 4.452, to distinguish and clarify procedures applying to sentences under Penal Code section 1170(h) and state prison.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021, amend California Rules of Court, rule 4.452, to (1) clarify that certain provisions apply only to sentences under Penal Code section 1170(h), (2) add procedures for when a subsequent court sentences a defendant to state prison when the prior sentence was under section 1170(h), and (3) clarify that subsequent courts may not increase the custody or mandatory supervision portion of the sentence imposed by the previous court.

The amended rule is attached at pages 4–6.

Relevant Previous Council Action

The Judicial Council amended rule 4.452, effective July 1, 2019, in response to Senate Bill 670 (Stats. 2017, ch. 287). Senate Bill 670 amended Penal Code section 1170(h) (see Link A), effective January 1, 2018, requiring courts to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent with or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. SB 670 also amended section 1170.3, requiring the Judicial Council to adopt rules of court providing criteria for trial judges to consider at the time of sentencing when determining the county or counties of incarceration and supervision.

Analysis/Rationale

The proposal distinguishes procedures for structuring multicounty sentences that are all under Penal Code section 1170(h) and multicounty sentences with earlier sentences under Penal Code section 1170(h) and subsequent state prison sentences. Penal Code section 1170(h)(6) governs the former and gives the second or subsequent court statutory authority to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent with or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. Penal Code sections 1170.1(a) (see Link B) and 669(d) (see Link C) govern the latter, and the second or subsequent court imposing a state prison sentence only has jurisdiction over that case. The earlier sentencing court must determine whether its sentence is concurrent or consecutive to the subsequent court's sentence, and does not have jurisdiction over modifications of the earlier sentence under Penal Code section 1170(h).

Policy implications

Any policy implications are derived from the legislation.

Comments

This proposal circulated for comment from April 10 to June 9, 2020, and received four comments, one in agreement, one stating no position, and two in opposition. In general, the comments in opposition were concerned that the proposed changes did not provide sufficient safeguards for defendants because the changes allow a subsequent sentencing judge to modify a previous sentence under section 1170(h) without the defendant's consent if the defendant is being sentenced to prison on the subsequent case. In response, the committee notes that this is consistent with statute; the proposed changes to paragraphs (a)(4) and (5) are based on Penal Code sections 669(d) and 1170.1(a). When a subsequent court sentences a defendant to state prison, the aggregate term must be served in state prison, regardless of whether one of the terms specifies a county jail sentence under Penal Code section 1170(h). Because of this statutory scheme, the defendant's consent to changes in the previous sentence is not required when a subsequent sentence is to state prison.

A commenter further suggested amending the rule to require that the second or subsequent court imposing a sentence to state prison address or modify specified aspects of the earlier section 1170(h) sentence. The committee declined the suggestions, noting that the second or subsequent

court imposing a state prison sentence only has jurisdiction over that case. The earlier sentencing court must determine whether its sentence is concurrent or consecutive to the subsequent court's sentence. The second or subsequent court does not have jurisdiction over modifications of the earlier Penal Code section 1170(h) case.

Alternatives considered

In developing the proposal, the committee considered a suggestion to add procedures for multicounty sentences involving mandatory supervision under section 1170(h), where the principal term of the prior sentence becomes a consecutive subordinate term as a result of what the second or subsequent court does in the sentencing of the current case. In these circumstances, the length of the prior term is reduced by operation of law rather than by exercise of discretion by the second or subsequent court, and the routine judicial response is for the prior court to restructure the earlier sentence. The committee did not think it was necessary to further clarify this procedure in the rule.

Fiscal and Operational Impacts

The recommended amendments clarify procedures on multiple county sentencing. Operational impacts may include additional training and updating docket codes and sentencing procedures. No additional fiscal and operational impacts are anticipated as a result of amending rule 4.452.

Attachments and Links

1. Cal. Rules of Court, rule 4.452, at pages 4–6
2. Chart of comments, at pages 7–25
3. Link A: Penal Code section 1170, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.&lawCode=PEN*
4. Link B: Penal Code section 1170.1, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.1.&lawCode=PEN*
5. Link C: Penal Code section 669, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=669&lawCode=PEN*

Rule 4.452 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 4.452. Determinate sentence consecutive to prior determinate sentence

(a) If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more determinate sentences imposed previously in the same court or in other courts, the court in the current case must pronounce a single aggregate term, as defined in section 1170.1(a), stating the result of combining the previous and current sentences. In those situations:

(1) The sentences on all determinately sentenced counts in all the cases on which a sentence was or is being imposed must be combined as though they were all counts in the current case.

(2) The ~~judge~~ court in the current case must make a new determination of which count, in the combined cases, represents the principal term, as defined in section 1170.1(a). The principal term is the term with the greatest punishment imposed including conduct enhancements. If two terms of imprisonment have the same punishment, either term may be selected as the principal term.

(3) Discretionary decisions of ~~the judges~~ courts in previous cases may not be changed by the ~~judge~~ court in the current case. Such decisions include the decision to impose one of the three authorized terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement. However, if a previously designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a).

(4) If all previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h), ~~T~~the second or subsequent ~~judge~~ court has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not, without express consent of the defendant, modify the sentence on the earlier sentenced charges in any manner that will (i) increase the total length of the sentence imposed by the previous court; (ii) increase the total length of the ~~actual~~ custody ~~time~~ portion of the sentence imposed by the previous court; (iii) increase the total length of the mandatory supervision portion of the sentence imposed by the previous court; or (iv) impose additional, more onerous, or more restrictive conditions of release for any previously imposed period of mandatory supervision.

(5) If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule. (A)(4) does not apply—and the consent of the defendant is not required—for this conversion and resentencing.

~~(5)~~(6) In cases in which a sentence is imposed under the provisions of section 1170(h) and the sentence has been imposed by courts in two or more counties, the second or subsequent court must determine the county or counties of incarceration or supervision, including the order of service of such incarceration or supervision. To the extent reasonably possible, the period of mandatory supervision must be served in one county and after completion of any period of incarceration. In accordance with rule 4.472, the second or subsequent court must calculate the defendant's remaining custody and supervision time.

~~(6)~~(7) In making the determination under ~~subdivision (a)(5)~~ (a)(6), the court must exercise its discretion after consideration of the following factors:

(A)–(H) * * *

~~(7)~~(8) If after the court's determination in accordance with ~~subdivision (a)(5)~~ (a)(6) the defendant is ordered to serve only a custody term without supervision in another county, the defendant must be transported at such time and under such circumstances as the court directs to the county where the custody term is to be served. The defendant must be transported with an abstract of the court's judgment as required by section 1213(a), or other suitable documentation showing the term imposed by the court and any custody credits against the sentence. The court may order the custody term to be served in another county without also transferring jurisdiction of the case in accordance with rule 4.530.

~~(8)~~(9) If after the court's determination in accordance with ~~subdivision (a)(5)~~ (a)(6) the defendant is ordered to serve a period of supervision in another county, whether with or without a term of custody, the matter must be transferred for

the period of supervision in accordance with provisions of rule 4.530(f), (g), and (h).

Advisory Committee Comment

The restrictions of ~~subdivision~~ (a)(3) do not apply to circumstances where a previously imposed base term is made a consecutive term on resentencing. If the ~~judge~~ court selects a consecutive sentence structure, and since there can be only one principal term in the final aggregate sentence, if a previously imposed full base term becomes a subordinate consecutive term, the new consecutive term normally will become one-third the middle term by operation of law (section 1170.1(a)).

SPR20-12

Criminal Procedure: Multicounty Incarceration and Supervision (Amend Cal. Rules of Court, rule 4.452)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Scott B. Garner, President	N	SPR20-12 proposes to amend CRC 4.452, which provides the framework for imposing consecutive determinative sentences. SPR20-12 makes a few minor technical changes throughout the rules, but it makes significant changes to (a)(4) and also adds (a)(5). Originally, the rule outlined in (a)(4) explained that if a person had been sentenced to a determinate sentence, and then was later sentenced to another determinate sentence, the subsequent judge could decide whether the previous sentence would be served in custody or on mandatory supervision. However, the court's power was limited here because this portion of the rule also provided that under no circumstances could the sentencing judge modify the earlier sentence to increase the total length of custody time, the period of supervision, or any other additional restrictions without the defendant's express consent. The changes to (a)(4) and new (a)(5) now provide that a subsequent sentencing judge can modify the previous sentence without the defendant's consent if the defendant is being sentenced to prison on the subsequent case. However, this new paragraph does not implement the same safeguards that the Judicial Council found crucial when enacting the original paragraph (a)(4). There is also no indication from the proposal why such a change is necessary or what problem this should hope to solve.	No response required. The proposed changes to paragraphs 4 and 5 are based on Penal Code sections 669(d) and 1170.1(a). When a subsequent court sentences a defendant to state prison, the aggregate term must be served in state prison, regardless as to whether one of the terms specifies a county jail sentence under Penal Code section 1170(h). Because of this statutory scheme, the defendant's consent to changes in the previous sentence is not required when a subsequent sentence is to state prison.

	Commenter	Position	Comment	Committee Response
			These rule changes are confusing, superfluous, and fail to protect a defendant's statutory and constitutional rights to enforcement of his or her plea bargain. Moreover, these rule changes would risk undermining finality of judgments and result in a class of defendants who may be entitled to later plea withdrawals or worse, possible litigation back and forth across county lines.	The proposed changes to the rule reflect the existing statutory scheme on structuring multicounty sentences involving previous sentences under Penal Code section 1170(h) and subsequent state prison sentences.
2.	Orange County Public Defender by Miles David Jessup, Senior Deputy Public Defender	N	The Orange County Public Defender's Office disagrees with the proposed substantive modifications[1] to Rule 4.452 ("the Rule"). The Rule was formulated in its original adopted form in part to address the concerns undermined by this proposed rule modification, and if adopted, this modification will again raise serious Constitutional concerns and will jeopardize the finality of many negotiated dispositions. Any final aggregate sentence must not be permitted to increase an aspect of punishment agreed to by the defendant as a condition of pleading guilty, and it must not negate rulings for clemency handed down by the original judge handling the sentencing on a matter. [1] New paragraph 5 and the first two lines added to paragraph 4 substantively change the existing Rule of Court. The other proposed changes clarify and are not problematic.	The proposed changes to the rule reflect the existing statutory scheme on structuring multicounty sentences involving previous sentences under Penal Code section 1170(h) and subsequent sentences to state prison.
			Nothing in the authorization for the Rule implied that a last in time judge, by virtue of handling a later resolved matter, was	The proposed changes to paragraphs 4 and 5 are based on Penal Code sections 669(d) and 1170.1(a). When a subsequent court sentences a

	Commenter	Position	Comment	Committee Response
			empowered to ignore sentencing limits in a plea agreement or to denigrate the discretionary sentencing determinations of earlier in time judges.	defendant to state prison, the aggregate term must be served in state prison, regardless as to whether one of the terms specifies a county jail sentence under Penal Code section 1170(h). Because of this statutory scheme, consideration of a defendant's prior plea agreement or the discretionary sentencing determinations of earlier in time judges is not required when a subsequent sentence is to state prison.
			The Rule should acknowledge defense rights to rely upon the judgment of the original sentencing judge (see generally, *People v. Arbuckle* (1978) 22 Cal.3d 749, 756–757, K.R. v. Superior Court (2017) 3 Cal.5th 295), and may need to specify different procedures for sentencing events on crimes that might be violations of earlier terms of conditional release, verses those that are simply later sentences.[2] [2] The proposed changes even disregard the Judicial Council's acknowledgement in the second bullet point of "The Proposal" regarding defense rights to revocation hearings and summary imposition of prison for mandatory supervision.	Please see response above.
			The limitation added to paragraph (4) is not necessary, and undermines the rules outlined in that paragraph. It is not necessary because any last in time sentencing judge imposing a state prison sentence is perfectly capable of addressing the earlier sentence per Penal Code[3] section 1170, subdivision (h) ("§ 1170(h)"), so long as that judge complies with the guidelines	The last in time sentencing judge, if sentencing a defendant to state prison, does not have jurisdiction to address earlier sentences under Penal Code section 1170(h).

	Commenter	Position	Comment	Committee Response
			in paragraph (4) of the Rule. Some suggestions are offered which may assist subsequent sentencing judges to efficiently and legally impose aggregate sentences without need to transfer cases back to earlier sentencing jurisdictions. [3] Further statutory section (§) references are to the Penal Code unless otherwise specified.	
			The proposal in its current form undermines finality of judgments and invites widespread error, as any judge reformulating a prior sentence may be led to disregard the sentencing parameters that induced the guilty plea and discretionary sentencing calls made by the earlier presiding sentencing judge. This would risk undermining finality of judgments and producing a vast class of defendants entitled to plea withdrawals or enforcement of previously imposed dispositions.	Please see response above.
			While the entirety of the substantive rule changes should be considered together, the proposal can reasonably be segmented into three themes, each independently flawed, with the combined proposal very inefficient and problematic. One component of the proposed rule would disempower the last in time sentencing judge from handling the aggregate sentence even if that judge could do so with complete respect for terms of earlier plea bargains and judicial discretionary choices. The next component would purport to require conversion of all remaining custody time (jail)	No response required.

	Commenter	Position	Comment	Committee Response
			and conditional release time (mandatory supervision) to state prison custody time (disregarding terms of plea bargains and revoking judicial discretion), while failing to account for rules of consecutive determinate sentencing. The final component specifically authorizes imposition of sentences inconsistent with plea bargains and prior judicial discretionary sentencing decisions. Proposed new paragraph (5) would provide that: If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule. Number (4) does not apply — and the consent of the defendant is not	

	Commenter	Position	Comment	Committee Response
			required—for this conversion and resentencing. PROBLEM/COMPONENT 1: EVERY EARLIER § 1170(h) SENTENCE MUST BE REMANDED FOR RESENTENCING[4] Proposed additional paragraph (5) would specifically disempower the second or subsequent judge from presiding over the determination and imposition of the aggregate sentence, even if that judge could reasonably do so in compliance with law. This is entirely unnecessary as the final sentencing judge would be entirely capable of modifying the earlier sentence, on the same terms as the original sentencing judge and subject to the same constraints. The final sentencing judge is clearly empowered to terminate any remaining period of mandatory supervision in an earlier § 1170(h) sentence, based on changed circumstances since the original pleading. This is supported by the plain terms of § 1170(h)(5)(B). [4]"If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h)."	The last in time sentencing judge, if sentencing a defendant to state prison, does not have jurisdiction to address earlier sentences under Penal Code section 1170(h). Please see response above.

	Commenter	Position	Comment	Committee Response
			The final sentencing judge is clearly empowered to convert the remaining custodial portion of the earlier section 1170(h) sentence to state prison with credit for time served. The location of custodial sentencing (jail or prison) is not a material term of a sentence (it is merely a matter of housing), so direct conversion of jail to prison, as such, does not as such create an issue. Our Supreme Court has rejected any "protectable interest in serving that sentence in county jail as opposed to state prison." (*People v. Cruz* (2012) 207 Cal.App.4th 664, 677.) Similarly, "where a defendant serves his or her sentence under the Realignment Act—prison or jail— does not operate to increase that sentence… ." (*People v. Griffis* (2013) 212 Cal.App.4th 956, 963 [emphasis in original].)	Please see response above.
			The final sentencing judge is clearly empowered to address any other modification of the earlier section 1170(h) sentence within the confines of current Paragraph 4 of the Rule. For example, that judge may reduce the period of custody or mandatory supervision with no corresponding increase in another component of the sentence as part and parcel of an aggregate determinate sentence under § 1170.1(a). While some modifications may possibly subject the modification to an objection by the People that their plea bargain has been impacted, this dispute could as easily be handled by the last in time judge as by the original judge.	Please see response above.
			The final sentencing judge is clearly empowered to make any other modification of the earlier	Please see response above.

	Commenter	Position	Comment	Committee Response
			section 1170(h) sentence with the consent of the parties to any bargain below (the defendant and the People of the State of California). Disempowering the final judge with respect to aggregate sentencing can be expected to introduce uncertainty into otherwise final plea bargaining on that final case: parties will be reduced to resolving the last in time case subject to uncertain adjustment of other (until-then-final) cases subject to approval by a bench officer who is back in the earlier jurisdiction. Obviously, any requirement that an earlier sentenced § 1170(h) matter must then be remanded to a different jurisdiction will burden state resources automatically, without first determining that burden is needed. For many cases, an in custody defendant will need to be transferred between holding facilities of different jurisdictions to revisit the original court, further burdening the state and wasting time. Cases which could be finally resolved in the last settling court should be allowed to be so resolved. Automatic and therefore arbitrary transfers serve no purpose. PROBLEM/COMPONENT 2: THE RESENTENCING JUDGE MUST CONVERT CONDITIONAL RELEASE TO PRISON TIME AND NEED NOT ACCOUNT FOR AGGREGATE SENTENCING RULES § 1170.1(a) WITH CREDIT AGAINST THAT	Please see response above. Please see response above.

	Commenter	Position	Comment	Committee Response
			AGGREGATE SENTENCE FOR TIME ALREADY SERVED[5] [5] "The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule." Proposed additional paragraph (5) would purport to require punitive sentencing by imposing mandatory prison time for each remaining day of conditional release. This component of the proposed Rule modification is at once contrary to law (or at least confusing), and arbitrarily punitive while purporting to withhold ordinary ameliorative sentencing discretion of judges, in that it mandates that previously ordered conditional release be converted straight to state prison custody. Obviously, judges should retain discretion to early terminate periods of conditional release – including mandatory supervision – where that period of supervision would not be useful, and where additional custody time would not serve the interests of justice. (§ 1170(h)(5)(B).) Moreover, by cutting straight to the remainder of the previously imposed § 1170(h) sentence, the language of this component works an end-run around limitations on subordinate sentences when they form components of an aggregate sentence: for example, one third mid-term and	Please see response above. No response required.

	Commenter	Position	Comment	Committee Response
			one third of charge specific enhancements per § 1170(a), and the prohibition on multiple imposition of status enhancements. (See e.g., *People v. Tassell* (1984) 36 Cal.3d 77, 90; *People v. Sasser* (2015) 61 Cal.4th 1, 16-17 [5-year enhancements per § 667, subd. (a), are status enhancements and may be imposed only once per aggregate determinate sentence].) Assuming for purposes of argument that a later state prison sentence was to be run consecutive to an earlier § 1170(h) sentence, the proper manner to calculate the total sentence would be to determine the applicability of sentencing limitations (e.g., § 654), then with respect to charges with sentences to be imposed and not stayed, to determine which charge would be the principal term and which charges' terms would run concurrent and which consecutive to that term, then to calculate the consecutive terms as subordinate terms, as described in § 1170.1(a). Any charge specific enhancements would be dismissed, stricken, or added to the principal term, and dismissed, stricken, or added at a one third rate to the subordinate term(s). Then any applicable status enhancements would be dismissed, stricken, or imposed once only for the aggregate sentence. At that point credit for time served would be awarded for all time served on the aggregate sentence, per applicable law, including any time credited per § 1170(h)(5)(B) [mandatory supervision], and any special credits earned through custodial authorities. (See, e.g., §§ 4019.4 [incentive	Please see response above.

	Commenter	Position	Comment	Committee Response
			milestone credits in jails] and 2933.05 [incentive milestone credits in prisons], Prop. 57, adopted Gen. Elec. (Nov. 8, 2016).) Obviously, to the extent that certain elements of clemency were included in the indicated sentence or prosecution offer that induced a court approved guilty plea, those elements of clemency would need to be respected. Further, to the extent that an earlier sentencing judge determined concurrent sentencing, striking, or dismissal of other allegations was appropriate (or made other discretionary sentencing decisions), such determinations would need to be respected. To the extent that the original sentence included a significant term of release conditional upon future compliance with rules of supervision, arbitrary revocation of that conditional release would offend minimal due process standards and basic concepts of fairness. (See e.g., in *Morrissey v. Brewer* (1972) 408 US 471, 481-848 [persons on conditional release such as parolees have substantial interests in continued liberty and at a minimum, the "discretionary aspect of the revocation decision need not be reached unless there is first an appropriate determination that the individual has, in fact, breached the conditions of [conditional release]."].) In this unique circumstance, perhaps whatever remaining portion of the previously § 1170(h) sentence remains (once recalculated as a § 1170.1(a) subordinate sentence and offset with credit for time served)	Please see response above. Please see response above.

	Commenter	Position	Comment	Committee Response
			must be either terminated (§ 1170(h)(5)(B)) or designated time remaining to be served on conditional release (i.e., mandatory supervision), unless the supervisee has actually violated a term of release. COMPONENT 3: ANY TIME AN § 1170(h) SENTENCE IS FOLLOWED BY A PRISON SENTENCE, A COURT MAY RESENTENCE THE § 1170(h) CHARGES WITHOUT REGARD FOR THE TERMS OF A PLEA BARGAIN INDUCING IT, AND WITHOUT REGARD FOR EARLIER DISCRETIONARY JUDICIAL SENTENCING DECISIONS[6] [6] "Number (4) does not apply —and the consent of the defendant is not required—for this conversion and resentencing." Also, the proposed rule modification would add to the start of Paragraph (4) "If all previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h)," the later sentencing judge may reformulate the earlier § 1170(h) sentence, but only in compliance with provisions to respect plea bargains and judicial discretion. Proposed additional paragraph (5) would purport to expressly exempt judges from the safeguards mandating respect for plea bargains approved by earlier sentencing judges whenever aggregating an earlier-sentenced § 1170(h) case. The proposed Rule as modified would seem to authorize unilateral deviation from agreed upon dispositions that were the bases of guilty pleas, expressly providing that negotiated terms may	No response required. Please see response above.

	Commenter	Position	Comment	Committee Response
			be changed to the detriment of defendants without their consent. A defendant in a criminal case has both a statutory right and Constitutional due process right to enforcement of his plea bargain. (§ 1192.5; *People v. Villalobos* (2012) 54 Cal.4th 177, 181-182; *Brown v. Poole* (9th Cir. 2003) 337 F.3d 1155, 1159; *People v. Walker* (1991) 54 Cal.3d 1013, 1025.) Note that defendants negotiating sentencing under § 1170(h) may prefer quicker completion (straight jail), or a longer period of less restricted freedom (mandatory supervision), or a combination thereof. In enforcement of the plea bargain contract: "we employ objective standards-it is the parties' or defendant's reasonable beliefs that control.... The construction we adopt, however, incorporates the general rule that ambiguities are construed in favor of the defendant. Focusing on the defendant's reasonable understanding also reflects the proper constitutional focus on what induced the defendant to plead guilty." (*Brown v. Poole*, *supra*, 337 F.3d at p. 1160 [emphasis in original].) In the event that a sentencing judge exercises its discretion to refuse to honor a plea agreement as made, and insists upon any significant change to the terms of the plea bargain (including imposition of additional terms of supervision, or revocation of	No response required.

	Commenter	Position	Comment	Committee Response
			conditional release), this should trigger an immediate duty to advise the defendant of his right to withdraw his plea and admissions. (Pen. Code § 1192.5; *People v. Villalobos* (2012) 54 Cal.4th 177.) Once the plea bargain has been approved or detrimentally relied upon by the defendant, the defendant is generally entitled to specific enforcement of that agreement. (*People v. Cantu* (2010) 183 Cal.App.4th 604, 607.) Plea withdrawal would send the open case back to the earlier sentencing county with new issues. SUGGESTED REVISION TO PROPOSED CHANGE The clause added at the beginning of paragraph (4) in the proposed rule modification should be cut.[7] Paragraph (4) should remain materially intact going forward as a safeguard to protect plea bargains against unilateral modification post- plea. This will help avoid large scale plea withdrawals and general disruption of plea finality. [7] ~~"If all previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h),~~ Tthe second or subsequent judge court has …") If proposed paragraph (5) is to remain in the modified rule, we recommend the following changes: (5) <u>If the date of violation of a crime proved in the second or subsequent case post-dates the earlier imposition of sentence in an</u>	The committee declines the proposed changes, due to the reasons stated above. The committee declines the suggestion. The substance of the recommended change already is included in the proposed rule.

	Commenter	Position	Comment	Committee Response
			earlier case and may serve as a violation of terms of conditional release on such earlier case, (unless waived by the defendant) the matter must be remanded to the original sentencing judge for disposition. *(People v. Arbuckle* (1978) 22 Cal.3d 749.) (6) If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), that court must determine whether its sentence is concurrent with or consecutive to the section 1170(h) sentence imposed by the original or earlier sentencing court. The jurisdiction of the second or subsequent court to impose a ~~prison~~ sentence applies solely to the current case, other than (a) termination of any remaining period of mandatory supervision in an earlier section 1170(h) sentence, (b) conversion of the custodial portion of the earlier section 1170(h) sentence to state prison, (c) any other modification of the earlier section 1170(h) sentence that reduces the period of custody or mandatory supervision with no corresponding increase in another component of the sentence, or (d) any other modification of the earlier section 1170(h) sentence with the consent of the defendant. In all circumstances, credit including all applicable conduct and milestone credits shall be awarded for time served in custody or on mandatory supervision. (7) In any instance where concurrent sentencing is imposed, the final sentencing judge shall specify that each current jail	The committee declines the suggestion. The second or subsequent court imposing a state prison sentence only has jurisdiction over that case. The earlier sentencing court must determine whether its sentence is concurrent or consecutive to the subsequent court's sentence. The second or subsequent court does not have jurisdiction over modifications of the earlier Penal Code section 1170(h) case. The committee declines the suggestion, as it is contrary to Penal Code section 669(d).

	Commenter	Position	Comment	Committee Response
			sentence per § 1170(h) and each state prison sentence may be served in any penal institution. The final sentencing judge shall specify which portions of any remaining concurrent custodial time shall be served in the jail of the originating jurisdiction, or in prison. (8) If the second or subsequent sentencing court imposes a consecutive sentence, that later sentence shall be calculated as a subordinate term (per section 1170.1(a)) if possible. If that later and consecutive sentence must serve as the principal term, the later sentencing court may recalculate custodial and supervised release portions of the earlier sentence in compliance with paragraph (5)(a)-(d), above. If further modification of the earlier sentence is necessary and paragraph (5)(a)-(d) cannot resolve those modifications, ~~T~~the defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). If ~~T~~the original sentencing court cannot reasonably complete the resentencing by consent or in compliance with paragraph (5)(a)-(d), that court shall vacate the earlier plea and the case shall proceed as if the plea had not occurred. When the case is resolved, credit shall be awarded for all custodial and conditional release time served, including applicable conduct and milestone credits if any ~~must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the~~	The committee declines the suggestion. The second or subsequent court imposing a state prison sentence only has jurisdiction over that case, so it would not impose a consecutive sentence to the earlier Penal Code section 1170(h) sentence.

	Commenter	Position	Comment	Committee Response
			~~state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule~~. ~~Number (4) does not apply and the consent of the defendant is not required for this conversion and resentencing.~~ These changes would anticipate renumbering of the original paragraphs (5)-(8) (paragraphs (6)-(9) in the proposed Rule as modified) accordingly. The proposed substantive modifications to Rule 4.452 are a mistake and need to be fixed.	
3.	Superior Court of Orange County		• Does the proposal appropriately address the stated purpose? Yes, as vacating an out-of-county 1170(h)(5) sentencing for a jail commitment violates	

	Commenter	Position	Comment	Committee Response
			jurisdictional issues, and the defendants statutory rights to a MSV: Formal Hearing, but also fails to address MS terms such as restitution, court-ordered programs, etc. should MS be terminated and committed to jail for the remainder of the term. Rule may require more directive as to the originating court with regard to resentencing of the defendant, or moving the court for a MS violation hearing.	The committee appreciates the comment. Because it would require a substantive change to the rule, it is beyond the scope of this proposal. The committee will take the suggestion into consideration for future amendments of the rule.
			• Would the proposal provide cost savings? If so, please quantify.	
			No, unless the case(s) were either transferred after sentencing pursuant to Penal Code section 1203.9, or consolidated prior to sentencing. If a case in Orange County carries the larger term, than the lower term based on the sentencing term before it then becomes subordinate, or can possibly be re-sentenced to 1/3 the mid. Since our Court does not have the authority to re-sentence the defendant, the defendant may need to be transported to the originating jurisdiction, which doesn't incur court costs, but does affect costs incurred to law enforcement agencies.	No response required.
			• 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?	
			Courtroom staff would require training as to the process of re-sentencing due to this Rule of Court	No response required.

	Commenter	Position	Comment	Committee Response
			change. Docket codes, and procedures would need to be updated, as necessary. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • How well would this proposal work in courts of different sizes? If the concern is with regard to smaller courts, the proposal may work even better as the case load is more than likely smaller than the courts of a larger size. Unless assigned to a particular judicial officer for specified purposes, consolidation of cases can be handled by the larger court in the event that re-sentencing take place. Communication between parties will more than likely be needed/recommended.	No response required. No response required.
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No Specific Comment	No response required.

Item number:14

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 20, 2020

Title of proposal: Criminal Procedure: Ignition Interlock Forms

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms ID-100, ID-110, ID-120, ID-130, ID-140, ID-150

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: October 28, 2019
Project description from annual agenda: Review and update the Judicial Council's ignition interlock forms.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Criminal Procedure: Ignition Interlock Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms ID-100, ID-110, ID-120, ID-130, ID-140, ID-150

Recommended by
Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 6, 2020

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revising the criminal forms implementing ignition interlock device requirements to conform to statutory changes on reporting, compliance, and monitoring requirements; increase clarity and usability; and make nonsubstantive technical changes.

Background

In 1993, the Judicial Council adopted six forms to assist courts with ordering and monitoring the use of ignition interlock devices ("IID") in criminal cases. The forms were based on Vehicle Code sections 23575 and 23576. The forms were last amended over 10 years ago and do not reflect statutory changes made by Assembly Bill 762 (Stats. 1998, ch. 756), Senate Bill 485 (Stats. 2001, ch. 473), and Senate Bill 1046 (Stats. 2016, ch. 783). The proposed amendments to the forms reflect the changes in each of these revisions to the statutes.

Historically, Vehicle Code section 23575 outlined the court's role in ordering and monitoring ignition interlock devices, making it optional for the court to order IIDs for persons convicted of

driving under the influence[1] and mandatory for those convicted of driving on a suspended or revoked license.[2] Senate Bill 1046 (Stats. 2016, ch. 783), established a statewide pilot program from January 1, 2019 to January 1, 2026, and added a separate code section mandating installation of IIDs for persons convicted of driving under the influence.[3]

The proposed changes to the IID forms comply with the current version of section 23575 with respect to suspended/revoked license referrals, but do not address the pilot program for driving under the influence referrals. Given the limited role of the courts in the pilot program, there is no separate proposed Judicial Council form.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021, renumber and revise six forms, identified below, addressing ignition interlock devices ordered in criminal cases. The proposed changes would revise the forms to conform to the requirements and language of Vehicle Code sections 23575 and 23576 and increase clarity and usability. The proposed changes would also make nonsubstantive technical changes to all six forms, including adding a field for defendant's email address and fax number, and adding "State" to the address fields.

1. *Order to Install Ignition Interlock Device* (form ID-100)

   - Renumber as **CR-221**;
   - State that the defendant may return a copy of the Department of Motor Vehicle's installation verification form in lieu of the Judicial Council's installation verification form, in order to streamline the process;
   - Conform to updated statutory language in Vehicle Code section 23576 by referencing motor vehicles and replacing "wholly" with "all;"
   - Delete the advisement that failure to comply with any court order is a violation of the order, as unnecessarily broad;
   - Delete the advisement that failure to maintain current license and registration on any vehicle owned by the defendant is a violation of the order, since it is duplicative of language on page 1; and

[1] Veh. Code, §§ 23152, 23153.

[2] Veh. Code, § 14601.2.

[3] Section 23575 was amended, effective January 1, 2019, to January 1, 2026, deleting the subdivision applying to driving under the influence but maintaining the subdivision on driving on a suspended or revoked license. The bill added a separate code section, Veh. Code, § 23575.3. Under this statute, courts are required to notify persons convicted of driving under the influence of the requirement to install an IID, but the Department of Motor Vehicles largely monitors installation and maintenance. Under SB 1046, the former version of section 23575 would go back into effect on January 1, 2026. This would again make IID installation for driving under the influence optional and revert monitoring duties back to the court.

- Conform to the requirements of Vehicle Code section 23575 through the following:
    - Delete the requirement for installation to occur no later than 30 days from the date of conviction;
    - Delete the advisement that the order is violated if defendant fails to return a completed copy of the verification form to the court or probation within the time limit specified in the order;
    - Delete the advisement that the order is violated if defendant defaults on any payment plan arranged with the installer or ordered by the court, absent a showing in court of good cause;
    - Delete the statement on affirmative defenses to specified violations if the defendant can show that a vehicle was leased, rented, or borrowed for emergency use when no other feasible alternative was available, or for a bona fide business purpose when away from defendant's regular place of business;
    - Delete the "Your Rights" section addressing medical exemptions and the ability to petition the court to review whether continued restrictions are necessary if driving privileges are restored; and
    - Reflect updated statutory language on recalibration and monitoring requirements.

2. *Ignition Interlock Installation Verification* (form ID-110)

- Renumber as **CR-222**;
- Delete the statement that the declaration by the installer is under penalty of perjury, as the statute does not require a sworn statement;
- Delete the requirement for the original form to be sent to the court, and add a line directing the defendant to return a completed and signed form to the court; and
- Delete the line stating "Distribution: Court, Manufacturer or Manufacturer's Agent, Defendant, Probation Department," as the distribution requirement appears unnecessary and is not required by statute.

3. *Ignition Interlock Calibration Verification and Tamper Report* (form ID-120)

- Renumber as **CR-223**;
- Convert this form to address only calibration verification, and move the tamper report provisions to *Ignition Interlock Noncompliance Report* (form ID-130/proposed form CR-224);
- Delete the statement that the declaration by installer is under penalty of perjury, as the statute does not require a sworn statement;
- Update the notice section to the defendant regarding missed appointments and payments to better reflect existing practice; and
- Delete the line stating "Distribution: Court, Manufacturer or Manufacturer's Agent, Defendant, Probation Department," as the distribution requirement appears unnecessary and is not required by statute.

4. *Ignition Interlock Noncompliance Report* (form ID-130)

- Renumber as **CR-224**;
- Include the tamper report provisions currently in form ID-120;
- Include a statement for the installer to indicate that the defendant failed to comply with a requirement for the maintenance or calibration of the device on three or more occasions, as required by Vehicle Code section 23575;
- Include a statement for the installer to indicate signs of removal, attempt to bypass, attempt to remove, or tampering as required by Vehicle Code section 23575; and
- Delete the statement that the declaration by installer is under penalty of perjury, as the statute does not require a sworn statement.

5. *Ignition Interlock Removal and Modification to Probation Order* (form ID-140)

- Renumber as **CR-225**.

Notice to Employers of Ignition Interlock Restriction (form ID-150)

- Renumber as **CR-226**;
- Conform to Vehicle Code section 23576(a) by specifying that the ignition interlock device be functioning and certified; and
- Conform to Vehicle Code section 23576(b) by adding a provision that a motor vehicle owned by a business entity that is all or partly owned or controlled by the defendant is not a motor vehicle owned by the employer subject to the exemption in Vehicle Code section 23576 (item #4 on proposed form CR-226).

The revised forms are attached at pages 7–13.

Relevant Previous Council Action

In 1993, the Judicial Council adopted six forms to assist courts with ordering and monitoring ignition interlock devices ("IID") in criminal cases, based on Vehicle Code sections 23575 and 23576. The forms were last amended over 10 years ago and do not reflect changes to both statutes.

Analysis/Rationale

The recommended changes to the IID forms comply with the current versions of Vehicle Code sections 23575 and 23576.

The forms are currently identified as "ID" forms.[4] The Rules Committee previously recommended shifting the forms to the criminal category, identified with the "CR" designation, which is reflected in the recommended changes.

Policy implications

The revisions are recommended so that the IID forms reflect existing statutory provisions. No further policy implications were discussed by the committee.

Comments

This proposal circulated for comment from April 10 through June 9, 2020, and received comments from two superior courts and a local bar association. Two commenters agreed with the proposal. The Superior Court of Orange County agreed with the proposal if modified, suggesting a nonsubstantive technical change to *Ignition Interlock Noncompliance Report* (form ID-130/CR-224) to avoid confusion in identifying the vehicles involved. The committee agreed with this suggestion, which is reflected in proposed form CR-224 on page 11. The committee's specific responses to each comment are available in the attached comments chart at pages 14–16.

Three of the original forms had required the installer to sign a declaration under penalty of perjury—a requirement which the committee recommends removing because it is not required by Vehicle Code section 23575. There was concern that the absence of a sworn statement could limit the court's ability to fulfill its statutory monitoring requirement, as the court would have limited recourse for a falsified document. Therefore, the proposal that circulated replaced the declaration with a statement of truth and correctness, and specifically sought public comment on the issue. The proposal received no comments expressly objecting to the change and one expressly agreeing with it.

Alternatives considered

The committee conducted an informal survey of courts to determine usage of the forms. Several courts responded that they used the forms, so the committee decided to move forward with the proposed changes.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-221, CR-222, CR-223, CR-224, CR-225, and CR-226, at pages 7–13
2. Chart of comments, at pages 14–16

[4] E.g., forms ID-100 and ID-110.

3. Link A: Vehicle Code section 23575, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23575.&lawCode=VEH
4. Link B: Vehicle Code section 23576, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23576.&lawCode=VEH

CR-221

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY **DRAFT** **Not approved by the Judicial Council**
NAME OF DEFENDANT: STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: DRIVER'S LICENSE NO.:	
ORDER TO INSTALL IGNITION INTERLOCK DEVICE	CASE NUMBER:

Under Vehicle Code section 23575, **the court orders:** a functioning, certified Ignition Interlock Device installed on the following vehicles operated by defendant:

	Make	Model	Year	Color	License Plate No. and/or VIN
a.					
b.					
c.					

1. Installation of an ignition interlock device on a vehicle does not allow defendant to drive without a valid driver's license.
2. Installation must be no later than *(date)*:
3. Defendant must present this form to the installer at the time of installation.
4. Defendant must return completed *Ignition Interlock Installation Verification* (form CR-222) or the Department of Motor Vehicles *Verification of Installation—Ignition Interlock* (DL 920) to the court no later than *(date)*:
5. Defendant must take vehicles to the installer to recalibrate or monitor the device:
   ☐ once every 60 days ☐ other *(specify frequency):* following the date of installation.
6. Without a court order, the devices may not be removed prior to *(specify a date no later than three years from the date of conviction):*
7. Defendant's employer requires defendant to drive a motor vehicle owned by the employer within the course and scope of defendant's employment. Defendant must provide the employer with the *Notice to Employers of Ignition Interlock Restriction* (form CR-226) no later than *(specify date)*: . Defendant must keep a copy of the *Notice to Employers of Ignition Interlock Restriction* in defendant's possession or keep the original or a copy in the employer's vehicle.
8. Defendant must maintain current insurance and registration on all vehicles owned.
9. Other *(specify)*:

Date: _____

I acknowledge receipt of this order.

_____
(TYPE OR PRINT NAME OF DEFENDANT)

_____
(DEFENDANT'S SIGNATURE)

Date: _____

_____
JUDICIAL OFFICER OF THE SUPERIOR COURT

Form Approved for Optional Use
Judicial Council of California
CR-221 [Rev. January 1, 2021]

Vehicle Code, §§ 23575, 23576
www.courts.ca.gov

ORDER TO INSTALL IGNITION INTERLOCK DEVICE	CASE NUMBER:

What is a violation of this order?

1. Failure to have ignition interlock devices installed as ordered.
2. Failure to show proof of installation to the court within the time limit specified in this order.
3. Failure to comply three or more times with any requirement for the maintenance or calibration of the ignition interlock devices.
4. If defendant has a valid driver's license, driving any vehicle without an ignition interlock device except for employer-owned vehicles required to be operated within the course and scope of employment. A motor vehicle owned by a business entity that is all or partly owned or controlled by defendant is not a motor vehicle owned by an employer subject to the exemption.

What will happen if you violate this order?

Under Vehicle Code section 23575, if a defendant fails to comply with this court order the court must notify the Department of Motor Vehicles.

Violation of the following is a misdemeanor and can be punished by imprisonment in the county jail and/or a fine:

1. Failure to notify any person who rents, leases, or loans a motor vehicle to defendant of the restriction imposed by this order.
2. Requesting or soliciting any person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing defendant with an operable motor vehicle.
3. Operating a vehicle not equipped with a functioning ignition interlock device.
4. Removing, bypassing, or tampering with an ignition interlock device.

Defendant: Call the ignition interlock device installer and arrange for the installation of the device(s). The court will provide you with a list of manufacturers certified by the Department of Motor Vehicles. Contact a certified manufacturer to locate an installer.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF:	FOR COURT USE ONLY
STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: BRANCH NAME:	**DRAFT** **Not approved by the Judicial Council**
NAME OF DEFENDANT: STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: DRIVER'S LICENSE NO.:	
DATE OF COURT ORDER:	
IGNITION INTERLOCK INSTALLATION VERIFICATION	CASE NUMBER:

1. Manufacturer:
2. Facility Location *(address):*
3. Vehicles:

	Make	Model	Year	Color	License Plate No.	VIN:
a.						
b.						
c.						

4. Serial nos. of units: a. b. c.
5. Odometer reading: a. b. c.
6. Date of installation: a. b. c.
7. Date of next monitor check: a. b. c.

I declare that the information provided is true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME OF INSTALLER) (SIGNATURE OF INSTALLER)

Defendant: return a completed and signed form to the court.

For installer use only:

Form Approved for Optional Use
Judicial Council of California
CR-222 [Rev. January 1, 2021]

IGNITION INTERLOCK INSTALLATION VERIFICATION

Vehicle Code, § 23575
www.courts.ca.gov

CR-223

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
NAME OF DEFENDANT: STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: DRIVER'S LICENSE NO.:	
DATE OF COURT ORDER:	
IGNITION INTERLOCK CALIBRATION VERIFICATION	CASE NUMBER:

1. Defendant's name: _____
2. Installer's name: _____
   Address:
   City: State: Zip Code:
   Telephone no.:
3. Vehicles:

	Make	Model	Year	Color	License Plate No.	VIN:
a.						
b.						
c.						

4. Installation date: a. b. c.
5. Odometer reading: a. b. c.
6. Calibration setting: a. b. c.
7. Unit serial no.: a. b. c.
8. Program to end *(date)*: _____
9. ☐ The system is in calibration ☐ a. ☐ b. ☐ c.
10. ☐ The system has been inspected and is functioning properly. ☐ a. ☐ b. ☐ c.
11. Payment of $ + sales tax $ Total collected $ paid by
    a. ☐ Credit card
    b. ☐ Money order/cashier's check/certified check
    c. ☐ Cash/personal check

I declare that the information provided is true and correct.

Date: _____ ▶ _____
(SIGNATURE OF INSTALLER)

DEFENDANT: Your next monitoring check is *(date)*: _____. If you have not had your system serviced within a few days after a missed monitoring check, the system will shut down and you will be unable to start your car. It will be your responsibility to have your car towed to the calibration location. You may also owe a missed appointment fee.

Your next payment of $ is due at the above monitoring check. Payment must be made in full before service is performed. If payment is not made, the system may shut down and you may not be able to start your car. This will result in a service call that will be your responsibility. You may be required to make an additional payment for late payments.

I acknowledge receipt of a copy of this form.

Date: _____ ▶ _____
(SIGNATURE OF DEFENDANT)

Form Approved for Optional Use
Judicial Council of California
CR-223 [Rev. January 1, 2021]

Vehicle Code, § 23575
www.courts.ca.gov

CR-224

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: BRANCH NAME:	DRAFT Not approved by the Judicial Council
NAME OF DEFENDANT: STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: DRIVER'S LICENSE NO.:	
IGNITION INTERLOCK NONCOMPLIANCE REPORT	CASE NUMBER:

1. Vehicles:

	Make	Model	Year	Color	License Plate No. and/or VIN
a.					
b.					
c.					

2. ☐ The defendant failed to comply with a requirement for the maintenance or calibration of the ignition interlock device installed in the vehicle indicated below on three or more occasions:

Vehicles	Date	Describe Noncompliance
☐ a. ☐ b. ☐ c.		
☐ a. ☐ b. ☐ c.		
☐ a. ☐ b. ☐ c.		

3. ☐ The ignition interlock device installed in the vehicle indicated below showed evidence of:

Vehicles	Date	Removal	Attempt to bypass	Attempt to remove	Tampering
☐ a. ☐ b. ☐ c.		☐	☐	☐	☐
☐ a. ☐ b. ☐ c.		☐	☐	☐	☐
☐ a. ☐ b. ☐ c.		☐	☐	☐	☐

4. I declare that the information provided is true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF FACILITY MONITOR)

Name of facility monitor *(specify)*:

Name of facility *(specify)*:

Address of facility *(specify)*:

Telephone number of facility *(specify)*:

Form Approved for Optional Use
Judicial Council of California
CR-224 [Rev. January 1, 2021]

Vehicle Code, §§ 23575, 23576
www.courts.ca.gov

CR-225

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
NAME OF DEFENDANT: STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: DRIVER'S LICENSE NO.:	
IGNITION INTERLOCK REMOVAL AND MODIFICATION TO PROBATION ORDER	CASE NUMBER:

1. ☐ **Order to change vehicles**. The above-named defendant has approval of the court to change the ignition interlock device *(system serial number:*) to another vehicle.
   a. Remove from vehicle:

Make	Model	Year	Color	License Plate No. and/or VIN

   b. Reinstall in vehicle:

Make	Model	Year	Color	License Plate No. and/or VIN

2. ☐ **Order for additional installation**. The above-named defendant must install an ignition interlock device on the vehicle designated below by *(date):* _____

Make	Model	Year	Color	License Plate No. and/or VIN

3. ☐ **Order to remove device.**
   ☐ Additional orders:

Date: _____

_____
(TYPE OR PRINT NAME)

I acknowledge receipt of this order.

_____
(SIGNATURE OF DEFENDANT)

Date: _____

_____
JUDICIAL OFFICER OF THE SUPERIOR COURT

Form Approved for Optional Use
Judicial Council of California
CR-225 [Rev. January 1, 2021]

Vehicle Code, §§ 23575, 23576
www.courts.ca.gov

CR-226

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY **DRAFT** **Not approved by the Judicial Council**
NAME OF DEFENDANT: STREET ADDRESS: MAILING ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: DRIVER'S LICENSE NO.:	
NOTICE TO EMPLOYERS OF IGNITION INTERLOCK RESTRICTION	CASE NUMBER:

INSTRUCTIONS TO DEFENDANT

You are required to provide this notice to any employer who owns a vehicle that you operate in the course and scope of your employment with that employer. You are also required to keep this notice in your possession or with your employer's vehicle.

NOTICE TO EMPLOYER

1. This is is to inform the employers of the above named defendant that the defendant is required by court order to have installed, on all vehicles that the defendant owns or operates, an ignition interlock device pursuant to Vehicle Code section 23575 et seq.

2. This court order is effective *(date)*:_____ and will expire *(date)*:_____

3. Note: Vehicle Code section 23576 provides:

   "[I]f a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of a functioning, certified approved ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted ... and if the person has proof of that notification in his or her possession, or if the notice, or a facsimile copy thereof, is with the vehicle."

4. A motor vehicle owned by a business entity that is all or partly owned or controlled by the defendant is not a motor vehicle owned by the employer subject to the exemption in Vehicle Code section 23576.

5. This notice satisfies the requirements of Vehicle Code section 23576.

Form Approved for Optional Use
Judicial Council of California
CR-226 [Rev. January 1, 2021]

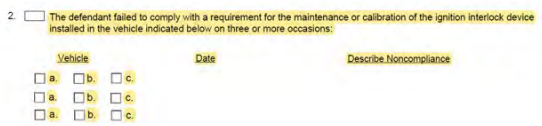
SPR20-13

Ignition Interlock Forms (Revise forms ID-100, ID-110, ID-120, ID-130, ID-140, ID-150)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Scott B. Garner, President	A	*Does the proposal appropriately address the stated purpose?* Yes. The proposed updated forms appropriately conform to the requirements set forth in Vehicle Code sections 23575 and 23576 with the exception of the "under penalty of perjury" declaration by the installer. *Is it sufficient for an IID installer to declare that information provided is true and correct, rather than under penalty of perjury? Does this limit the court's ability to properly monitor the IID installation and maintenance as required by statute?* The court should not require the declaration under the penalty of perjury by the installer as the legislature did not provide for such declaration by section 23575. True and correct affirmation is sufficient. The court's ability to properly monitor the IID installation and maintenance as required by statute will not be hampered by a true and correct affirmation. On the other hand, evidentiary issues related to proof of noncompliance or tampering based solely upon the proposed calibration verification or noncompliance report court forms may arise in a hearing for a violation of probation or a new criminal prosecution.	No response required. The committee appreciates this input.
2.	Superior Court of Orange County	AM	*Does the proposal appropriately address the stated purpose?*	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Yes, the recommended modifications to the forms appropriately address the purpose. The proposed changes accommodate the use of the form during and after the pilot program has concluded, however, step 2 of the Ignition Interlock Noncompliance Report is not clear. The use of letters to both list the vehicles and identify which vehicle was being referenced is confusing Perhaps modifying as follows may alleviate some confusion:  2. ☐ The defendant failed to comply with a requirement for the maintenance or calibration of the ignition interlock device installed in the vehicle indicated below on three or more occasions: Vehicle Date Describe Noncompliance ☐ a. ☐ b. ☐ c. ☐ a. ☐ b. ☐ c. ☐ a. ☐ b. ☐ c. *Is it sufficient for an IID installer to declare that information provided is true and correct, rather than under penalty of perjury? Does this limit the court's ability to properly monitor the IID installation and maintenance as required by statute?* The phrase "under penalty of perjury" was removed because the statute does not provide for this as a requirement. This appears to be a legal question as to enforceability of the standards and practices of an installer. *Would the proposal provide cost savings? If so, please quantify.* The proposal will not impact the court. Non-substantive changes were made to the form and not the process.	The committee agrees with this suggestion and has modified the proposal to recommend making this change to item 2 on *Ignition Interlock Noncompliance Report*, form ID-130/CR-224, as well as to item 3 on the same form, for consistency and to further alleviate confusion. No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-13

Ignition Interlock Forms (Revise forms ID-100, ID-110, ID-120, ID-130, ID-140, ID-150)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			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? Minimal training would be required to inform staff of the non-substantive modifications made to the form. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes *How well would this proposal work in courts of different sizes?* As these forms have been in use previously, and the changes are non-substantive, the impact would be minimal.	No response required No response required. No response required.
3.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment	No response required.

Item number:15

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer
Amend Cal. Rules of Court, rule 4.530

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019, amended January 20, 2020
Project description from annual agenda: Amend Cal. Rules of Court, rule 4.530, Intercounty transfer of probation and mandatory supervision
Project Summary: Consider rule changes to 1) require a receiving court to notify a transferring court if the transferred case's disposition changes, e.g., reduced to a misdemeanor or dismissed, 2) modernize the rule and further clarify the roles of transferring and receiving courts through allowing electronic transmission of court files from the transferring court to the receiving court, and 3) allow only the receiving court to make certified copies of court records.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.530

Recommended by
Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 30, 2020

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee, in response to a suggestion by a judicial administrator, recommends amending rule 4.530 of the California Rules of Court to increase clarity concerning certified copies of the court file and the electronic transfer of court files.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021, amend California Rules of Court, rule 4.530, by adding two paragraphs to subdivision (g) stating that on transfer, only the receiving court may certify copies from the court file; and that a certified copy of the entire court file may be electronically transmitted if an original court file does not exist, and if the receiving court receives a certified copy of the entire court file from the transferring court, it must be deemed an original file.

The amended rule is attached at page 3.

Relevant Previous Council Action

The Judicial Council adopted rule 4.530 effective July 1, 2010, and the rule was most recently amended effective January 1, 2017 to clarify file transfer requirements after intercounty transfer under Penal Code section 1203.9.

Analysis/Rationale

A judicial administrator stated that there was a lack of clarity around whether the transferring or receiving court may certify records from a case, when, for example, a district attorney requests a certified copy of conviction documents. Under Penal Code section 1203.9(b), the receiving court has entire jurisdiction over the case once the transfer is ordered. Hence, the committee recommends amending the rule to clarify that only the receiving court may certify records in the case.

The rule's requirement for a court to transfer the original file does not address how to transfer a file through an electronic case management system, where no original paper file exists. The committee recommends amending the rule to account for these systems.

Policy implications

The recommended amendments aim to clarify confusion and a lack of consistency around the certification of transferred court records and reflect technological changes to case management systems.

Comments

This proposal circulated for comment from April 10 to June 9, 2020, and received five comments. All commenters agreed with the proposal. A chart of comments received and the committee's response is on pages 4–7.

Alternatives considered

The committee agreed that the two proposed changes added clarity to the administration of probation transfers and considered no alternatives.

Fiscal and Operational Impacts

No fiscal or operational impacts are anticipated as a result of amending rule 4.530.

Attachments and Links

1. Cal. Rules of Court, rule 4.530, at page 3
2. Chart of comments, at pages 4–7

Rule 4.530 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 4.530. Intercounty transfer of probation and mandatory supervision cases

(a)–(f) * * *

(g) Transfer

(1)–(5) * * *

(6) A certified copy of the entire court file may be electronically transmitted if an original paper court file does not exist. Upon receipt of an electronically transmitted certified copy of the entire court file from the transferring court, the receiving court must deem it an original file.

(7) Upon transfer the probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans to the probation officer of the receiving county.

(8) Upon transfer of the case, the probation officer of the transferring county must notify the supervised person of the transfer order. The supervised person must report to the probation officer of the receiving county no later than 30 days after transfer unless the transferring court orders the supervised person to report sooner. If the supervised person is in custody at the time of transfer, the supervised person must report to the probation officer of the receiving county no later than 30 days after being released from custody unless the transferring court orders the supervised person to report sooner. Any jail sentence imposed as a condition of probation or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

(9) Upon transfer of the case, only the receiving court may certify copies from the case file.

(h) * * *

SPR20-15

Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend Cal. Rules of Court, rule 4.530)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Scott B. Garner, President	A	No specific comment	No response required.
2.	Superior Court of Orange County Superior - Juvenile Court Division	A	Rule 4.530 would amend the rule to clarify the appropriate roles between transferring and receiving courts in certifying transferred case records and accommodate modernized court practices due to electronic case management systems. *Does the proposal appropriately address the stated purpose?* Yes, this proposal appropriately addresses the stated purpose. *Would the proposal provide cost savings? If so, please quantify*. This would not provide cost savings or add additional costs to the court. *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?* The implementation requirements for Orange County Superior Court would be to revise the Transfer In - Acceptance of Transfer and Transfer Out procedures and training the Legal	No response required. No response required. No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Processing Specialists working with transfer matters for about 15-20 mins. *Would three months from Judicial Council approval of this proposal until its effective date provide enough time for implementation?* Yes, three months would provide sufficient time for implementation. This would allow the courts to be able to make sure they are receiving the whole case from the transferring court. *How well would this proposal work in courts of different sizes?* This would work well in court of different sizes but anyone requesting information from the case would just have to go to the court that has jurisdiction.	No response required. No response required.
3.	Superior Court of Orange County	A	*Does the proposal appropriately address the stated purpose?* Yes, the proposal merely clarifies two aspects of an existing rule of court. *Would the proposal provide cost savings? If so, please quantify.* Allowing an electronic transmission of the court file, when applicable, decreases the use of paper, ink, postage, etc. Depending on the method of electronic submission, staff will not be required to track the package and image the receipt. Likewise, with the certification being limited to	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			the receiving court, it would reduce the amount of certified documentation provided to the public specific to cases that are no longer in our jurisdiction. *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?* If electronic transmission is utilized, a process would need to be identified to establish the method of transmission depending on the location and capabilities of the receiving court. Staff processing PC 1203.9 transfers will require training to identify applicable cases and method of transmission. Additionally, a process would also need to be established for certification request staff to address and properly refer certification requests for cases no longer in our jurisdiction. Procedures would need to be updated accordingly. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Three months is sufficient time to establish a referral process for designated staff to address requests for cases which are no longer in our jurisdiction.	The committee appreciates this input. No response required.

SPR20-15

Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend Cal. Rules of Court, rule 4.530)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? Courts of different sizes that provide certified records would be minimally impacted by the proposal.	No response required.
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comments	No response required.
5.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee - Joint Rules Subcommittee	A	The JRS notes the following impact to court operations: • Results in additional training, which requires the commitment of staff time and court resources. JRS also notes that the proposal should be implemented because it will provide statewide consistency.	No response required.

Item number:16

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Forms: Miscellaneous Technical Changes

Revise forms CR-150, CR-162, CR-200, CR-251, and CR-300

Committee or other entity submitting the proposal:
Sarah Fleischer-Ihn

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda:

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 25, 2020

Title
Criminal Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-150, CR-162, CR-200, CR-251, and CR-300

Recommended by
Judicial Council staff
Sarah Fleischer-Ihn, Attorney
Criminal Justice Services

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 11, 2020

Contact
Sarah Fleischer-Ihn, (415) 865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

Judicial Council staff recommend revising five criminal forms to incorporate changes resulting from legislation and a prior rule amendment. The changes are technical, minor, and noncontroversial. Judicial Council staff recommend making the necessary corrections to conform to statutes and rules and avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective January 1, 2021:

1. Revise *Certificate of Identity Theft: Judicial Finding of Factual Innocence* (form CR-150) to include a gender nonbinary identification checkbox and conform to changes to Penal Code section 530.6, as amended effective January 1, 2003, to add two additional findings;

2. Revise *Order to Surrender Firearms in Domestic Violence Case* (form CR-162) to avoid the use of gendered pronouns[1] and replace a reference to Penal Code section 136.2(a)(7)(B), which was renumbered by Assembly Bill 1850 (Stats. 2014, ch. 673);

3. Revise *Form Interrogatories—Crime Victim Restitution* (form CR-200) to correct the reference to Code of Civil Procedure section 2030, which was repealed by Assembly Bill 3081 (Stats. 2004, ch. 182), and replaced with sections 2030.010–2030.410;

4. Revise *Order for Transfer* (form CR-251) to reflect changes to Penal Code section 1203.9 and California Rules of Court, rule 4.530; and

5. Revise *Petition for Revocation* (form CR-300) to add a reference to Penal Code section 3000(b)(4), to conform to Penal Code section 3000.08(h), which was amended by Senate Bill 1023 (Stats. 2012, ch. 43) to include persons subject to parole under section 3000(b)(4) as warranting special parole status.

The proposed revised forms are attached at pages 5–12.

Relevant Previous Council Action

The recommendation to revise form CR-251 is related to the Judicial Council's prior amendment of California Rules of Court, rule 4.530, effective January 1, 2017. Although the Judicial Council has acted on the other forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these forms are technical in nature and necessary to conform to statutory changes and correct inadvertent omissions and incorrect references.

Revisions to *Certificate of Identity Theft: Judicial Finding of Factual Innocence* (form CR-150) are recommended to conform to changes to Penal Code section 530.6. The section was amended by Assembly Bill 1219 (Stats. 2002, ch. 851) to allow victims to petition the court in two additional circumstances: "where the perpetrator of identity theft was . . . cited for . . . a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name." The proposed change would add these two circumstances to the petition form, using substantially identical language as the statute.

Revisions to *Order for Transfer* (form CR-251) are recommended to conform to changes to Penal Code section 1203.9 and California Rules of Court, rule 4.530. Section 1203.9 was

[1] This form includes checkboxes indicating whether the person surrendering firearms is male or female. Judicial Council staff is monitoring how the Department of Justice is modifying the California Restraining and Protective Order System (CARPOS) to include a nonbinary gender option and intends to update this form to reflect those changes at a future date.

amended by Assembly Bill 673 (Stats. 2015, ch. 251) to change court jurisdiction over the collection and distribution of court-ordered debt after intercounty transfer. Rule 4.530 was amended, effective January 1, 2017, to make the rule consistent with the changes to section 1203.9 on court-ordered debt and to add additional file transfer requirements after intercounty transfer. Form CR-251 currently reflects prior versions of both the statute and rule. The revisions to form CR-251 incorporate the same changes the Judicial Council previously approved to rule 4.530 regarding court-ordered debt (Cal. Rules of Court, rule 4.530(h)(1)(A)) and file transfer requirements (Cal. Rules of Court, rule 4.530(g)(5)).

Policy implications

This proposal promotes accuracy and consistency with statutes and rules.

Comments

This proposal was not circulated for public comment because the recommended changes are corrections, technical revisions, and minor modifications that are unlikely to create controversy, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

Revising the forms later, alongside more substantive revisions, was considered. However, revising the forms at this time appears to be the better option, to avoid having courts and court users continuing to rely on inaccurate forms for an unforeseen amount of time.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are minor or technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Forms CR-150, CR-162, CR-200, CR-251, and CR-300, at pages 5–12
2. Link A: Pen. Code, § 530.6, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=530.6&lawCode=PEN*
3. Link B: Assembly Bill 1219 (Stats. 2002, ch. 851), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200120020AB1219*
4. Link C: Assembly Bill 1850 (Stats. 2014, ch. 673), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1850*
5. Link D: Assembly Bill 3081 (Stats. 2004, ch. 182), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040AB3081*
6. Link E: Pen. Code, § 1203.9, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.9&lawCode=PEN*

7. Link F: Assembly Bill 673 (Stats. 2015, ch. 251), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB673*
8. Link G: Cal. Rules of Court, rule 4.530, *https://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_530*
9. Link H: Pen. Code, § 3000.08, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3000.08&lawCode=PEN*
10. Link I: Senate Bill 1023 (Stats. 2012, ch. 43), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1023*

CONFIDENTIAL (SEE RULE 4.601)

CR-150

ATTORNEY OR PARTY WITHOUT ATTORNEY — STATE BAR NUMBER:
NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR *(name)*:

PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT:

CASE NUMBERS:

CERTIFICATE OF IDENTITY THEFT: JUDICIAL FINDING OF FACTUAL INNOCENCE
(Penal Code, § 530.6)

Warrant No. (if any): _____ Violation Date: _____

1. Petitioner Information:
   Name: _____ Date of Birth: _____
   Gender: ☐ M ☐ F ☐ Nonbinary Ht: _____ Wt: _____
   Hair Color: _____ Eye Color: _____ Race: _____ Age: _____
   Booking No.: _____ Driver's License or Identification No.: _____
   Other Identifying Information: _____
2. The court finds that:
   - ☐ Another person was arrested for, cited for, or convicted of a crime under the identity of the petitioner in this case.
   - ☐ A criminal complaint has been filed against another person under the name of the petitioner in this case.
   - ☐ The petitioner is not the person for whom the warrant in this case was issued.
   - ☐ The petitioner's identity has been mistakenly associated with a record of the criminal conviction in this case.

Accordingly, the court finds that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense in this case, and that the petitioner is factually innocent of that offense.

Date: _____

_____
JUDICIAL OFFICER

CERTIFICATION

(SEAL)

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: _____

Clerk, by _____

_____
(DEPUTY)

1. The box to the right contains the petitioner's
   - ☐ right thumbprint
   - ☐ other print *(specify)*:
2. The print was taken on *(date)*:
3. The print was taken by
   a. Name:
   b. Position:
   c. Badge or serial No.:

ANY ALTERATION RENDERS THIS FORM VOID.

CONFIDENTIAL (SEE RULE 4.601)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA *VS.* DEFENDANT:	
ORDER TO SURRENDER FIREARMS IN DOMESTIC VIOLENCE CASE (CLETS - CPO) **(Penal Code, §§ 136.2(a)(1)(G)(ii))**	CASE NUMBER:

PERSON TO SURRENDER FIREARMS *(complete name):*

Sex: ☐ M ☐ F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

1. This proceeding was heard on *(date):* at *(time):* in Dept.: Room:

   by judicial officer *(name):*

2. **This order expires on *(date):*** . **If no date is listed, this order expires three years from date issuance.**

3. ☐ Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

4. must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer, any firearm owned by the defendant or subject to the defendant's immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.

   ☐ The court finds good cause to believe that the defendant has a firearm within the defendant's immediate possession or control and sets a review hearing for *(date):* to ascertain whether the defendant has complied with the firearm relinquishment requirements of Code Civ. Proc., § 527.9. (Cal. Rules of Court, rule 4.700.)

   ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f). The defendant is not required to relinquish this firearm *(specify make, model, and serial number of firearm):*

Executed on: _____ _____ Department/Division:
(DATE) (SIGNATURE OF JUDICIAL OFFICER)

WARNINGS AND NOTICES

This order is effective as of the date it was issued by the judicial officer and expires as ordered in item 2.

This order is to be used ONLY when the court orders firearms relinquishment but does not make any other protective or restraining orders. Do NOT use in conjunction with other Criminal Protective Orders (form CR-160 or CR-161).

NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a $1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.

Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 4 of this order. *The court must check the box under item 4 to order an exemption from the firearm relinquishment requirements*. If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	**CR-200**
	TELEPHONE NO.:
	FAX NO. *(Optional):*
	E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
SHORT TITLE OF CASE:	
FORM INTERROGATORIES—CRIME VICTIM RESTITUTION **Asking Party:** **Answering Party:** **Set No.:**	CASE NUMBER:

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to the action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use by victims in criminal cases to assist them in recovering unpaid restitution.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010—2030.410 and the cases construing those sections.

(c) These form interrogatories do not change existing law relating to interrogatories, nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by crime victims to assist them in recovering unpaid restitution as provided in Code of Civil Procedure section 2033.720.

(b) Check the box next to each interrogatory that you want the answering party to answer. Take care to choose those interrogatories that are applicable to the case.

(c) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) You must answer or provide an appropriate response to each interrogatory checked by the asking party.

(b) As a judgment debtor you must disclose assets up to an amount clearly sufficient to satisfy the judgment.

(c) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared in court. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(d) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(e) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good-faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(f) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(g) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you need only provide them in the first interrogatory asking for that information.

(h) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(i) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE) _____ (SIGNATURE) _____

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(b) **ADDRESS** means the street address, including city, state, and zip code.

(c) **ASSET** or **PROPERTY** includes any interest in real estate or personal property. It includes any interest in a pension, profit-sharing, or retirement plan.

(d) **SUPPORT** means any benefit or economic contribution to the living expenses of another person, including gifts.

Sec. 5. Interrogatories
The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.720:

CONTENTS

1.0 Identity of Persons Answering These Interrogatories

☐ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the response to these interrogatories. *(Do not identify anyone who simply typed or reproduced the responses.)*

2.0 General Background Information --Individual

☐ 2.1 State:
(a) your full name;
(b) every name you have used in the past;
(c) the dates you used each name.

☐ 2.2 State the date and place of your birth.

☐ 2.3 State:
(a) your present residence **ADDRESS** and telephone number;
(b) whether you live in a private home, apartment, or other type of residence;
(c) if you live in a private home, who owns it;
(d) if you live in an apartment, the name and **ADDRESS** of your landlord, the monthly rent, and the name of the **PERSON** who pays the rent;
(e) your residence **ADDRESSES** for the past five years;
(f) the dates you lived at each **ADDRESS**.

☐ 2.4 State:
(a) the name, **ADDRESS**, and telephone number of each school or other academic or vocational institution you have attended, beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed;
(d) the degrees you received;
(e) the dates the degrees were received.

☐ 2.5 Do you have a driver's license or identification card? If so, state:
(a) the state or other issuing entity;
(b) the license or identification card number, type of license, and expiration date.

☐ 2.6 State any and all social security numbers that you have.

☐ 2.7 Are you married? If so, state:
(a) your spouse's full name;
(b) any maiden name;
(c) the date of your marriage;
(d) your spouse's current **ADDRESS**.

☐ 2.8 Have you ever filed for bankruptcy? If so, state:
(a) the disposition;
(b) the court;
(c) the year.

☐ 2.9 Have you filed income tax returns during the last three years? If so, state:
(a) the dates filed;
(b) a date and place where the records can be inspected;
(c) whether you are attaching the income tax records to your answers to these interrogatories.

3.0 Current Income

☐ 3.1 List all income you received during the past 12 months, its source, the basis for its computation, and the total amount received from each source.

4.0 Employment Information

☐ 4.1 State:
(a) the name, **ADDRESS**, and telephone number of your present employer;
(b) your current title, the nature of your work, and dates of employment;
(c) whether you work part-time or full-time;
(d) the frequency of payment (weekly, biweekly, or monthly);
(e) gross pay;
(f) net pay;
(g) whether you receive additional compensation for overtime pay;
(h) the average amount of overtime you work per week;
(i) the form of payment of salary *(check, cash, or other; if other, please explain);*
(j) the name and **ADDRESS** of each bookkeeper, payroll clerk, or other person having records of salaries or other sums of money paid to you by your present employer.

☐ 4.2 Are you self-employed or an independent contractor? If so, state:
(a) the address and telephone numbers of the persons or businesses for whom you have performed work or services during the last 12 months;
(b) the nature of the work or services performed and the dates they were provided;
(c) whether you billed each service or the work performed at a flat rate, an hourly rate, or a job rate, and the amount of payment you received;
(d) the name and **ADDRESS** of each bookkeeper, payroll clerk, or other person having records of salaries or other sums of money paid to you during the last three years for your work.

5.0 Employment History

☐ 5.1 State the employer's name and **ADDRESS**, dates of employment, job title, and nature of the work for each job you have had in the last five years. If you were self-employed in the last five years, state your business **ADDRESS**, dates of self-employment, title, and nature of the work.

6.0 Support Received From Others

☐ 6.1 Have you received any financial **SUPPORT** in the last three years? If so, state:
(a) the name, age, **ADDRESS**, and relationship to you of each **PERSON** from whom you have received **SUPPORT**;
(b) the dates you received the **SUPPORT** and the amount you received.

7.0 General Background Information— Business

☐ 7.1 Are you in any partnerships? If so, state for each:
(a) the current partnership name;
(b) all other names used by the partnership in the last five years and the dates each was used;
(c) whether you are a limited partnership and, if so, in what jurisdiction it operates;
(d) the name and **ADDRESS** of each general partner;
(e) the **ADDRESS** of the principal place of business

☐ 7.2 Have you done any business under a fictitious name during the last five years? If so, state:
(a) the current and any former fictitious business names;
(b) the dates each was used;
(c) the **ADDRESS** of the principal place of business.

8.0 Bank Accounts and Cash

☐ 8.1 Do you have, in your own name or jointly with another **PERSON**, any bank accounts, commercial savings accounts, credit union accounts, or safe deposit boxes? If so, state for each:
(a) the institution's name and **ADDRESS** where the account or the safe deposit box is located;
(b) the amount of the balance of any account and the contents of any safe deposit box;
(c) the source of the money in any account or safe deposit box;
(d) the date you last made a deposit;
(e) the type and the amount of your last deposit;
(f) the amount of cash that you currently possess.

☐ 8.2 Does your spouse have, in his or her own name or jointly with another **PERSON**, any bank accounts, commercial savings accounts, credit union accounts, or safe deposit boxes? If so, state for each:
(a) the institution's name and **ADDRESS** where the account or the safe deposit box is located;
(b) the source of the money in your spouse's bank account or safe deposit box.

9.0 Property

☐ 9.1 Do you or your spouse own or have any interest in **PROPERTY** in California or elsewhere? If so, state:
(a) the **ADDRESS** of any real estate, land, buildings, apartments, or condominiums in which you hold an interest;
(b) the date acquired and the current value of any real estate, land, buildings, apartments, or condominiums in which you hold an interest.

☐ 9.2 Do you or your spouse own or have any interest in stocks, bonds, or other securities or IRA, Keogh, or deferred compensation accounts? If so, state the source, value, and location of each.

☐ 9.3 Are you or your spouse entitled to any money from any federal, state, city, county, or governmental department or agency? If so, state the agency, the date you received or will receive the money, and the amount.

☐ 9.4 Have you or your spouse inherited any money or property in the last two years? If so, state the nature and value of the money or property and the date you received it.

☐ 9.5 Do you or your spouse have vehicles? If so, state for each:
(a) the model, make, year, and owner's name;
(b) whether you own it;
(c) if it is encumbered, state to whom and to the amount.

☐ 9.6 Do you have any pending civil actions? If so, state for each:
(a) the parties' names, the court, and the case number;
(b) the nature of the claim.

☐ 9.7 During the last three years have you received any judgments or insurance settlements? If so, state for each:
(a) the source or the judgment or insurance settlement;
(b) the amount of the judgment or insurance settlement.

☐ 9.8 Have you or your spouse applied for loans from any banks, credit unions, financial companies, or other lending institutions in the last three years? If so, state for each:
(a) if the loan was approved;
(b) the amount of the loan;
(c) what you or your spouse did with the proceeds.

☐ 9.9 Do you own any of the following items? If so, describe each item, the item's location, its approximate value, and any joint owner:
(a) office equipment;
(b) farm equipment;
(c) gemstones or jewelry;
(d) camera or video equipment;
(e) antiques;
(f) precious metals (gold or silver);
(g) musical instruments;
(h) weapons;
(i) motorcycles;
(j) motor homes;
(k) boats;
(l) airplanes;
(m) furs;
(n) watches;
(o) stamp or coin collections;
(p) china;
(q) original works of art;
(r) crystal.

10.0 Other Assets

☐ **10.1** Does any **PERSON**, company, or institution owe you money? If so, state for each:
(a) the name, **ADDRESS**, and telephone number of the person or institution;
(b) the amount of the debt;
(c) the basis of the debt;
(d) the date the debt is due to be paid.

☐ 10.2 Do you have any pending court proceedings in a California court where you have posted cash bail to guarantee your appearance? If so, state:
(a) the name of the court and date of posting;
(b) the amount of cash bail posted;
(c) the date to appear.

☐ 10.3 Are you the beneficiary of any trusts, or do you have any ownership interest in any partnerships, corporations, or companies? If so, state:
(a) the name and **ADDRESS** of each trustee, partnership, corporation, or company;
(b) the date each entity or trust was established;
(c) the **ASSETS** of each trust or entity.

11.0 Other Income

☐ 11.1 During the last three years have you received cash or other property not identified in the above interrogatories? If so, state:
(a) the nature and value of the cash or property
(b) the source of the cash or property;
(c) the current location of the cash or property.

12.0 Liabilities and Debts

☐ 12.1 Are there any other judgments of record against you? If so, state for each:
(a) the date entered;
(b) the location of the court and the names of the parties;
(c) the case number;
(d) the amount of the judgment;
(e) whether you have made any payments;
(f) the amount and source of the payments;
(g) the amount still due.

☐ 12.2 What are your average monthly expenses, and how are they met?

☐ 12.3 Are there any liens, levies, or garnishments against your assets or wages? If so, please explain each in detail.

☐ 12.4 Have you paid any fines or fees in the criminal case in which the asking party is the victim?

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR TRANSFER **(Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)**	CASE NUMBER:

1. A motion for intercounty transfer of *(select one)*: ☐ probation ☐ mandatory supervision in the above-entitled case was heard by this court on *(date):*
2. Notice of the motion was provided as required by California Rules of Court, rule 4.530(d).
3. Before deciding the motion, the court considered
   a. any comments provided by the receiving court; and
   b. at least the following factors: (1) the permanency of the supervised person's residence, (2) the availability of appropriate programs for the supervised person, (3) restitution orders, and (4) victim issues.
4. The motion for transfer is *(select one):*
   ☐ **Denied** for the reasons stated on the record.
   ☐ **Granted**. The court has determined the supervised person's county of residence and the case is hereby ordered transferred to the Superior Court of the County of:
   a. The court of the receiving county must accept entire jurisdiction over the case.
      The balance of time remaining on supervision is *(specify):*
   b. The supervised person is committed to the care and custody of the probation officer of the receiving county. Reimbursement of the reasonable costs for processing this transfer are to be paid by the supervised person to the county of the transferring court in accordance with Penal Code section 1203.1b.
   c. The entire original court file, excluding exhibits or any records of payments, must be transmitted to the receiving court. If transfer is ordered in a case involving more than one defendant, the court must transmit certified copies of the entire original court file, excluding exhibits and any records of payment.
   d. The probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans to the probation officer of the receiving county.
   e. The probation officer of the transferring county must notify the supervised person of this transfer order.
   f. The supervised person must report to the probation officer of the receiving county *(select one):*
      ☐ within 30 days of this order.
      ☐ within *(specify):* days of this order.
      ☐ within 30 days of release from custody.
      ☐ within *(specify):* days of release from custody.
   g. Any jail sentence imposed as a condition of probation or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.
   h. If the transferring court has ordered the supervised person to pay fines, fees, forfeitures, penalties, assessments, or restitution, and those and any other amounts ordered by the court are still unpaid at the time of transfer, the supervised person is ordered to pay to the collection program for the transferring court for proper distribution and accounting once collected.

Date: By: _____
(JUDICIAL OFFICER)

FOR COURT USE ONLY

Form Adopted for Mandatory Use
Judicial Council of California
CR-251 [Rev. January 1, 2021]

SUPERVISING AGENCY *(Name and address)*:	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN THE MATTER OF *(name of supervised person)*: Date of birth:	
PETITION FOR REVOCATION ☐ **PAROLE (Pen. Code, §§ 3000.08, 1203.2)** ☐ **PRCS (Pen. Code, §§ 3455, 1203.2)** ☐ **PROBATION (Pen. Code, § 1203.2)** ☐ **MANDATORY SUPERVISION (Pen. Code, §§ 1170(h)(5)(B), 1203.2)**	SUPERVISING AGENCY NUMBER: COURT CASE NUMBER:

INSTRUCTIONS

- *Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.*
- *Petitioner must note whether the petition applies to a parole (beginning July 1, 2013) or postrelease community supervision matter by marking the appropriate check box above.*

1. **HEARING INFORMATION:** A hearing on this petition for revocation has been scheduled as follows:
   Date: Time: Dept.:
   Location *(if different than court address above)*:
   If an interpreter is needed, please specify the language:
2. **CUSTODY STATUS** *(Select one)*: ☐ not in custody ☐ in custody *(specify location)*:
   Booking number *(if any)*:
3. **CONVICTION INFORMATION:**
   The supervised person was originally convicted of the following offenses:
   on *(date)*: in case numbers *(specify)*:
   in county of *(specify)*: and sentenced to *(specify sentence)*:
4. **SUPERVISION INFORMATION:** The supervised person was released on supervision on *(specify date)*:
   Name of current supervising agent or officer:
   Supervision is scheduled to expire on (i.e., the controlling discharge date is) *(date)*:
5. **SPECIFIC TERMS AND CONDITIONS:** Petitioner alleges that the supervised person has violated the following terms and conditions of supervision *(if more space is needed, please use* Attachment to Judicial Council Form *(MC-025))*:
6. **SUMMARY:** The supervising agency established probable cause for the alleged violation on *(date)*:
   The circumstances of the alleged violation are *(if more space is needed, please use* Attachment to Judicial Council Form *(MC-025))*:
7. **SPECIAL PAROLE STATUS** *(check this box **only if** the supervised person is subject to parole under Penal Code sections 3000(b)(4) or 3000.1)*:
   ☐ The supervised person is on parole under Penal Code sections 3000(b)(4) or 3000.1. If the court determines that the person has violated parole, the court is required to remand the person to the custody of CDCR for future parole consideration. (Pen. Code, § 3000.08(h).)

I declare under penalty of perjury and to the best of my information and belief that the foregoing is true and correct.

Date: _____ By _____
NAME AND TITLE OF PETITIONER SIGNATURE OF PETITIONER

Form Approved for Optional Use
Judicial Council of California
CR-300 [Rev. January 1, 2021]

PETITION FOR REVOCATION
Pen. Code, §§ 1170(h)(5)(B), 1203.2, 3000.08, and 3455)

Item number:17

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (out of cycle)

Rules Committee Meeting Date: August 20, 2020

Title of proposal: Criminal Forms: Sex Offender Registration Termination

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Adopt forms CR 415, CR 416, and CR 417; approve form CR 415-INFO

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: October 28, 2019
Project description from annual agenda: Develop forms to implement SB 384, which, in relevant part, establishes three tiers of sex offender registration based on specified criteria and a petition process to request termination from the registry upon completion of a mandated minimum registration period under specified conditions. The petition process goes into effect on July 1, 2021 and it is intended for the forms to go into effect at that time, though they will be presented to the Judicial Council at its September 2020 meeting. Assist criminal courts with any required implementation.

If requesting July 1 or out of cycle, explain:
The petition process is effective July 1, 2020. The committee would like the forms to be approved prior to that date.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP20-03

Title
Criminal Forms: Sex Offender Registration Termination

Proposed Rules, Forms, Standards, or Statutes
Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO

Proposed by
Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Action Requested
Review and submit comments by October 21, 2020

Proposed Effective Date
July 1, 2021

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes three new mandatory forms and an optional information sheet to be used to petition the court for termination of sex offender registration, indicate a district attorney's response to the petition, and make appropriate court orders. The state Department of Justice requested the Judicial Council's assistance with forms to implement relevant parts of the Sex Offender Registration Act (Sen. Bill 384; Stats. 2017, ch. 541).

Background

Under the Sex Offender Registration Act, effective January 1, 2021, sex offender registration will convert from a lifetime requirement to a tier-based registration system with a minimum registration time period of 10 years, 20 years, or lifetime, largely depending on the registrable offense. The state Department of Justice will designate tiers for all current registrants and will notify the registering law enforcement agency of the designation. Starting July 1, 2021, registrants may petition the court in the county of registration to terminate the registration requirement if the registrant has been registered for the minimum required time and meets other criteria. The district attorney may request a hearing if they believe the person does not meet the requirements or that community safety would be enhanced by the person's continued registration. Penal Code section 290.5, effective July 1, 2021, outlines the procedure and requirements for the petition process.

Prior Circulation

Earlier this year, a proposal (SPR20-16) to adopt the forms included in this proposal was circulated for public comment. Twenty comments were received from a range of stakeholders: the Department of Justice, courts, law enforcement, district attorney's offices (Los Angeles, San Diego), a public defender's office (San Diego), advocates, and members of the public. Most commenters agreed with the proposal if modified. The committee incorporated several substantive changes suggested by commenters.

Acknowledgment of receipt

In the prior proposal, the committee circulated for public comment an *Acknowledgment of Receipt* form requiring law enforcement and the district attorney to confirm receipt of the petition to the court within 10 days. Several law enforcement agencies, district attorney's offices, and a public defender's office opposed the form, stating, in part, that the form shifted the burden of providing proof of service to the court from the petitioner to law enforcement and prosecuting agencies and imposed a non-statutory burden on law enforcement and prosecuting agencies by requiring them to file the form with the superior court in which the registrant resides within 10 days. Based on these comments, the committee has decided not to move forward with the previously proposed *Acknowledgement of Receipt* form.

One commenter stated that the service section of the petition provided sufficient information about proper service. The committee agreed, with minor modifications to the service section of the petition to include the name of the agency served, the address of service, a declaration by the petitioner or counsel that the information contained in the petition is true and correct, and notice to the petitioner that a court may deny a petition that is not properly served.

Summary denial

The previously circulated response form and order form included three grounds for requesting and granting summary denial of the petition: first, that petitioner did not meet the minimum time period for registration; second, that petitioner was assigned to a lifetime tier and does not qualify for termination; and third, a catch-all "other" category. The committee received two comments recommending that the forms include additional reasons for summary denial, mirroring the statutory requirements, to fully inform petitioners about how to correct any subsequently filed petitions. The committee agreed with the comments. The proposed changes also align with statutory changes introduced by Senate Bill 118 (Stats. 2020, ch. 29), discussed below, regarding summary denials.

Incorporating comments

The committee also incorporated other comments into the forms for further clarification, user-friendliness, and correcting omissions and errors.

Update to Penal Code section 290.5

While the forms circulated for public comment, the Legislature introduced, and the Governor subsequently signed into law, a budget trailer bill (Senate Bill 118) amending Penal Code section

290.5. The amendments prohibit the filing of a petition for termination until on or after the petitioner's next birthday after July 1, 2021, and explicitly allows the court to summarily deny a petition if the court determines the petitioner does not meet the statutory requirements for termination or if the petitioner has not fulfilled the filing or service requirements. The petition form and information sheet have been modified to state that petitions must be filed only on or after the petitioner's next birthday after July 1, 2021, and the district attorney response form and court order were modified to expand the summary denial sections.

The Proposal

The committee proposes adoption of the following three mandatory forms and approval of an information sheet.

Petition to Terminate Sex Offender Registration **(form CR-415)** allows petitioner or counsel to:

- Indicate that petitioner has met the requirements for termination under Penal Code section 290.5(a)(2), including proof of current registration; that petitioner has no pending charges that could extend the time to complete the registration requirements of petitioner's tier or change petitioner's status; and that petitioner is not in custody and not on parole, probation, postconviction supervised release, or any other form of supervised release;
- Identify petitioner's tier designation and indicate whether petitioner has registered for the minimum number of years for that tier designation as required under Penal Code section 290(e);
- If applicable, indicate whether petitioner has met the exceptions requirements outlined in Penal Code section 290.5(b);[1]
- Provide information on any previously filed and denied petitions so the served parties and the court are aware of any time restrictions on filing a subsequent petition under Penal Code section 290.5(a)(4) and (b)(2)–(3); and
- State the agencies that the petition was served on and the method of service, to indicate compliance with the service requirements of Penal Code section 290.5(a)(2).

Information on Filing a Petition to Terminate Sex Offender Registration **(form CR-415-INFO)** is an information sheet that provides background on eligibility for relief, tier designation, tolling of the registration period, exception categories, and the petition process.

[1] This subdivision includes specified exceptions to tier two's 20-year registration requirement and tier three's lifetime registration requirement. Tier two contains an exception that permits a minimum 10-year registration requirement for specified offenses involving a minor victim, 14 to 17 years of age, that occurred when the offender was under 21. The state Department of Justice has indicated that it will not separately designate tier two registrants in this exception category. There is also an exception for registrants who have been designated as tier three due to an above-average risk level on the sex offender risk-assessment instrument, which permits them to petition for termination after a minimum 20-year registration period. The state Department of Justice has indicated that it *will* separately designate persons in tier three based on a risk-level assessment. The court's role is to determine whether community safety would be enhanced by requiring continued registration and, if the court denies the request based on community safety concerns, the time period after which the person can file another petition.

Response by District Attorney to Petition to Terminate Sex Offender Registration **(form CR-416)** allows the district attorney to:

- State that there is no objection to the petition;
- Request a hearing based on either a community safety argument or because petitioner did not meet the requirements of Penal Code section 290(e) (Pen. Code, § 290.5(a)(2)); or
- Recommend that the court summarily deny the petition based on petitioner's ineligibility.

Order on Petition to Terminate Sex Offender Registration **(form CR-417)** allows the court to take one or more of the following actions:

- Grant the request to terminate sex offender registration under Penal Code section 290 et seq.;
- Summarily deny the request based on petitioner's ineligibility;
- Deny the request after hearing based on a finding that community safety would be significantly enhanced by petitioner's continued registration or because petitioner did not meet the requirements of Penal Code section 290(e) (Pen. Code, § 290.5(a)(2));
- Indicate that its findings after hearing are either stated on the record or set forth in writing in the order; and
- Indicate the time period after which the petitioner may file another petition (Pen. Code, § 290.5(a)(4), (b)(2)–(3)).

The committee recommends an effective date of July 1, 2021, for the proposed forms since the termination petition process goes into effect on that date.

Alternatives Considered

Reply form

The committee discussed whether to develop a reply form for petitioners, but concluded that it would not develop one at this time. The committee notes that a petitioner should receive a copy of the district attorney's response form and may file a reply for the court's consideration. To ensure that petitioner receives a copy of the district attorney's response, the committee added a line to the district attorney's response form indicating service of the form to the petitioner.

Fiscal and Operational Impacts

It is anticipated that the volume of petitions for termination under Penal Code section 290.5 will be significant. Courts will have to process and act on the requests for termination by setting and conducting hearings and issuing written orders. The proposed forms are intended to mitigate workload burdens by streamlining some of this process and providing greater thoroughness and consistency in the presentation of the relevant information. Expected costs include training, case management system updates, and the production of new forms.

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 six 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 CR-415, CR-415-INFO, CR-416, and CR-417, at pages 6–15
2. Link A: Senate Bill 384 (Stats. 2017, ch. 541), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB384*
3. Link B: Penal Code section 290.5, effective July 1, 2021, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=290.5.&lawCode=PEN*
4. Link C: Senate Bill 118 (Stats. 2020, ch. 29), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB118*

CR-415 Petition to Terminate Sex Offender Registration (Pen. Code, § 290.5)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

- Before using this form, read *Information on Filing a Petition to Terminate Sex Offender Registration* (form CR-415-INFO).
- Petitioner must continue to register as a sex offender until a court terminates the registration requirement.
- A copy of this petition and proof of current registration must be served on the proper law enforcement agencies and district attorney offices. The petition may be denied if service is not complete.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

For Court use only:

Date:
Time:
Department:

1 Petitioner's Information

a. Name: _____
Last *First* *Middle*

Date of birth: _____ *(mm/dd/yyyy)*

b. Attorney assisting with the petition (if any)

Attorney Name: _____

Firm: _____

State Bar No.: _____

c. Contact information *(IMPORTANT: You may be contacted about this matter at the address, phone, or e-mail listed below):*

☐ Check if attorney's contact information

_____
Street

_____ _____ _____ Phone: _____
City *State* *Zip*

E-mail *(if available):* _____ ☐ Check if you agree to e-mail communication.

d. ☐ If there is a hearing, petitioner requests an interpreter in *(language)*: _____

2 Registration Status and Information

a. ☐ Petitioner is **currently registered** as a sex offender in California in the County of: _____

b. ☐ Identify the court in which petitioner was convicted of an offense requiring sex offender registration in California (e.g., specific California superior court, federal district court, military court, other state court):

_____

c. ☐ This petition is being filed on or after petitioner's next birthday after July 1, 2021, following the expiration of petitioner's mandated minimum registration period.

d. ☐ Proof of current registration is attached.

3 Termination Request

☐ Petitioner requests termination of the requirement to register as a sex offender in California.

Case Number:

4 Pending Charges

☐ To my knowledge, there are no pending charges against petitioner that could extend the time to complete the registration requirements of petitioner's tier or change petitioner's tier status.

5 Custody Status

☐ Petitioner is not in custody *(in jail or prison)*.

6 Supervision Status

☐ Petitioner is not on parole, probation, postconviction supervised release, or any other form of supervised release.

7 Tier Designation and Eligibility

Petitioner was designated by the Department of Justice in the following tier and has registered for the following number of years:

a. ☐ Tier 1 (Adult)
   (1) ☐ Petitioner has registered for at least 10 years.

b. ☐ Tier 2 (Adult)
   (1) ☐ Petitioner has registered for at least 20 years; **or**
   (2) ☐ Petitioner has registered for at least 10 years and all of the following apply:
      (a) ☐ Petitioner has not been convicted of a new offense requiring sex offender registration since petitioner was released from custody on the offense requiring sex offender registration;
      (b) ☐ Petitioner has not been convicted of a new offense listed in Penal Code section 667.5(c) (violent felonies) since petitioner was released from custody on the offense requiring sex offender registration; and
      (c) ☐ The offense for which petitioner is required to register as a sex offender in California (1) involved no more than one victim 14 to 17 years of age, (2) occurred when petitioner was under 21 years of age, (3) is not one listed in Penal Code section 667.5(c) (except Penal Code section 288(a)), and (4) is not one listed in Penal Code section 236.1.

c. ☐ Tier 3 *(All of the following apply.)*
   (1) ☐ Petitioner's designation is based only on a risk-level assessment;
   (2) ☐ Petitioner has registered for at least 20 years;
   (3) ☐ Petitioner has not been convicted of a new offense requiring sex offender registration since petitioner was released from custody on the offense requiring sex offender registration;
   (4) ☐ Petitioner has not been convicted of a new offense listed in Penal Code section 667.5(c) (violent felonies) since petitioner was released from custody on the offense requiring sex offender registration; and
   (5) ☐ Petitioner is not required to register for a conviction pursuant to Penal Code section 288 or an offense listed in Penal Code section 1192.7(c) (serious felonies).

8 Previous Petition

a. Petitioner *(check one)* ☐ has ☐ has not previously filed a Penal Code section 290.5 petition in California for termination of a sex offender registration requirement that was denied by the court.

b. The previous petition was denied in *(case number)*: _____, in the Superior Court of California, County of _____, on *(date)*: _____

c. The court set ____ (years) ____ (months) as the time period after which petitioner may request termination again.

9 Service

A copy of this petition and the proof of current registration was served on the following agencies (include the name or county of the agency and the address where the petition and proof of current registration was served):

Agency Name	Service
Registering law enforcement agency: Name of agency: _____ Address: _____	Date of service: _____ Method: ☐ mail ☐ in-person ☐ electronic
District attorney (county of registration): County: _____ Address: _____	Date of service: _____ Method: ☐ mail ☐ in-person ☐ electronic
Law enforcement agency (county of conviction): Name of agency: _____ Address: _____	Date of service: _____ Method: ☐ mail ☐ in-person ☐ electronic
District attorney (county of conviction): County: _____ Address: _____	Date of service: _____ Method: ☐ mail ☐ in-person ☐ electronic

10 Registration Period

☐ Petitioner believes that they have met the requirements to register for the time period required by petitioner's tier designation.

I declare that the information provided is true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____

_____ ▶ _____

Printed name of petitioner or attorney *Signature of petitioner or attorney*

CR-415-INFO Information on Filing a Petition to Terminate Sex Offender Registration

1 General Information

- Do not file this information sheet with your petition.
- You must continue to register as a sex offender until a court grants your request to terminate the registration requirement.
- You may be required to register as a sex offender in another jurisdiction even if your requirement to register in California is terminated.
- Do not file evidence that shows proof of rehabilitation unless requested by the court, after the petition is filed.
- This petition must be filed only on or after your next birthday after July 1, 2021, following the expiration of your mandated minimum registration period.
- This information sheet is for registration based on convictions in adult criminal court. It does not address registration based on juvenile adjudications.

2 Am I eligible for relief under Penal Code section 290.5?

You *may be* eligible to petition for relief under Penal Code section 290.5 if:

- You are required to register as a sex offender under Penal Code section 290 et seq.; and
- Your tier assignment has been determined by the Department of Justice; and
- You have been assessed as Tier 1 or Tier 2; or
- You have been assessed as Tier 3 based solely on your assessed level of relative risk.

3 Which tier am I? How is my tier determined?

- Your tier is based on your conviction, risk assessment scores, and other factors. The Department of Justice will determine tier assignments for all current registrants and will notify the law enforcement agency where you register. Upon being convicted of a registrable offense, your minimum required registration period begins on the date you were released from incarceration, placement, or commitment, or released on probation or other supervision.
- Time spent in incarceration, placement, or commitment does not count toward the minimum required registration period unless it was the result of an arrest that did not result in a conviction, adjudication, or revocation of probation or parole.
- Any misdemeanor conviction for failure to register extends the minimum time period by one year. Any felony conviction for failure to register extends the minimum time period by three years.
- If there have been no pauses or extensions of the minimum registration period, you are eligible to petition for relief after you have registered for the following minimum time periods:

If you are ...	You must have registered for at least ...
Tier 1 (Adult)	10 years
Tier 2 (Adult)	20 years
Tier 2 (10-Year Registration Exception)	10 years
Tier 3 (Based on Risk Level)	20 years

4 Are there any other requirements besides registering for my tier's minimum time period?

If you are assessed as Tier 1 or Tier 2, you are *only* eligible to petition for relief upon reaching the end of the minimum registration period, and only if *all of* the following are true:

- You are not the subject of pending criminal charges that could extend the time to complete the registration requirements of the tier or change the tier status;
- You are not in custody; *and*
- You are not on parole, probation, postconviction supervised release, or any other form of supervised release.

Please see 5 for more information about the Tier 2 10-year registration exception.

If you are assessed as Tier 3 solely based on your assessed relative risk level, you are *only* eligible to petition for relief at the end of the minimum period of registration if all of the above factors *and* all of the following are true:

- You were not convicted of a new offense requiring sex offender registration since your release from custody following your conviction for the offense originally giving rise to your duty to register;
- You were not convicted of a new offense listed in Penal Code section 667.5(c) ("violent felony") since your release from custody following your conviction for the offense originally giving rise to your duty to register; and
- You are not required to register for a conviction pursuant to Penal Code section 288 or for an offense listed in Penal Code section 1192.7(c) ("serious felony").

5 If I have been designated as being in Tier 2 (Adult), how do I know if I qualify for the Tier 2 10-year registration exception?

For adult registrants, a small number of Tier 2 offenses qualify for a 10-year registration period, instead of 20 years. Your designation letter or proof of current registration will not tell you whether you qualify. You may qualify if you have registered for 10 years and all of the following apply:

- The offense involved only one victim and that victim was between the ages of 14 and 17;
- You were under 21 years of age at the time of the offense;
- The offense is not listed in Penal Code section 667.5(c), violent felonies, with the exception of Penal Code section 288(a), lewd or lascivious act, or in Penal Code section 236.1, false imprisonment and human trafficking;
- You were not convicted of a new offense requiring sex offender registration since your release from custody following your conviction for the offense originally giving rise to your duty to register; and
- You were not convicted of a new offense described in Penal Code section 667.5(c) since your release from custody upon conviction for the offense originally giving rise to your duty to register.

6 At the end of my minimum period of registration, where and how do I file my petition with the court?

- On or after your next birthday after July 1, 2021, you can file your petition and proof of current registration as a sex offender, which you can get from the registering law enforcement agency, in the superior court in the county where you register. If you register with more than one law enforcement agency (for example, campus registration or additional residence address), you must file the petition in the county of your primary residence.
- Make a copy of the petition and proof of current registration for each law enforcement agency and district attorney's office you (or someone on your behalf) must serve. Most courts will require you to serve the law enforcement agency and district attorney's office before filing the petition with the court.
- Contact the court clerk or check the court's website to see if any local rules exist regarding filing and/or service of the petition and ask how you can receive proof of filing.
- File the petition by:
  - Taking it to the court clerk in person;
  - Mailing the petition to the court; or
  - Depending on the court's local rules and practices, filing the petition electronically.

7 Who else gets a copy of the petition, and how?

You or someone on your behalf must deliver a copy of the petition and the proof of current registration to:

- The law enforcement agency with which you currently register; and
- The district attorney in the county in which you currently register.

If you were convicted of a registrable offense in a different county than where you currently reside and/or register in, the petition and proof of current registration must also be delivered to the law enforcement agency and the district attorney of the county of conviction of the registrable offense.

Example: If you were convicted of a registrable offense in Los Angeles County but register in Orange County, you or someone on your behalf must serve the law enforcement agency and the district attorney's office in both counties.

Contact every agency that must be served to check if there is a specific person or mailing address that should receive the petition. If the agencies do not get a copy, they will not be able to provide the information the court needs to consider your request, and the court may deny the request or delay its decision until it receives this information.

There are three main ways to serve the petition:

- **Personal service:** You may serve the petition or ask someone else to do it. Go in person to hand-deliver the petition and proof of current registration to a representative of the law enforcement agency and district attorney's office during business hours. You may want to ask the representative for a written acknowledgment of receipt. This is the most reliable form of service.
- **Service by mail:** Place copies of the petition and the proof of current registration in a stamped, sealed envelope addressed to the law enforcement agency and district attorney's office. Put first-class postage on the envelope and mail it by depositing the envelope with the U.S. Postal Service or at an office or business mail drop where the mail is picked up every day and deposited with the U.S. Postal Service. Alternatively, you may mail the documents by certified mail with a return receipt requested.
- **Electronic service:** Contact the law enforcement agency and district attorney's office to check if they accept electronic service and, if so, how to confirm receipt of service. The court may require proof of consent and proof of electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV) and *Proof of Electronic Service* (form EFS-050), available at **www.courts.ca.gov/forms**.

Your petition may be denied if any law enforcement agencies and district attorney's offices required to be served are not served.

8 Time frame for court's decision

The court will not make a decision until it hears from the law enforcement agency and the district attorney. This may take 4 months or longer.

- The law enforcement agency has 60 days from receipt of the petition to report on your eligibility to the court and district attorney. The law enforcement agency may request more time if it discovers a conviction not previously considered by the Department of Justice.
- The district attorney must request a hearing within 60 days after receiving the eligibility report from law enforcement.

Once you file your petition and the court gives you a case number, you can see whether any responses from the law enforcement agency and the district attorney's office have been filed in the court by (1) looking up the case online for courts with remote electronic access, or (2) going in person to the court to review the case docket through a paper file or at a public access kiosk.

The court may grant your request, deny your request, or set the request for a hearing if one is requested by the district attorney.

9 Hearing

The district attorney in the county where the petition is filed may request a hearing if the attorney does not believe you have registered for the minimum time period required or if the attorney believes that you should continue registering for community safety. At the hearing, the court will make its decision about whether you should continue registering for community safety by reviewing the facts of your case and your conduct since the conviction.

If the district attorney does not request a hearing, the court must grant the petition for termination if (1) you provided proof of current registration, (2) the registering law enforcement agency reported that you met the requirements for termination, (3) there are no pending charges against you that could extend the time to complete the registration requirements of the tier or change your tier status, and (4) you are not in custody or on parole, probation, or supervised release.

At the hearing, the court will make its decision about whether you should continue registering for community safety by reviewing the facts of your case, your conduct before and after the conviction, and your current risk of sexual or violent re-offense, among other factors.

10 Subsequent petition

If the court denies your request, it will let you know how much time must pass before you can make the request again. This depends in part on your tier.

- Tier 1 and 2 (Adult): At least one year from date of denial, but not to exceed five years, based on facts presented at the hearing
- Tier 2 (10-year registration exception): At least one year from date of denial
- Tier 3 (based on risk level): At least three years from date of denial

CR-416 Response by District Attorney to Petition to Terminate Sex Offender Registration

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

1 Petitioner's Information

This is a response to a petition filed by:

a. Name: _____
Last *First* *Middle*

Date of birth: _____ *(mm/dd/yyyy)*

CSAR Petition Number: _____

b. Tier *(check one)*:

☐ Tier 1 (Adult)
☐ Tier 2 (Adult)
☐ Tier 2 (10-year registration exception)
☐ Tier 3 (based on risk level)
☐ Tier 3 (lifetime)

Fill in court name and street address:

Superior Court of California, County of

Case Number:

For Court use only:

Date:
Time:
Department:

2 Response

a. ☐ The district attorney has no objection to this petition.

b. The district attorney objects to granting the petition and requests a hearing because *(check one)*:

1. ☐ Community safety would be significantly enhanced by the petitioner's continued registration; or
2. ☐ Petitioner has not met the requirements of Penal Code section 290(e).

c. The district attorney requests the petition be summarily denied because *(check all that apply and state reasons for summary denial)*:

(1) ☐ Petitioner has not fulfilled the filing and service requirements of Penal Code section 290.5 because:

_____

(2) ☐ There are pending charges against petitioner which could extend the time to complete the registration requirements of the tier or change petitioner's tier status: _____

(3) ☐ Petitioner is in custody or on parole, probation, or supervised release: _____

(4) ☐ Petitioner does not qualify for termination because petitioner is in Tier 3 as a lifetime registrant and does not fall under the risk-level exception.

(5) ☐ Petitioner is in Tier 1 or Tier 2 and has not met the mandatory minimum registration period for that tier. Unless petitioner is convicted of a new offense extending it, the mandatory minimum registration period will be met as of *(date)*: _____

(6) ☐ Petitioner is in Tier 2 and has not met the following criteria for a 10-year registration exception in Penal Code section 290.5(b)(1) and (2): _____

(7) ☐ Petitioner is in Tier 3 solely on the basis of a risk assessment score and has not met the following criteria for a 20-year registration exception in Penal Code section 290.5(b)(3): _____

(8) ☐ Other: _____

This response has been served on the petitioner or counsel at the address set forth on the petition.

Date: _____

_____ ▶ _____
Printed Name *Signature*

CR-417 Order on Petition to Terminate Sex Offender Registration (Pen. Code, § 290.5)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

1 Petitioner's Name: _____
Last *First* *Middle*

Date of birth: _____ *(mm/dd/yyyy)*

CSAR Petition Number: _____

Mailing address: _____
Street

_____ _____ _____
City *State* *Zip*

E-mail: _____

Fill in court name and street address:

Superior Court of California, County of

2 ☐ The court **GRANTS** the petition to terminate the sex offender registration requirement under Penal Code section 290 et seq.

3 The court summarily **DENIES** the petition to terminate the sex offender registration requirement because *(check all that apply and state reasons for summary denial):*

Court fills in case number when form is filed.

Case Number:

a. ☐ Petitioner has not fulfilled the filing and service requirements of Penal Code section 290.5 because:

_____

b. ☐ There are pending charges against petitioner which could extend the time to complete the registration requirements of the tier or change petitioner's tier status:

_____

c. ☐ Petitioner is in custody or on parole, probation, or supervised release:

_____

d. ☐ Petitioner does not qualify for termination because petitioner is in Tier 3 as a lifetime registrant and does not fall under the risk level exception.

e. ☐ Petitioner is in Tier 1 or Tier 2 and has not met the mandatory minimum registration period for that tier. Unless petitioner is convicted of a new offense extending it, the mandatory minimum registration period will be met as of: *(date)*: _____

f. ☐ Petitioner is in Tier 2 and has not met the following criteria for a 10-year registration exception in Penal Code section 290.5(b)(1) and (2): _____

g. ☐ Petitioner is in Tier 3 solely on the basis of a risk assessment score and has not met the following criteria for a 20-year registration exception in Penal Code section 290.5(b)(3):

_____

h. ☐ Other: _____

This is a Court Order.

4 After hearing, the court **DENIES** the petition to terminate the adult sex offender registration requirement because the court finds that *(check one)*:

a. ☐ Petitioner has not met the requirements of Penal Code section 290(e). Unless petitioner is convicted of a new offense extending it, the mandatory minimum registration period will be met as of *(date)*: _____

b. ☐ Community safety would be significantly enhanced by the petitioner's continued registration. The court's findings are *(select one)*: ☐ stated orally on the record ☐ set forth below:

_____

_____

_____

_____

_____

_____

(1) ☐ **For Tier 1 and Tier 2 denials:** Petitioner may not file another petition for termination for _____ years (must be between 1-5 years) from the date of denial, for the following reasons:

_____

(2) ☐ **For Tier 2 denials (10-year registration exception)**: Petitioner may not file another petition for termination for _____ year(s) (must be at least 1 year) from the date of denial.

(3) ☐ **For Tier 3 denials (based on risk level)**: Petitioner may not file another petition for termination for _____ years (must be at least 3 years) from the date of denial.

To the court: Notify the Department of Justice, California Sex Offender Registry, when a petition for termination from the registry is granted, denied, or summarily denied. If the petition is denied after hearing, the court must also state the time period after which the person can file a new petition for termination. The court may notify the department through electronic reporting or by mail (California Sex Offender Registry, P.O. Box 903387, Sacramento, CA 94203-3780).

Date: _____

_____
Signature of Judicial Officer

Item number: 18

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family and Juvenile Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions

Committee or other entity submitting the proposal:
Family & Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Diana Glick, 916-643-7012, diana.glick@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda:
Project Title: Legislative Changes from the 2018-2019 Legislative Session, Priority 1

Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
c. AB 677 (Choi) Intercountry adoption finalized in a foreign country (Ch. 805, Statutes of 2019) Requires that a foreign adoption be set for re-adoption in California within a set period of time
f. AB 1373 (Patterson) Adoption (Ch. 192, Statutes of 2019) Clarifies when the termination of parental rights as part of an adoption may be waived and expands the ability to use the limited stepparent adoption process when a child is born to a married couple or domestic partners through gestational surrogacy.

Status/Timeline: Proposed for effective date 1/1/2021

Fiscal Impact/Resources: CFCC staff, in consultation with staff from the Legal Services will prepare revised rules and forms as needed. Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary.

Project Title: Judicial Council forms within the committee's purview that have a gender identity question or term, Priority 2

Project Summary: Revise all gendered terms or gender identity questions to conform to legislative changes providing for nonbinary gender identity as those forms are subject to revision for any other purpose including implementation of statutory changes.

Status/Timeline: Ongoing with each RUPRO cycle

Fiscal Impact/Resources: Legal Services

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-159
For business meeting on September 24–25, 2020

Title
Family and Juvenile Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn Borack, Cochair
Hon. Mark Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 13, 2020

Contact
Diana B. Glick, 916-643-7012
diana.glick@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends the adoption of a new rule of court and an amendment to a chapter title in title 5 of the California Rules of Court, in addition to revisions to adoption forms, to implement Assembly Bill 677 (Choi; Stats. 2019, ch. 805) regarding intercountry adoptions. The committee also recommends revisions to adoption forms and the approval of a new, optional form to implement Assembly Bill 1373 (Patterson; Stats. 2019, ch. 192) regarding stepparent adoptions in cases of gestational surrogacy. Both bills became effective January 1, 2020.

Recommendation

The Family and Juvenile Law Advisory Committee (committee) recommends the following, each with an effective date of January 1, 2021:

1. Adopt California Rules of Court, rule 5.493 setting forth the responsibilities of adoptive parents, adoption agencies, and the courts with regard to the filing of a request for adoption under California law of a child whose adoption was finalized in another country;

2. Amend the title of chapter 3 in division 2 of title 5 of the California Rules of Court to allow for the inclusion of additional rules of court related to intercountry adoptions;

3. Approve *Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy* (form ADOPT-206), which is a slightly modified version of *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205), an optional attachment used to confirm parentage;

4. Revise *How to Adopt a Child in California* (form ADOPT-050-INFO) to include new statutory requirements for intercountry adoptions and the use of stepparent confirmation of parentage in certain situations of gestational surrogacy; and

5. Revise *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Order* (form ADOPT-215) to include new statutory requirements for intercountry adoptions and the use of stepparent confirmation of parentage in certain situations of gestational surrogacy.

The text of the recommended new rule of court and the amended title is attached at pages 13–15.

The recommended new and amended forms are attached at pages 16-32.

Relevant Previous Council Action

The Adoption Request (form ADOPT-200), Adoption Agreement (form ADOPT-210), and Adoption Order (form ADOPT-215) were first adopted by the Judicial Council in October 1998 as part of a proposal for mandatory uniform adoption forms for all minor children subject to adoption proceedings. The forms were revised in October 1999 in response to feedback from users to better meet the needs of courts, practitioners, and petitioners. The council revised the forms in April 2000 to facilitate the provision of information about the Adoption Assistance Program to adoptive parents. ADOPT-200 and ADOPT-215 were revised in April 2001 to provide information on post-adoption contact. In November 2002, the forms were further revised to adopt plain language and to comply with Assembly Bill 25 (Stats. 2001, ch. 893), which included provisions allowing domestic partners to adopt a partner's child using the stepparent adoption process. These plain-language forms were again revised in October 2003 to incorporate feedback from users and improve the effectiveness and ease of use of the forms. The forms were revised again in April 2010 to implement the provisions of Assembly Bill 1325 (Stats. 2009, ch. 287), tribal-sponsored legislation allowing the adoption of Indian children who are dependents of the court through the custom, traditions, or law of the child's tribe without requiring termination of parental rights. ADOPT-200 and ADOPT-215 were revised in July 2013 to implement legislative changes and numerous suggestions from court personnel and court users. ADOPT-200

was last revised in January 2016 to conform to new statutory requirements under Assembly Bill 2344, the Modern Family Act (Stats. 2014, ch. 636), expediting adoptions for nonbiological parents, and Senate Bill 274 (Stats. 2013, ch. 564), which amended the Family Code to provide that a child may have a parent-child relationship with more than two parents.

The council adopted the information sheet, *How to Adopt a Child in California* (form ADOPT-050-INFO) in 1999 to provide basic information on the adoption process. ADOPT-050-INFO was revised in April 2010 to list certain forms necessary to file with the adoption request to let the court know that an inquiry into the child's possible Indian ancestry had been made.

The Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205) was adopted in 2016 in response to Assembly Bill 2344, the Modern Family Act, which established an expedited process for adoptions for nonbiological parents.

Analysis/Rationale

Background

Intercountry adoptions

During federal fiscal year 2018, the U.S. Department of State adoption statistics indicated that 269 children were adopted from foreign countries and brought to California to live with their adoptive families.[1] Of these 269 adoptions, 244 had their adoptions finalized in the foreign country and 25 entered the United States with the intention of finalizing their adoption in this country.[2]

With the enactment of the Child Citizenship Act of 2000,[3] the federal government authorized automatic U.S. citizenship for adoptees in certain cases of intercountry adoption, depending on the child's country of origin and age at adoption, whether the adoption was finalized in the child's country of origin, and the visa the child used to enter the United States. If a child does not acquire automatic U.S. citizenship pursuant to the Child Citizenship Act, the federal government requires readoption under state law for purposes of attaining U.S. citizenship. Prior to the enactment of AB 677, California law mandated readoption under state law for children whose adoption was finalized abroad only when required by the Department of State for U.S. citizenship purposes.[4]

As of January 1, 2020, when an adoption has been finalized in a foreign country, California adoptive parents are required under Family Code section 8919 to file a request for adoption

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[1] U.S. Dept. of State, Bureau of Consular Affairs, "Adoption Statistics," 2018, *https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-statistics1.html?wcmmode=disabled*.

[2] U.S. Dept. of State, Bureau of Consular Affairs, *FY 2018 Annual Report on Intercountry Adoption* (Mar. 2019), *https://travel.state.gov/content/dam/NEWadoptionassets/pdfs/Tab%201%20Annual%20Report%20on%20Intercountry%20Adoptions.pdf*.

[3] 106 Pub.L. 395 (Oct. 30, 2000) 114 Stat. 1631, *www.congress.gov/106/plaws/publ395/PLAW-106publ395.pdf*.

[4] Readoption under California law was and still is required when a child enters the United States prior to finalization of the adoption, is *placed* with a California adoptive family, and the adoption is finalized in this state. (Fam. Code, § 8911.)

under state law within the earlier of 60 days from the child's entry to the United States or by the child's 16th birthday. Parents are also required to provide a copy of the petition to each adoption agency that provided services to the parents. If the adoptive parents fail to timely file the request for adoption or provide copies to the adoption agency or agencies that provided the adoption services, the adoption agency must—within 90 days of the entry of the child to the United States—initiate the filing with the court and provide a "file-marked copy" of the petition to the adoptive parent and any other adoption agency that provided adoption services, within five business days of filing. The purpose of AB 677 is to ensure that U.S. citizenship is pursued and obtained for children whose adoptions are finalized abroad and to protect adopted children against human trafficking, by requiring adoptive parents to file a request for adoption during a specified time frame and, if the parents fail to do so, by requiring the intercountry adoption agency to initiate the filing.

Adoptions in certain cases of gestational surrogacy

The current "stepparent adoption" process contemplates two possible scenarios. The first scenario is the traditional definition of stepparent adoption: when a person marries or enters into a registered domestic partnership with the legal parent of a child after the child is born and seeks to become a legal parent of the child. This process requires a home study and is contained in Family Code sections 9000 through 9007. The second scenario arising under stepparent adoption is a process to confirm parentage when the "stepparent" or person seeking the adoption was married to or in a registered domestic partnership with the birth parent when the child was born. The process allowing for confirmation of parentage was enacted with the Modern Family Act of 2014 (Assem. Bill 2344; Stats. 2014, ch. 636) and is contained in Family Code section 9000.5. Confirmation of parentage does not require a home study, and the hearing is optional.

California law also contemplates two types of gestational surrogates: "traditional" surrogates, in which the surrogate's own egg is inseminated with the sperm of an intended parent; and "gestational carriers," who are implanted with a fertilized embryo and do not contribute any genetic material to the child. (Fam. Code, § 7960(f).) Under legislation enacted in 2016 (Assem. Bill 2349; Stats. 2016, ch. 385), intended parents who have entered into a surrogacy agreement with a gestational carrier who resides outside the state of California are authorized to pursue a prebirth order of parentage and may file an action in California to establish parentage of the child under the Uniform Parentage Act, as enacted in California. (Fam. Code, §§ 7600–7730.) However, some states still prohibit a parent with no genetic ties to the child from establishing parentage under that state's version of the Uniform Parentage Act and require the parent to pursue adoption in order to be listed on the child's birth certificate.

The purpose of AB 1373 was to expand the process allowing intended parents to "confirm parentage" in those cases in which **all** of the following apply:

- The intended parents reside in California;
- One or both of the intended parents entered into a surrogacy agreement with a gestational carrier residing out of state;
- The child's birth was registered in another state;

- The laws of that other state allowed for only one of the two intended parents to be listed on the child's birth certificate;
- The intended parents were married or in a registered domestic partnership when the child was born and remain in that union; and
- The parent who was not able to establish parentage in another state now seeks to adopt the child in order to be listed on the child's birth certificate.

Gender identification questions

California's Gender Recognition Act (Sen. Bill 179; Stats. 2017, ch. 853) contains findings and declarations regarding the fundamentally personal nature of gender identification and the need for options on state-issued identification documents to ensure that gender is accurately reflected. In addition to streamlining processes for name change and gender recognition, the act establishes *nonbinary* as a new option for gender recognition, making California one of only five states in the nation and the District of Columbia to recognize a third gender category.

As requested by the Judicial Council's Rules Committee, the Family and Juvenile Law Advisory Committee indicated on its annual agenda that it would "revise all gendered terms or gender identity questions to conform to legislative changes providing for nonbinary gender identity as those forms are subject to revision for any other purpose including implementation of statutory changes."[5]

Best practices for the identification and removal or revision of gender identification questions on Judicial Council forms dictate that gender identification questions should be asked only when necessary to effectuate the purpose of the form, which includes a statutory requirement to ascertain sex or gender. If it is determined that the question is required, it may need to be revised in order to be legally compliant, use clear and respectful language, and elicit data that satisfies the needs of the form consumer.

The current *Adoption Request* (form ADOPT-200) contains a field in item 4b in which the form user can check a box next to "Boy" or "Girl." There are five Family Code provisions applicable to adoptions—intercountry, stepparent, agency, and independent adoptions—which require that the petition state the sex of the child.[6] Therefore, this item has been reformulated to ask the "Sex of this child" and include three response options, as follows:

b. Sex of this child ___ Female ___ Male ___ Nonbinary

[5] Judicial Council of Cal., Family and Juvenile Law Advisory Com., Annual Agenda—2020 (approved Oct. 28, 2019), *www.courts.ca.gov/documents/famjuv-annual.pdf*.

[6] Intercountry adoptions: "The petition shall state the child's sex and date of birth" (Fam. Code, § 8912(b)); Stepparent adoptions: "The petition shall state the child's sex and date of birth and the name the child had before adoption" (Fam. Code, § 9000(c)); Agency adoptions: "The petition shall state the child's sex and date of birth" (Fam. Code, §§ 8714(d), 8714.5(e)); Independent adoptions: "The petition shall state the child's sex and date of birth and the name the child had before adoption" (Fam. Code, § 8802(c)).

Indian Child Welfare Act content and questions

In 2016, the federal government finalized comprehensive regulations and issued updated guidelines to implement the Indian Child Welfare Act (ICWA).[7] In 2017, the Attorney General's ICWA Compliance Task Force made recommendations on the implementation of ICWA in California,[8] and in 2018, state legislative changes impacted the ICWA provisions contained in the Welfare and Institutions Code.[9] It was determined that in some areas, federal guidelines were inconsistent with existing California law and practice, thus necessitating a recent proposal to update title 5 of the California Rules of Court and a variety of ICWA and juvenile law forms, which went into effect on January 1, 2020.[10] Specifically, the proposal clarified the application of the standards "reason to believe" and "reason to know" whether a child is an Indian child, and the requirement to conduct additional inquiry.

The current form ADOPT-200 asks whether the child "may have Indian ancestry." Because this question is part of the required inquiry, but is not the sole determinant as to whether additional inquiry is required and whether there is reason to know that a child is an Indian child, this section is proposed to be amended to come into compliance with current federal regulations.

Each of the committee's recommendations is described below.

Rule 5.493

The committee recommends adopting rule 5.493, which sets forth the requirements contained in Family Code sections 8912 and 8919 with respect to the readoption of children born in foreign countries whose adoptions were finalized abroad. Specifically, the proposed rule contains the new statutory requirement to request adoption under California law of a child whose adoption was finalized in a foreign country, the responsibility of agencies to initiate a petition when a parent fails to make a timely request, and the responsibilities of courts to notify the Department of Social Services at their Sacramento office upon the filing of a petition for adoption.

Amendment to chapter title

The committee recommends an amendment to the title of chapter 3 in division 2 of title 5 from "Adoptions under the Hague Adoption Convention" to "Intercountry Adoptions." All existing rules of court addressing adoptions under the rules of the convention would remain as is, but the more general title for this section will allow for the inclusion of new rule 5.493 related to intercountry adoptions.

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[7] See 25 C.F.R. § 23 (2020), www.ecfr.gov/cgi-bin/retrieveECFR?gp=&r=PART&n=25y1.0.1.4.13; U.S. Dept. of the Interior, Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.

[8] *California ICWA Compliance Task Force: Report to the California Attorney General's Bureau of Children's Justice* (2017), www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf.

[9] Assem. Bill 3176 (Waldron; Stats. 2018, ch. 833), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176.

[10] Judicial Council report available at: *https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000*

***How to Adopt a Child in California* (form ADOPT-050-INFO)**
The committee recommends revisions to this form to accommodate changes in the law from both bills and the changes to ICWA implementation language. Form ADOPT-050-INFO is an information sheet that provides instructions on the various forms required to be filled out in order to adopt a child in California, and includes information regarding stepparent adoptions; confirmation of parentage; adoption of an Indian child; independent, agency, and intercountry adoptions; and open adoptions.

The recommended revisions to this form are as follows:

- Add information to sections addressing intercountry adoptions and stepparent adoption to confirm parentage with new processes and procedures based on AB 667 and AB 1373.

- Reframe the section that helps adopting parents to distinguish "Stepparent/Domestic Partner Adoptions," from "Stepparent Adoptions to Confirm Parentage," as follows:

    - Change the first question to "If you wish to adopt the child of your spouse or domestic partner, you may be eligible for a stepparent adoption. There are two types of stepparent adoptions. Answer these questions to figure out which process is right for you."

    - Combine the existing two questions into one: "Was the adopting parent in a union with the child's legal parent **at the time the child was born** and is the adopting parent **still in a union** with the legal parent?"

    - Add a question: "Did the adopting parent's **spouse or partner give birth to the child** or was the child born through a **gestational surrogacy process** brought about by one or both of the spouses or partners?"

    - Add a reference to new proposed form ADOPT-206, a description indicating when this optional form applies, and a reference to the application of the parentage confirmation process to certain types of gestational surrogacy.

- Revise explanatory information regarding form ICWA-010(A) and form ICWA-020, depending on how each is used in the different types of adoptions.

- Add new section "Inquiry and Notice Under the Indian Child Welfare Act" along with detailed requirements pursuant to recent federal regulatory and state legislative changes.

- With regard to tribal customary adoptions, remove the list of additional forms required and add the statement: "If this is a tribal customary adoption, a copy of the tribal customary adoption order must be attached to the petition and the order."

- Under the section title "'Open' Adoption," change the text to "If you want your child to have contact with their birth family, use *Contact After Adoption Agreement* (form

ADOPT-310) to describe the kind of contact the birth family will have with your child. Fill out this form and bring it to your hearing."

- The form was also revised throughout to incorporate plain language edits.

Adoption Request **(form ADOPT-200)**

The recommended revisions to this form are as follows:

- In Item 2, reword each option by removing "where" from the beginning and adding "in this county."

- In Item 3, under the "Intercountry" option, move "This adoption may be subject to the Hague Adoption Convention (form ADOPT-216 must be filed with this request)" to renumbered Item 13, "Intercountry adoption questions." Change the "Stepparent" option to "Stepparent adoption." Convert the text under that item to an option that reads "Stepparent adoption to confirm parentage." Replace the instruction text with: "See form ADOPT-050-INFO to determine whether you are eligible for the stepparent adoption to confirm parentage process." Added joinder questions to the bottom of this section and separate them to make clear that joinder is not a type of adoption.

- In Item 4, delete the options in 4b. for "Boy" and "Girl" and substituted with "Sex" followed by the options "Female," "Male," and "Nonbinary." This makes the form language consistent with the Gender Recognition Act of 2017 (SB 179), while remaining in compliance with various adoption statutes requiring the collection of information on "sex" on the petition.

- In Item 8, add the heading "Inquiry and notice under the Indian Child Welfare Act." Reword the questions and information relative to inquiry and notice under ICWA based on recent statutory changes to title 5 of the California Rules of Court and the Welfare and Institutions Code.

- In Item 9, add item 9a allowing the form user to indicate that this is an adoption of an Indian child and instructing the user to fill out two additional forms. Add item 9b (formerly item 10c) allowing the user to indicate that this is a tribal customary adoption.

- In Item 12, modify Item 12c to state "The adopting parent married or entered into a registered domestic partnership with the legal parent" instead of referring to "the adopting parents." Modify Item 12d to add a check box to indicate whether proposed new form ADOPT-206 is attached. Add item 12f to account for the possibility of adding a third parent without termination of either existing parent's rights, using the stepparent adoption process.

- In Item 13, add Item 13a (former item 3) containing the statement regarding the Hague Adoption Convention. Add item 13b (former item 10d) but change to: "This is an

adoption conducted under the requirements of the Hague Adoption Convention and the child has already moved with the adopting parent(s) to another Hague Convention member country or will be moving at the conclusion of this adoption." The Yes/No options will be removed from this question, so it will only be checked when applicable. Pursuant to AB 667, add Item 13c to ask the date the child entered the United States and provide a cross-reference to form ADOPT-050-INFO for a list of documents to attach to the adoption request for an intercountry adoption finalized in another country.

- In Item 15, revise subparagraph a. to remove reference to "presumed father." Add new subparagraph b. to provide options for consent of presumed parents. Add new subparagraph c. to provide options for consent of alleged father.

- The form was revised throughout to incorporate plain language edits and to increase readability.

Adoption Agreement **(form ADOPT-210)**

This form is typically signed in front of a judge at the hearing. Minor changes to items 1 and 2 are recommended to conform to plain language changes in form ADOPT-200. The committee recommended modifying the caption to include additional code provisions contemplated in the form. In response to a suggestion received in public comment, the committee recommends modifying the instructions in Item 4 to read, "If there is only **one** adopting parent and that person is married and not separated, the consent of their spouse is required under section 8603 of the Family Code. Read and sign below. Stepparent adoptions: Go to Item 7."

Adoption Order **(form ADOPT-215)**

This form requires only minor modifications to align with legislative changes. The committee recommends the following changes:

- Next to the final check box in Item 4, change instructions to read: "(Check this box only if this is an adoption confirming parentage of a parent who was married to or in a state-registered domestic partnership, including a registered domestic partnership or civil union from another jurisdiction, with the legal parent at the time the child was born)."

- In Item 12, delete the term "independent" to allow for the possibility of a traditional stepparent adoption involving an additional parent, pursuant to this option on form ADOPT-200 (new item 12f).

Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy **(form ADOPT-206)**

This proposed new form is an adaptation of existing form ADOPT-205, which is designed for optional use in a stepparent parentage confirmation process. The title includes the term "Gestational Surrogacy" to indicate that the form may be used in a case to which AB 1373 applies. The rest of the form was modified by removing the term "birth parent" and replacing it with "parent who established parentage through a gestational surrogacy process" or, in some

contexts, “legal parent.” In Item 4, the committee recommends adding the words “outside the state of California” to the statement about the child’s birth. Because this is a different application of the confirmation of parentage process and the terms are long and unwieldy, the committee proposes this separate optional attachment for these very specific cases.

Comments

The proposal was circulated for public comment from April 10 through June 9, 2020. A total of 17 comments were received from agencies providing international adoption services, state child welfare agencies, private attorneys, and courts. Two commenters agreed with the proposal, four disagreed, five agreed with modifications, and the remainder of the commenters did not indicate a position. Several commenters provided feedback leading to improvements to the clarity of proposed language on the forms. The superior courts that submitted comments provided helpful information regarding the operational impacts on courts of the new process.

The substantive comments and feedback fell into the following major categories:

ICWA comments

Two commenters raised issues related to the forms required for compliance with the Indian Child Welfare Act and the references to Tribal Customary Adoptions. The responsibility for inquiry and the provision of the form ICWA-020 to birth parents was clarified for agency and independent adoptions. References to Tribal Customary Adoptions were scaled back in anticipation of forthcoming guidance from the Department of Social Services and additional substantive changes to these sections will be considered for a future cycle.

***Concerns regarding missing options on form* ADOPT-200**

Several commenters noted the lack of options to describe why consent of a presumed parent or the termination of parental rights of an alleged parent are not necessary, in accordance with recent legislation. These options have been added to Item 15 of the form.

Logistical concerns from international adoption agencies

A group of six individual adoption agencies and one association of adoption agencies expressed concerns regarding the requirements on international adoption agencies when adopting families fail to uphold their requirement to file for readoption under California law. One specific request was to develop a Judicial Council form to serve as a cover sheet in the event that an international adoption agency is required to initiate the Adoption Request on behalf of a parent who has failed to do so within the statutory time frame. In view of the operational concerns and administrative burdens inherent in the development, publication, and maintenance of a new Judicial Council form, the committee declined this suggestion. The rule of court contains the requirements for a cover page to be drafted by the adoption agency, with the required information as set forth in statute.

The chart of comments and committee responses is attached at pages 33–76.

Policy implications

Two important pieces of legislation impacting two different types of adoption were the impetus for this proposal. The stated purpose of Assembly Bill 677 was to ensure that U.S. citizenship was pursued for children whose adoptions were finalized abroad and to avoid children falling into situations of human trafficking. The purpose of Assembly Bill 1373 was to streamline an adoption process in the specific circumstance of a child born to a gestational surrogate in a state that will not recognize both intended parents on the child's birth certificate. This proposal creates a path through Judicial Council rules and forms to implement these changes in the law and effectuate the purpose of supporting adoptive children and parents who are currently forming families using these two types of adoption.

Alternatives considered

One alternative proposed by several commenters was to fully examine and reconsider the contents and organization of form ADOPT-200, which encompasses most of the various avenues for adopting a child in California, including independent, agency, intercountry, and stepparent adoptions. Breaking up this lengthy and comprehensive form and allowing for the inclusion of attachments corresponding to the various legal adoption avenues in the state may serve to clarify this process. Ultimately, the committee determined that the overall number of intercountry adoptions statewide each year did not justify the staff and committee time that would have been required to undertake a complete overhaul of these forms. Likewise, for the forms that are impacted by the legislation adding a new category of stepparent adoptions, a very narrow group of adoptive parents is impacted by the changes, so it was determined that for this proposal, the most important task is to ensure compliance of the forms and the process with current law, and the most efficient way to do this is through minor amendments to the existing forms.

Several commenters also proposed the development of new forms—one to accompany an adoption agency filing of the Adoption Request if the adopting parents fail to do so within 60 days of a child's entry to the state, and another form to expand on options for Tribal Customary Adoptions. In both cases, it was determined that the number of potential users of these proposed forms did not justify the administrative costs of developing, programming, maintaining, and translating new forms and that the processes contemplated for these forms could be effectuated using existing forms.

Fiscal and Operational Impacts

According to the comments received from superior courts, there will be a need to train court clerks to respond appropriately when an international adoption agency initiates an adoption request under the new law or a request to confirm parentage is submitted in the case of an out-of-state gestational surrogate. Courts that maintain paper versions of the forms will incur the costs of replacing old forms with the revised forms. Because there are amendments to forms ADOPT-210 and ADOPT-215, both of which have been translated into Spanish, the Judicial Council will incur costs in updating these translated versions should the forms ultimately be amended by the Judicial Council.

Attachments and Links

1. Cal. Rules of Court, rule 5.493, at pages 13-15
2. Forms ADOPT-050-INFO, ADOPT-200, ADOPT-206, ADOPT-210, and ADOPT-215, at pages 16-32
3. Chart of comments, at pages 33–76
4. Link A: Assembly Bill 677, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB677*
5. Link B: Assembly Bill 1373, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1373*

Rule 5.493 of the California Rules of Court is adopted, effective January 1, 2021, to read:

Title 5. Family and Juvenile Rules

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 3. ~~Adoptions under the Hague Adoption Convention~~ Intercountry Adoptions

Rules 5.490–5.492 * * *

Rule 5.493. Requirement to request adoption under California law of a child born in a foreign country when the adoption is finalized in the foreign country (Fam. Code, §§ 8912, 8919)

(a) Responsibility to file request

(1) A resident of California who has finalized an intercountry adoption in a foreign country must:

(A) File a request to readopt the child in California within the earlier of 60 days from the adoptee's entry into the United States or the adoptee's 16th birthday; and

(B) Provide a copy of the adoption request to each adoption agency that provided the adoption services to the adoptive parent or parents.

(2) If the adopting parent fails to timely file a request to readopt the child under California law, the adoption agency that facilitated the adoption must:

(A) File the request within 90 days of the child's entry into the United States; and

(B) Provide a file-marked copy of the request to the adoptive parent and to any other adoption agency that provided services to the adoptive parent within five business days of filing.

(3) If an adoption agency files a request in accordance with (2), the adoptive parent or parents will be liable to the adoption agency for all costs and fees incurred as a result of good faith actions taken by the adoption agency to fulfill the requirement set forth in this rule.

(b) Contents of request

(1) A request to adopt under California law a child born in a foreign country whose adoption was finalized in a foreign country must include all of the following:

(A) A certified or otherwise official copy of the foreign decree, order, or certification of adoption that reflects finalization of the adoption in the foreign country;

(B) A certified or otherwise official copy of the child's foreign birth certificate;

(C) A certified translation of all documents described in this subdivision that are not written in English;

(D) Proof that the child was granted lawful entry into the United States as an immediate relative of the adoptive parent or parents;

(E) A report from at least one postplacement home visit by an intercountry adoption agency or a contractor of that agency licensed to provide intercountry adoption services in the state of California; and

(F) A copy of the home study report previously completed for the international finalized adoption by an adoption agency authorized to provide intercountry adoption services, in accordance with Family Code section 8900.

(2) If an adoption agency initiates a request in accordance with (a)(2), the filing must consist of the following:

(A) A signed cover sheet containing the name, date of birth, and date of entry to California of the child, the names and address of the adoptive parent or parents, and the name and contact information for the adoption agency;

(B) Blank copies of all forms required to initiate the request for adoption under California law; and

(C) Any document required in (b)(1) that is in the possession of the adoption agency.

(c) Clerk's notice of request and order

(1) When a request for adoption under California law of a child whose adoption was finalized in a foreign country is filed, the court clerk must immediately notify the California Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(2) If a request for adoption under California law is initiated under (a)(2), the clerk of the court must file-stamp the request to allow the adoption agency to fulfill its obligations under (a)(2)(B).

(3) Within 10 business days of an order granting a request for adoption under California law, the clerk of the court must submit to the State Registrar the order granting the request.

General Information on Adoptions

Seek legal advice about your family's options before beginning any adoption. Every family is different and adoption may not be necessary for some families. Visit the California Court's Online Self-Help Center adoption page to get copies of adoption forms, look for organizations that provide legal help with adoptions, and learn how to complete the adoption process on your own if you do not have a lawyer: ***www.courts.ca.gov/selfhelp-adoption.htm***. You can also get copies of adoption forms at your local court clerk's office.

In California there are several kinds of adoption. This information sheet provides steps for the following types:

- Independent or agency adoptions in the United States
- Intercountry adoptions
- Stepparent/domestic partner adoptions
- Stepparent/domestic partner confirmation of parentage

Page 4 also has information about open adoptions and special requirements for the adoption of Indian (Native American) children.

Stepparent/Domestic Partner Adoptions

If you wish to adopt the child of your spouse or domestic partner, you may be eligible for a stepparent adoption. There are two types of stepparent adoptions. Answer these questions to figure out which process is right for you:

→ Were you in a union with the child's legal parent **at the time the child was born** and are you **still in a union** with the legal parent? (A "union" means a marriage, a California registered domestic partnership, or a registered domestic partnership or civil union from another state that is legally equivalent to a marriage.)

→ Did your **spouse or domestic partner give birth to the child** or was the child born through a **gestational surrogacy process** brought about by one or both of you?

If you answered "No" to **either** question, complete items 1 through 4 below for a stepparent/domestic partner adoption.
If you answered "Yes" to **both** questions, complete items 1 and 2, only, for a stepparent adoption to confirm parentage.

1 Fill out court forms

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may be an Indian child.
☐ ICWA-020	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

Additional Forms for Stepparent Adoption to Confirm Parentage

☐ ADOPT-205 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage. See above for more information on this type of adoption. Both the birth parent and the adopting parent must complete a separate declaration.
	-OR-	
☐ ADOPT-206 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage because the child was conceived through a gestational surrogate and was born outside of California, and the state where the child was born only allowed one intended parent to be named as a legal parent on the child's birth certificate.

2 Take your forms to court

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one. If there is no hearing, the ADOPT-210 must be signed in front of the court clerk or a notary.

3 The social worker writes a report

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing

Bring:

☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215
☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Independent or Agency Adoptions in the United States

If this is an independent or agency adoption in the United States, complete items 1 through 4 below.

Note: The rights of the existing parents usually terminate with adoptions. In an independent adoption, if the existing and adopting parents agree, the rights of the existing parent(s) do not have to be terminated. See Fam. Code, § 8617(b).

1 Fill out court forms

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
☐ ICWA-010(A)*	*Indian Child Inquiry Attachment*	This lets the judge know that the required questions have been asked to determine whether the child may be an Indian child.
☐ ICWA-020*	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

*The agency or adoption service provider is responsible for getting these forms completed and making them part of the adoption file.

2 Take your forms to court

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one.

3 The social worker writes a report

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing

Bring: ☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215 ☐ Form ADOPT-230
☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Intercountry Adoptions

If this is an intercountry (international) adoption, complete items 1 through 6 below.
Note: You must follow this process to adopt your child under California law, even if the adoption was previously finalized in a foreign country. If the child's adoption was finalized in a foreign country, you must file the *Adoption Request* within the earlier of 60 days of the child's entry to the United States, or the child's 16th birthday.

1 Fill out court forms

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
☐ ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may be an Indian child.
☐ ICWA-020	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

2 Postadoption or postplacement visits and reports

If the child's adoption was finalized in a foreign country, there will be at least one postadoption visit provided by the international adoption agency. The report of this visit must be submitted to the court as described below. If the child was born in a foreign country and placed with a California family for adoption in this state, the adoption agency must provide postplacement supervision with up to four visits. These reports are also provided to the court.

3 Attach documentation

If the child's adoption was finalized in a foreign country, you must attach the following documents to your *Adoption Request*:

- ☐ A certified or otherwise official copy of the foreign decree, order, or certification of adoption that reflects finalization of the adoption in the foreign country;
- ☐ A certified or otherwise official copy of the child's foreign birth certificate;
- ☐ A certified translation of all required documents that are not written in English;
- ☐ Proof that the child was granted lawful entry into the United States as an immediate relative of the adoptive parent or parents;
- ☐ A report from at least one postplacement home visit by an intercountry adoption agency or a contractor of that agency licensed to provide intercountry adoption services in the state of California; and
- ☐ A copy of the home study report previously completed for the international finalized adoption by an adoption agency authorized to provide intercountry adoption services, in accordance with Family Code section 8900.

4 Take your forms to court

Take the completed forms and any required documents to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one.

5 Provide a copy of the forms and documents

If the child's adoption was finalized in a foreign country, provide a copy of the forms and documentation you filed with the court to any adoption agency that provided services to you for your international adoption.

6 Go to court on the date of your hearing

Bring: ☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215 ☐ Form ADOPT-230
☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Inquiry and Notice Under the Indian Child Welfare Act

- ☐ The child and other people in the child's life must be asked specific questions in order to determine whether the child may be an Indian child. The *Indian Child Inquiry Attachment* (form ICWA-010(A)) should be attached to the *Adoption Request*. In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and that the form is made part of the adoption file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible. For more information about the duty of inquiry, see form ICWA-005-INFO.
- ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) for each birth parent should be attached to the *Adoption Request*, OR it should be shown that good faith attempt was made to provide the form to each birth parent, the Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court. In agency adoptions, it is the responsibility of the agency to ensure that this form is provided to the birth parents and made part of the adoption file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.
- ☐ If there is **reason to believe** that the child is or may be an Indian child, additional inquiry is required. For more information about the duty of inquiry, see form ICWA-005-INFO.
- ☐ If, after additional inquiry, there is **reason to know** that the child is an Indian child, notice must be provided of the adoption request to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030). This form must be served by registered or certified mail, with return receipt requested.
- ☐ If it is determined that the child **is an Indian child** or this is a tribal customary adoption, see Adoption of an Indian Child, below.

Adoption of an Indian Child

If you are adopting an Indian child, fill out and bring to court the following additional forms:

- ☐ *Adoption of Indian Child* (form ADOPT-220); and
- ☐ *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225).

If this is a tribal customary adoption, a copy of the tribal customary adoption order must be attached to the petition and the order.

"Open" Adoption

If you want your child to have contact with their birth family, use *Contact After Adoption Agreement* (form ADOPT-310) to describe the kind of contact the birth family will have with your child. Fill out this form and bring it to your hearing.

ADOPT-200 Adoption Request

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

If you are adopting more than one child, fill out an adoption request for each child.

1 Adopting parent(s)

a. Name: _____

b. Name: _____

Relationship to child: _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer (if any) *(name, address, telephone numbers, e-mail address, and State Bar number):*

_____

_____

_____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 County of filing

This *Adoption Request* in filed in this court because *(check all that apply):*

- ☐ The adopting parent or parents live in this county;
- ☐ The child was born in or the child now lives in this county;
- ☐ An office of the agency that placed the child for adoption is located in this county;
- ☐ An office of the department or public adoption agency that is investigating the request is located in this county;
- ☐ The placing birth parent or parents lived in this county when the adoptive placement agreement, consent, or relinquishment was signed;
- ☐ The placing birth parent or parents lived in this county when the request was filed;
- ☐ The child was freed for adoption in this county.

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing Date →

Hearing is set for:

Date: _____

Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

(Note: If the child is a dependent of the court, the *Adoption Request* must be filed in the county where the child was freed for adoption or the county where the adopting parent or parents reside. See Fam. Code, § 8714.)

3 Type of adoption

Check one of the following:

- ☐ Agency *(name):* _____ ☐ Relative ☐ Nonrelative
  - ☐ Tribal customary adoption *(attach tribal customary adoption order)*
- ☐ Independent: ☐ Relative ☐ Nonrelative ☐ Additional Parent(s)
- ☐ Intercountry *(name of agency):* _____
- ☐ Stepparent adoption
- ☐ Stepparent adoption to confirm parentage. See form ADOPT-050-INFO to determine whether you are eligible for the stepparent adoption to confirm parentage process.

Joinder:

- ☐ Joinder is being filed at same time as this *Adoption Request.* ☐ Joinder will be filed.

Your name: _____ **Case Number:**

4 Information about the child

a. The child's new name will be: _____

b. Sex: ☐ Female ☐ Male ☐ Nonbinary

c. Date of birth: _____ Age: _____

d. Child's address (*if different from address of adopting parent or parents*):
Street: _____ City: _____ State: _____ Zip: _____

e. Place of birth (*if known*): City: _____ State: _____ Country: _____

f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No

g. Date child was placed in the physical care of the adopting parents: _____

h. ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

i. ☐ The child is a dependent of the court. Juvenile Case No. _____ County: _____

5 Child's name before adoption (fill out ONLY for independent, stepparent, or tribal customary adoption)

Child's name before adoption: _____

6 Birth parents

Names of birth parents, if known: _____

7 Legal guardian

Does the child have a legal guardian? ☐ Yes ☐ No (If yes, attach *Letters of Guardianship* and fill out below.)

a. Date guardianship ordered: _____ c. Case number: _____

b. County: _____

8 Inquiry and notice under the Indian Child Welfare Act

a. ☐ The inquiry required under law to determine whether the child may be an Indian child has been made, and a completed *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
Note: In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and the form is made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

b. ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) is attached OR a good faith attempt has been made to provide the form to the parents, Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court.
Note: In agency adoptions, it is the responsibility of the agency to ensure that these forms are made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

c. ☐ There is **reason to know** that this child is an Indian child. Notice of the adoption request will be provided to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030).

9 Adoption of an Indian child

a. ☐ This is an adoption of an Indian child. The adopting parents have filled out and attached *Adoption of Indian Child* (form ADOPT-220) and will bring *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) to the hearing.

b. ☐ This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

Your name: _____ **Case Number:**

10 Agency adoption questions

a. ☐ I/We have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that might be available.

b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a county adoption agency or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services, and the time to revoke the relinquishment has expired or been waived. ☐ Yes ☐ No
If no, list the name and relationship to child of each person who has not signed the relinquishment form or whose time to revoke the relinquishment has not expired or been waived:

_____

11 Independent adoption questions

a. ☐ A copy of the Independent Adoptive Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.)

b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement or consent on the appropriate California Department of Social Services form. ☐ Yes ☐ No
(If no, list the name and relationship to child of each person who has not signed the agreement form):

_____

c. ☐ I/We will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.

d. ☐ This is an independent adoption involving additional parent(s):
- ☐ All persons with existing parental rights agree to this adoption and will maintain their existing parental rights.
- ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

12 Stepparent adoption and confirmation of parentage questions

a. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent.

b. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent.

c. The adopting parent married or entered into a registered domestic partnership with the legal parent on *(date)*: _____. *(For court use only. This does not affect social worker's recommendation. There is no waiting period.)*

d. ☐ I am seeking a stepparent adoption to confirm my parentage. At the time the child was born, I was married to or in a state-registered domestic partnership with the parent who gave birth or whose parentage was established through a gestational surrogacy process, and we remain in that union. See attached:
- ☐ Form ADOPT-205, *Declaration Confirming Parentage in Stepparent Adoption*
- ☐ Form ADOPT-206, *Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*
- ☐ Declaration describing the circumstances of the child's conception.

e. The investigation or written report will be completed as follows *(choose one):*
- ☐ I will choose someone to do an investigation or written report. I understand that the person I choose must be a licensed clinical social worker, a licensed marriage and family therapist, or work for a licensed private adoption agency. I will pay this person or agency directly.
- ☐ I would like the court to choose someone to do an investigation. I understand that the court can charge me money for this investigation.

f. ☐ This is a stepparent adoption involving an additional parent:
- ☐ All persons with existing parental rights agree to this adoption and will maintain their existing parental rights.
- ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

13 Intercountry adoption questions

a. ☐ This adoption may be subject to the Hague Adoption Convention (*form* ADOPT-216 *must be filed with this request*).

b. ☐ This is an adoption conducted under the requirements of the Hague Adoption Convention and the child has already moved with the adopting parent(s) to another Hague Convention member country or will be moving at the conclusion of this adoption.
Child will be moving or has moved to (name of country): _____
Adopting parent(s): ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

c. ☐ This is an intercountry adoption that was finalized in another country before the child entered the United States with the adopting parent(s).
Date the child entered the United States: _____
See form ADOPT-050-INFO for a list of documents to attach to this *Adoption Request*.

14 Contact after adoption

Contact After Adoption Agreement (form ADOPT-310) ☐ is attached ☐ will not be used
☐ will be filed at least 30 days before the adoption hearing ☐ is undecided at this time.
☐ This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

15 Consent for adoption

Complete all sections that apply to your adoption:

a. ☐ The consent of the birth parent is not necessary because *(check the applicable reasons under Fam. Code, § 8606)*:
(1) ☐ The parent has been judicially deprived of the custody and control of the child.
(2) ☐ The parent has voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction, under a law of that jurisdiction providing for the surrender.
(3) ☐ The parent has deserted the child without providing information to identify the child.
(4) ☐ The parent has relinquished the child under Family Code section 8700.
(5) ☐ The parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b. ☐ The child has a presumed parent under Family Code, section 7611. The consent of the presumed parent is not required because:
(1) ☐ The presumed parent did not become a presumed parent before the mother's relinquishment or consent became irrevocable or the mother's parental rights were terminated. (Fam. Code, § 8604(a).)
(2) ☐ The presumed parent signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code, section 7660.5.

c. ☐ Termination of parental rights of an alleged father is not required because:
(1) ☐ The relationship to the child was previously terminated or determined not to exist by a court.
(2) ☐ The alleged father was served as prescribed in Family Code section 7666 with a written notice of alleged parentage and the proposed adoption, and has failed to bring an action pursuant to subdivision (c) of section 7630 within 30 days of service of the notice or the birth of the child, whichever is later. (*Attach proof of notice to this* Adoption Request.)
(3) ☐ The alleged father has executed a written form to waive notice, deny parentage, relinquish the child for adoption, or consent to the adoption of the child.

15 d. ☐ A court ended the parental rights of:

Name: _____ Relationship to child: _____ on *(date)*: _____
Name: _____ Relationship to child: _____ on *(date)*: _____
(Enter the date of the court order ending parental rights and attach a copy of the order.)

e. ☐ The child is the subject of a tribal customary adoption order under Welfare and Institutions Code section 366.24, which has modified the parental rights of *(attach a copy of the order)*:

Name: _____ Relationship to child: _____ on *(date)*: _____
Name: _____ Relationship to child: _____ on *(date)*: _____
Name: _____ Relationship to child: _____ on *(date)*: _____

f. ☐ I/We will ask the court to end the parental rights of *(attach copy of* Petition to Terminate Parental Rights *or* Application for Freedom From Parental Custody, *if filed)*:

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

g. ☐ Adopting parent has custody of the child by court order or by agreement with the other parent, and each of the following persons with parental rights has not contacted the child and has not paid for the child's care, support, and education for one year or more when able to do so. (Fam. Code, § 8604(b).)

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

h. ☐ The child has been abandoned as follows:

(1) ☐ The child has been left by the child's parent or parents with no way to identify the child.

(2) ☐ The child has been left in the custody of another person by both parents or the sole parent for six months without providing for the child's support, or without communication from the parent or parents, with the intent to abandon the child.

(3) ☐ One parent has left the child in the care and custody of the other parent for one year or longer without providing for the child's support or without communication from the parent, with the intent to abandon the child.

(If any of the above boxes are checked, adopting parent must also check item 15d and file an Application for Freedom From Parental Custody. *See Fam. Code, § 7822(a).)*

i. ☐ Each of the following persons with parental rights has died:

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

16 Suitability for adoption

Each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
b. Will treat the child as his or her own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

Your name: _____ **Case Number:**

17 **Requests to court**

☐ I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

☐ I/We ask the court to date its order approving the adoption as of an earlier date *(date)*: _____ for the following reason (Fam. Code, § 8601.5):

_____

_____

(Enter a date no earlier than the date parental rights were ended.)

☐ This is a tribal customary adoption. I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

18 If a lawyer is representing you in this case, the lawyer must sign here:

Date: _____ _____ ▶ _____

Type or print lawyer's name *Signature of lawyer for adopting parent(s)*

19 I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit *www.coveredca.com*. Or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

Your name: _____

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

ADOPT-206

Case Number:

Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy

☐ This form is attached to form ADOPT-200 (*Adoption Request*).

This optional form may be attached to the form ADOPT-200 if the adopting parent was married to or in a state-registered domestic partnership or equivalent civil union with the parent who established parentage through a gestational surrogacy process. You may instead attach a declaration in another format containing substantially the same information. The legal parent through surrogacy and the adopting parent must complete separate declarations.

1 I *(write your name)* _____ declare as follows:

2 Relationship between the legal parent and the adopting parent seeking to confirm parentage *(check one)*:

a. ☐ I am the parent of a child born through a gestational surrogacy process. Only my parentage was established through the Uniform Parentage Act or another proceeding related to the surrogacy. Before the birth of the child, I married, or entered into a state-registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) with, the adopting parent who is seeking to confirm parentage, *(name)*_____ , and we remain in that union.

b. ☐ I am the adopting parent seeking to confirm parentage. Before the birth of the child, I married, or entered into a state-registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) with, the parent whose parentage has been established for a child born through a gestational surrogacy process, *(name)*_____, and we remain in that union.

3 We were married/registered as domestic partners on *(date you entered into your earliest union)* _____, before our child was born. A copy of our marriage certificate, registered domestic partner certificate, or certificate of out-of-state domestic partnership or civil union is attached.

4 Our child *(name of child to be adopted)* _____ was born on *(date)* _____ outside of the state of California. A copy of our child's birth certificate is attached.

5 ☐ Our child was conceived through a gestational surrogacy process. (*Describe how your child was conceived.)*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Your name: _____

Case Number:

6 ☐ *If there are any other persons who are or may be the child's parents, describe these persons' relationship to the child, including their names, the ways in which these persons act as parents to the child, and whether these persons consent to the adoption:* _____

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 your name *Sign your name*

ADOPT-210 Adoption Agreement

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent(s)

a. Name: _____

b. Name: _____

Relationship to child: _____

Address *(skip this if you have a lawyer)*: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer (if any) *(name, address, telephone numbers, e-mail address, and State Bar number)*: _____

2 Information about the child

Child's name before adoption: _____

Child's name after adoption: _____

Date of birth: _____ Age: _____

Signing this form:

- *Adoptions usually require a hearing where most signatures on this form must be completed in front of a judge.*
- *Item 4b may be signed before the hearing.*
- *If this is a stepparent adoption to confirm parentage involving a spouse or registered domestic partner who gave birth to the child or established parentage over a child born through gestational surrogacy during the union, usually no hearing is required and you may sign this form in front of a proper witness. See item 8a for instructions on having your signature properly witnessed. If the court orders a hearing in this case, you must sign this form at the hearing in front of the judge.*
- *All other signatures must be signed at a hearing, in front of a judge, unless waived by the judge for good cause.*

3

I am the child listed in 2 and I agree to the adoption. *(Not required in the case of a tribal customary adoption under Welf. & Inst. Code, § 366.24.)*

Date: _____ _____ ▶ _____

Type or print your name *Signature of child (child must sign if 12 or older; optional if child is under 12)*

4

*If there is only **one** adopting parent and that person is married and not separated, the consent of their spouse is required under section 8603 of the Family Code. Read and sign below. Stepparent adoptions: Go to Item 7.*

a. I am the adopting parent listed in 1, and I agree that the child will:

(1) Be adopted and treated as my legal child (Fam. Code, § 8612(b)) *and*

(2) Have the same rights as a natural child born to me, including the right to inherit my estate.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

b. I am married to, or am the registered domestic partner of, the adopting parent listed in (1), and I am not a party to this adoption. I agree to his or her adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of spouse or registered domestic partner (may be signed before hearing)*

5 *If there are **two** adopting parents, read and sign below.*
We are the adopting parents listed in (1), and we agree that the child will:

a. Be adopted and treated as our legal child (Fam. Code, § 8612(b)) and
b. Have the same rights as a natural child born to us, including the right to inherit our estate.

I agree to the other parent's adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

I agree to the other parent's adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

6 *If this is a tribal customary adoption, read and sign below.*
I/we are the adopting parents listed in (1), and I/we agree that the child will:

a. Be adopted and treated as my/our legal child (Fam. Code, § 8612(b)) and
b. Have the same rights and duties stated in the tribal customary adoption order dated _____ *(copy attached).*

If two adopting parents, we agree to the other parent's adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

7 *For stepparent adoptions only:*
If you are the legal parent of the child listed in (2), read and sign below.
I am the legal parent of the child and am the spouse or registered domestic partner of the adopting parent listed in (1), and I agree to his or her adoption of my child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of legal parent*

Your name: _____ **Case Number:**

8 **Executed *(check one):***

a. ☐ This form was signed outside of a hearing. *(Select this option only for a stepparent adoption to confirm parentage under Family Code, § 9000.5, where the court did not order a hearing for good cause.)*

(1) ☐ This form was signed **in** California.
This form was signed in front of the following type of witness *(check one):*
- ☐ Notary public *(the notary acknowledgment is attached)*
- ☐ Court clerk
- ☐ Probation officer
- ☐ Qualified court investigator
- ☐ Authorized representative of a licensed adoption agency
- ☐ County welfare department staff member

(2) ☐ This form was signed **outside** of California.
This form was signed in front of the following type of witness *(check one):*
- ☐ Notary public *(the notary acknowledgment is attached)*
- ☐ Other person authorized to perform notarial acts *(proof of notarization is attached)*
- ☐ Authorized representative of an adoption agency that is licensed in the state or country where this form was signed

(3) Witness information
This form was signed in: *(county)* _____ *(state)* _____ *(country)* _____
Name of witness: _____
Agency witness works for *(if applicable):* _____
Date: _____
Witness signature: ▶ _____

b. ☐ This form was signed at a hearing in front of a judicial officer. *(The judge will date and sign the form below.)*

Date: _____

_____
Judge (or Judicial Officer)

ADOPT-215 Adoption Order

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent(s)

a. Name: _____

b. Name: _____

Relationship to child: _____

Street address: _____

City: _____ State: _____ Zip: _____

Daytime telephone number: _____

Lawyer (if any) *(name, address, telephone number, e-mail address, and State Bar number):* _____

2 Information about the child

Child's name after adoption: _____

First name: _____

Middle name: _____

Last name: _____

Date of birth: _____ Age: _____

Place of birth *(if known):* _____

City: _____ State: _____ Country: _____

3 Name of adoption agency *(if any):* _____

4 Hearing details

Hearing date: _____ Dept.: _____ Div.: _____ Rm.: _____

Judicial officer: _____ Clerk's office telephone number: _____

People present at the hearing:

- ☐ Adopting parent(s)
- ☐ Lawyer for adopting parent(s)
- ☐ Child
- ☐ Child's lawyer
- ☐ Parent keeping parental rights: _____
- ☐ Other people present *(list each name and relationship to child):*
  - a. _____
  - b. _____

  If there are more names, attach a sheet of paper, write "ADOPT-215, Item 4" at the top, and list the additional names and each person's relationship to child.

☐ The hearing is waived pursuant to Family Code section 9000.5 *(Check this box only if this is an adoption confirming parentage of a parent who was married to or in a state-registered domestic partnership, including a registered domestic partnership or civil union from another jurisdiction, with the legal parent at the time the child was born.)*

Judge will fill out section below.

5 The judge finds that the child *(check all that apply):*

a. ☐ Is 12 or older and agrees to the adoption

b. ☐ Is under 12

c. ☐ Is not required to consent because this is a tribal customary adoption.

Your name: _____ **Case Number:**

6 The judge has reviewed the report and other documents and evidence and finds that each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Fam. Code, § 8601(b);
b. Will treat the child as his or her own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

7 ☐ This case is an adoption by a relative petitioned under Family Code section 8714.5.
☐ The adopting relative ☐ The child, who is 12 or older, has requested that the child's name before adoption be listed on this order. (Fam. Code, § 8714.5(g).) The child's name before adoption was:
First name: _____ Middle name: _____ Last name: _____

8 ☐ The child is an Indian child. The judge finds that this adoption meets the placement requirements of the Indian Child Welfare Act or that there is good cause to give preference to these adopting parents. The clerk will fill out **13** below.

9 ☐ The judge approves the *Contact After Adoption Agreement* (ADOPT-310)
☐ As submitted ☐ As amended on ADOPT-310

10 ☐ This is a tribal customary adoption. The tribal customary adoption order of the _____ tribe dated _____ containing ___ pages and attached hereto is fully incorporated into this order of adoption.

11 ☐ This is an adoption under the Hague Adoption Convention. *Verification of Compliance with Hague Adoption Convention Attachment* (form ADOPT-216) is attached and fully incorporated into this order.

12 ☐ This is an adoption involving an additional parent or parents. ☐ All persons with existing parental rights agreed to this adoption and will maintain their existing parental rights. ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s), was filed with the court.

13 The judge believes the adoption is in the child's best interest and orders this adoption.
The child's name after adoption will be:

First name: _____ Middle name: _____ Last name: _____

The adopting parent or parents and the child are now parent and child under the law, with all the rights and duties of the parent-child relationship or, in the case of a tribal customary adoption, all the rights and duties set out in the tribal customary adoption order and Welfare and Institutions Code section 366.24.

☐ The judge believes it will serve public policy and the best interest of the child to grant the request of the adopting parent or parents for the court to make this order effective as of *(date):* _____.

Date: _____ _____
(Date of Signature) *Judge (or Judicial Officer)*

Clerk will fill out section below.

14 **Clerk's Certificate of Mailing**

For the adoption of an Indian child, the clerk certifies:
I am not a party to this adoption. I placed a filed copy of:

☐ *Adoption Request* (form ADOPT-200) ☐ *Adoption of Indian Child* (form ADOPT-220)
☐ *Adoption Order* (form ADOPT-215) ☐ *Contact After Adoption Agreement* (form ADOPT-310)
in a sealed envelope, marked "Confidential" and addressed to:

Chief, Division of Social Services
Bureau of Indian Affairs
1849 C Street, NW
Mail Stop 310-SIB
Washington, DC 20240

The envelope was mailed by U.S. mail, with full postage, from:
Place: _____ on *(date):* _____
Date: _____ Clerk, by: _____, Deputy

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	Adoption Horizons By Cynthia Savage, Director Eureka, CA	AM	1. Response to Proposed Revisions of the ADOPT-200 Form: a. The proposed revisions to the Adopt 200 form do not adequately address the requirements of AB 677 because there is still no section for an adoption agency representative to sign for the agency as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive parent or prospective adoptive parent, as applicable. Date:_____ _____(name of agency) by:_____(signature) Printed name and title:_____ b. The other, more general modifications proposed to clarify the Adopt-200 are helpful, but do not go far enough. This form is much too long and confusing for most laypersons, and even for many lawyers, as well. Proposed solution: Revise the Adopt 200 form to include only the sections that are	The Committee appreciates this comment and notes that the proposed new California Rule of Court, rule 5.493(b)(2)(A) requires the use of a cover sheet for a filing initiated by an adoption agency, which would be signed by the adoption agency, consistent with the requirement in Family Code section 8919. As long as the statutorily-required contents of this cover sheet and filing as set forth in subsection (2) are satisfied, an adoption agency would be free to include additional attestations, within the bounds of any restrictions on confidential information in the case. The Committee appreciates this comment; however, revamping the ADOPT-200 form is outside the scope of the current proposal.

	Commenter	Position	Comment	Committee Response
			applicable to all adoptions. Then create a separate attachment sheet for each type of adoption: domestic agency, domestic independent, international, and step-parent. This would simplify the procedure greatly, especially for unrepresented parties, and would also reduce paper waste. c. The Adopt-200 form has no place to note that parental rights do not need to be terminated under the conditions specified in Family Code Section 7660.5 or Family Code Section 7662(a)(2) and (3). Proposed solution: Revise the Adopt-200 form to add all of the following options to Section 15(a): (6) The presumed father has signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code Section 7660.5. (7) The alleged father has been served as prescribed in Section 7666 with a written notice alleging that the alleged father is or could be the biological father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later. (8) The alleged father has executed a written form developed by the department to waive notice of the adoption proceedings or to deny parentage. 2. Response to Proposed Rule 5.493. This proposed Rule does not adequately address the requirements of AB 677, because it does not make allowance for the fact that the	The Committee appreciates this comment and has inserted additional language on the form to account for the consent of presumed and alleged parents in Item 15.

	Commenter	Position	Comment	Committee Response
			adoption agency is extremely unlikely to have the majority (if any) of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family. Remember, the agency will only be filing this form on behalf of non-compliant adoptive families; these families will almost certainly failed to provide the agency with any of the child's information and documents received when they completed the adoption in the foreign country. The adoption agency has no other means by which to obtain these documents if the adoptive family does not provide them; thus, the agency cannot attach them to the Adopt-200 as mandated. In addition, many courts will not provide file-marked copies of an Adoption Request until all other required documents for finalization have been received, and the matter has been set for final hearing. In counties where this is the rule, the agency will be unable to comply with the statutory requirement to provide a file-marked copy of the Adopt-200 to the parties listed in (a)(2)(B). Finally, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200, as this is an expense that the adoptive family should be required to bear. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-	The Committee appreciates this comment and would refer the commenter to the language in proposed CRC rule 5.493(b)(2)(C), which requires the adoption agency to attach "Any document required in (b)(1) that is in the possession of the adoption agency." The Committee appreciates this comment and would refer the commenter to the language in proposed CRC rule 5.493(c)(2): "If a request for adoption under California law is initiated under (a)(2), the clerk of the court must file-stamp the request to allow the adoption agency to fulfill its obligations under (a)(2)(B)." Please see proposed Rule 5.493(a)(3), clarifying the responsibility of the adoptive parent for all costs and fees reasonably incurred by the adoption agency if it is required to submit the Adoption Request. The Committee appreciates this suggestion

	Commenter	Position	Comment	Committee Response
			200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall accept the form for filing, shall not require payment of any filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200.	but believes that the proposed language of the form currently achieves the goals of this recommended language.
2.	Adopt International By Lisa Clark, Executive Director San Francisco, CA	D	1. Response to Proposed Revisions of the ADOPT-200 Form: a. The proposed revisions to the Adopt 200 form do not adequately address the requirements of AB 677 because there is still no section for an adoption agency representative to sign for the agency as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive parent or prospective adoptive parent, as applicable. Date:_____	Please see Committee response to this proposal in Comment 1.

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			_____(name of agency) by:_____(signature) Printed name and title:_____	
			b. The other, more general modifications proposed to clarify the Adopt-200 are helpful, but do not go far enough. This form is much too long and confusing for most laypersons, and even for many lawyers, as well. Proposed solution: Revise the Adopt 200 form to include only the sections that are applicable to all adoptions. Then create a separate attachment sheet for each type of adoption: domestic agency, domestic independent, international, and step-parent. This would simplify the procedure greatly, especially for unrepresented parties, and would also reduce paper waste.	Please see Committee response to this proposal in Comment 1.
			c. The Adopt-200 form has no place to note that parental rights do not need to be terminated under the conditions specified in Family Code Section 7660.5 or Family Code Section 7662(a)(2) and (3). Proposed solution: Revise the Adopt-200 form to add all of the following options to Section 15(a): (6) The presumed father has signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code Section 7660.5. (7) The alleged father has been served as prescribed in Section 7666 with a written notice alleging that the alleged father is or could be the biological father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child,	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			whichever is later. (8) The alleged father has executed a written form developed by the department to waive notice of the adoption proceedings or to deny parentage. 2. Response to Proposed Rule 5.493. This proposed Rule does not adequately address the requirements of AB 677, because it does not make allowance for the fact that the adoption agency is extremely unlikely to have the majority (if any) of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family. Remember, the agency will only be filing this form on behalf of non-compliant adoptive families; these families will almost certainly failed to provide the agency with any of the child's information and documents received when they completed the adoption in the foreign country. The adoption agency has no other means by which to obtain these documents if the adoptive family does not provide them; thus, the agency cannot attach them to the Adopt-200 as mandated. In addition, many courts will not provide file-marked copies of an Adoption Request until all other required documents for finalization have been received, and the matter has been set for final hearing. In counties where this is the rule, the agency will be unable to comply with the statutory requirement to provide a file-marked copy of the Adopt-200 to the parties listed in (a)(2)(B). Finally, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200, as this is an expense that the adoptive	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			family should be required to bear. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall accept the form for filing, shall not require payment of any filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200.	Please see Committee response to this proposal in Comment 1.
3.	California Association of Adoption Agencies (CAAA) By David Boschen, President Scotts Valley, CA	AM	Thank you for this opportunity to respond to the proposed revisions to the California Rules of Court and to the proposed amendments on the adoption forms. The California Association of Adoption Agencies (CAAA) has responded to several conversations regarding the recent changes of the family law, specifically Assembly Bill 677. These conversations included members of the California Department of Social Services (CDSS) Adoptions Policy Unit (APU), members of CAAA who are licensed for international adoptions, with one meeting attended by Diana Glick as a representative of your committee last December 16, 2019 discussing these proposed changes. CAAA has recently received your invitation of comment and have established a workgroup for review of the proposed changes for comment. Below is the collective effort of these meetings with proposed changes that will effectively make it possible for agencies to complete and file all available adoption	

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			information for re-adoption to be compliant to the laws and associated regulations. The question that has been significant to the California licensed international adoption agencies is meeting the new legal requirements of AB677 for re-adoption when the adopting family is non-compliant. The adopting family's non-compliance is the reason for the intended law to complete the re-adoption process. Their noncompliance will likely impede or make it impossible to complete the filing of the court petition under current and proposed changes to the adoption forms and rules of court. As the revised changes are currently being presented with the proposed changes now available for comment, please accept this letter of comment and proposed changes for consideration. Current History: "The Family and Juvenile Law Advisory Committee proposes the adoption of a new rule of court and revisions to a chapter title in title 5 of the California Rules of Court, in addition to amendments to adoption forms, to implement Assembly Bill 677 (Choi; Stats. 2019, ch. 805) regarding intercountry adoptions. The committee also proposes amendments to adoption forms and the approval of a new, optional form to implement Assembly Bill 1373 (Patterson; Stats. 2019, ch. 192) regarding stepparent adoptions in cases of gestational surrogacy. Both bills became effective January 1, 2020." The California Association of Adoption Agencies (CAAA) Comments: 1. Response to Proposed Revisions of the ADOPT-200	

	Commenter	Position	Comment	Committee Response
			Form: a. The proposed revisions to the Adopt 200 form do not adequately address the requirements of AB 677 as there is still no section for an adoption agency representative to sign for the agency as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive parent or prospective adoptive parent, as applicable. Date:_____ _____(name of agency) by:_____(signature) Printed name and title:_____ 2. Response to Proposed Rule 5.493: This proposed Rule does not adequately address the requirements of AB 677, because it does not make allowance for the fact that the adoption agency is extremely unlikely to	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			have the majority (if any) of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family. a. Remember, the agency will only be filing this form on behalf of non-compliant adoptive families who will not have provided the agency with the adequate child's information and documents received when they completed the adoption in the foreign country. b. In addition, many courts will not provide file-marked copies of an Adoption Request until all required documents have been received and the matter has been set for final hearing. This will leave the agency unable to comply with the statutory requirement of providing a file-marked copy to the parties listed in (a)(2)(B). c. Also, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200, as this is an expense that the adoptive family should be required to bear. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall accept the form for filing, shall not require payment of any	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200. Thank you once again for allowing time for considering comments to the proposed changes in forms and Rule of the Court. The practical application of the Laws often reveals details for consideration such as those mentioned in our comments for applied solutions.	
4.	California Department of Child Support Services By Lucila Ledesma, Attorney Sacramento, CA	A	Commentary on each proposal: 1. Title Revision: The revision of the title appears appropriate given that not all countries participate in the Hague Convention and there will be family law matters that involve non-Hague Convention countries. The proposal appropriately addresses the stated purpose and accurately reflects the processes established in the legislation. 2. Rule 5.493: The adoption of this rule will significantly enhance clarity regarding the roles of participants in intercountry adoptions impacted by the implementation of AB 677 (intercountry adoptions), AB 1373 (stepparent adoptions) & SB 179 (gender identity issues). The proposal appropriately addresses the stated purpose and accurately reflects the processes established in the legislation. 3. Revise form ADOPT-050-INFO: This form incorporates many changes increasing informational content consistent with recent legislation. The proposal appropriately addresses the stated purpose and accurately reflects the processes established in the legislation. 4. Revise forms ADOPT-200, ADOPT-210, & ADOPT-215:	The Committee appreciates these comments.

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All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			The changes to these forms are consistent with recent legislation, facilitate collection of additional relevant information, and enhance the clarity of the parties' intentions. The proposal appropriately addresses the stated purpose and accurately reflects the processes established in the legislation. 5. Approve form ADOPT-206: In recognition of the expanding array of ways in which parentage can be established, this new form has been created for a person involved in a gestational surrogacy case as a stepparent who wishes to be acknowledged as a parent of a child born outside of California. The proposal appropriately addresses the stated purpose and accurately reflects the processes established in the legislation. DCSS does not object to any of the proposals. DCSS supports the revisions as appropriate updates to the rule and forms regarding California re-adoption requirements of intercountry adoptions and enhancing of clarity in the implementation of cited legislation.	
5.	California Department of Social Services By Myrna Hernandez, Policy Consultant Sacramento, CA	AM	On the ADOPT-050-INFO - it is states the adopting parents must ask specific questions, however for agency or independent adoptions the duty to inquire falls on the department, county adoption agency, licensed adoption agency, or adoption service provider pursuant to Family Code section 8620. This amendment will contradict what is in the family code allowing adoptive parents to believe they have met the requirements of ICWA inquiry when they have not for agency and independent adoptions. On the ADOPT 200 form number 8a it also states the adopting parents have made inquiry. This will also cause problems as it contradicts Family Code section 8820 as to who is responsible for ICWA inquiry for independent and agency adoptions.	The Committee appreciates this comment and has added language to indicate agency responsibility for the inquiry process to form ADOPT-050-INFO. The Committee appreciates this comment and has added language to indicate agency responsibility for the inquiry process to form ADOPT-200.

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	Commenter	Position	Comment	Committee Response
6.	Saul Bercovitch, Director of Governmental Affairs Executive Committee Family Law Section California Lawyers Association Sacramento, CA	A	FLEXCOM agrees with this proposal. As to specific requests for comment, FLEXCOM believes the proposal addresses the stated purpose, and the rule and forms reflect the process established in legislation. FLEXCOM's technical suggestions are set out below. As to Form ADOPT-050-INFO, on page 1, next to the second arrow under Stepparent/Domestic Partner Adoptions, FLEXCOM suggests that the word "domestic" be inserted between "or" and "partner". Also, it might be helpful to have the term "legal parent" briefly defined in the form. In addition, in our experience the descriptor "Indian" sometimes confuses self-represented individuals who think the term applies to people from the country India, even when the context may be the Indian Child Welfare Act. We suggest that the meaning of the descriptor be clarified. As to Form ADOPT-200 at subparagraph 4(b), FLEXCOM suggests differentiating on gender not on sex as a descriptor, consistent with wider usage including other places in this same Form (e.g., the inclusion of the term "nonbinary" in the subparagraph indicates gender is the descriptor category). As to Form ADOPT-206, in the signature line on page 2, to be consistent with the rest of the form, FLEXCOM suggests inserting the word "your" between "sign" and "name." As to Form ADOPT-215, in the italicized instructions following the last checkbox under item 4, FLEXCOM suggests that "including a registered domestic partnership or civil union from another jurisdiction" should be inserted to be consistent	The Committee appreciates this comment and inserted the term "domestic" in front of partner on the information sheet. The instructions on this page also indicate "Indian (Native American)" in the hopes of avoiding the kind of confusion referenced in this comment. The Committee appreciates this comment, and has included the term "Sex" here instead of "Gender" in compliance with Family Code section 8912(b), 9000(c), 8714(d), 8714.5(e), and 8802(c), all of which call for a statement as to the "sex" of the child who is the subject of the adoption. The Committee appreciates this comment and has made this change. The Committee appreciates this comment; this change was made by shrinking the text to a 10-point font.

	Commenter	Position	Comment	Committee Response
			with the language in Family Code section 9000.5.	
7.	Dillon International By Maren Brose, Adoption Supervisor Costa Mesa, CA	D	1. Response to Proposed Revisions of the ADOPT-200 Form: a. The proposed revisions to the Adopt 200 form do not adequately address the requirements of AB 677 because there is still no section for an adoption agency representative to sign for the agency as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive parent or prospective adoptive parent, as applicable. Date:_____ _____(name of agency) by:_____(signature) Printed name and title:_____ b. The other, more general modifications proposed to clarify the Adopt-200 are helpful, but do not go far enough. This form is much too long and confusing for most laypersons, and even for many lawyers, as well. Proposed solution: Revise	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			the Adopt 200 form to include only the sections that are applicable to all adoptions. Then create a separate attachment sheet for each type of adoption: domestic agency, domestic independent, international, and step-parent. This would simplify the procedure greatly, especially for unrepresented parties, and would also reduce paper waste. c. The Adopt-200 form has no place to note that parental rights do not need to be terminated under the conditions specified in Family Code Section 7660.5 or Family Code Section 7662(a)(2) and (3). Proposed solution: Revise the Adopt-200 form to add all of the following options to Section 15(a): (6) The presumed father has signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code Section 7660.5. (7) The alleged father has been served as prescribed in Section 7666 with a written notice alleging that the alleged father is or could be the biological father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later. (8) The alleged father has executed a written form developed by the department to waive notice of the adoption proceedings or to deny parentage. 2. Response to Proposed Rule 5.493. This proposed Rule does not adequately address the requirements of AB 677,	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			because it does not make allowance for the fact that the adoption agency is extremely unlikely to have the majority (if any) of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family. Remember, the agency will only be filing this form on behalf of non-compliant adoptive families; these families will almost certainly failed to provide the agency with any of the child's information and documents received when they completed the adoption in the foreign country. The adoption agency has no other means by which to obtain these documents if the adoptive family does not provide them; thus, the agency cannot attach them to the Adopt-200 as mandated. In addition, many courts will not provide file-marked copies of an Adoption Request until all other required documents for finalization have been received, and the matter has been set for final hearing. In counties where this is the rule, the agency will be unable to comply with the statutory requirement to provide a file-marked copy of the Adopt-200 to the parties listed in (a)(2)(B). Finally, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200, as this is an expense that the adoptive family should be required to bear. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1. Please see Committee response to this

	Commenter	Position	Comment	Committee Response
			200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall accept the form for filing, shall not require payment of any filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200.	proposal in Comment 1.
8.	Family Connections Christian Adoptions By Alison Foster Davis Legal Director Modesto, CA	AM	1. Response to Proposed Revisions of the ADOPT-200 Form: a. The proposed revisions to the Adopt 200 form do not adequately address the requirements of AB 677 because there is still no section for an adoption agency representative to sign as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			parent or prospective adoptive parent, as applicable. Date:_____ _____(name of agency) by:_____(signature) Printed name and title:_____	
			b. The other, more general modifications proposed to clarify the Adopt-200 are helpful, but do not go far enough. This form is much too long and confusing for most laypersons, and even for many lawyers, as well. Proposed solution: Revise the Adopt-200 form to include only the sections that are applicable to ALL adoptions. Then create a separate attachment sheet for each type of adoption: domestic agency, domestic independent, international, and step-parent. Then the petitioners would only have to answer the questions on the attachment that relates to the type of adoption being requested. This would simplify the procedure greatly, especially for unrepresented parties, and would also reduce paper waste.	Please see Committee response to this proposal in Comment 1.
			c. The Adopt-200 form has no place to note that parental rights do not need to be terminated under the conditions specified in Family Code Section 7660.5 and Family Code Section 7662(a)(2) and (3). Proposed solution: Revise the Adopt-200 form to add ALL of the following options to Section 15(a): (6) The presumed father has signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code Section 7660.5. (7) The alleged father has been served as prescribed in Section 7666 with a written notice alleging that the alleged father is or could be the biological father of the child to be	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later. (8) The alleged father has executed a written form developed by the department to waive notice of the adoption proceedings or to deny parentage.	
			2. Response to Proposed Rule 5.493. This proposed Rule does not adequately address the requirements of AB 677, because it does not make allowance for the fact that the adoption agency is extremely unlikely to have any of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family.	Please see Committee response to this proposal in Comment 1.
			Remember, the agency will only be filing this form on behalf of non-compliant adoptive families; these families will almost certainly have failed to provide the agency with any of the child's information and documents received when they completed the adoption in the foreign country. The adoption agency has no other means by which to obtain these documents if the adoptive family does not provide them; thus, the agency cannot attach them to the Adopt-200 as mandated.	Please see Committee response to this proposal in Comment 1.
			In addition, many courts will not provide file-marked copies of an Adoption Request until all other required documents for finalization have been received, and the matter has been set for final hearing. In counties where this is the rule, the agency will be unable to comply with the statutory requirement to provide a file-marked copy of the Adopt-200 to the parties listed in (a)(2)(B).	Please see Committee response to this proposal in Comment 1.

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	Commenter	Position	Comment	Committee Response
			Finally, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200. Instead, the adoptive family should be required to bear this expense. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall accept the form for filing, shall not require payment of any filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200.	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.
9.	Holt International By Ann Cleary CA Branch Director Agoura Hills, CA	D	This bill is onerous to CA international adoption agencies. While the intent to protect adoptees by providing a revised CA birth certificate is an understandable aim, placing the burden on CA agencies is misguided and cumbersome. While we want to support the aim to have adoptees have the necessary documents they need as they move forward, the timeframe of 90 days is short for families and agencies. Families arriving home within the first 60 days are faced with a myriad of needs for their child and family, and filing within 60 days is a challenge. Providing a postplacement report within the first 45 days of arrival is an agency priority, but then the family only has two weeks to file within the 60 day deadline. Then, the agency has only the 60-	

	Commenter	Position	Comment	Committee Response
			90 day window to file on the family's behalf. This is an undue burden on the family and agency. Particularly when we are adoption agencies, and are unfamiliar with the filing procedures for the courts and will have to rely on outside legal services. Which poses the questions, will there be training for agencies on these matters? As a statewide agency, we are not familiar with the filing procedures for all CA counties. Education and support for agencies should be provided if this moves forward. Additionally, the information required to fulfill the petition is not available to the agency. Petitions filed with the courts by the agencies will most likely languish and how a family can be incentivized to complete the petition is not clear. This is a bulky and burdensome attempt to bring families to court to refinalize for the birth certificate. Adoptees already have their citizenship when they enter the country, could they directly apply to Vital Records for a birth certificate? Other states have this option so the adoptee has the US Citizenship and the birth certificate to assure their legal presence in the US. Anyway, if this is where we are with the process, here are suggestions for revisions with the Adoption forms. These forms are bulky and confusing for families, and make it challenging for families to apply to the courts with confidence. Families are already stressed by the recent arrival with a child where the primary concern should be attachment and bonding, not the completion of court paperwork within the first 60 days. Please simplify the process. Suggestions here: 1. Response to Proposed Revisions of the ADOPT-200 Form: a. The proposed revisions to the Adopt 200 form do not	

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			adequately address the requirements of AB 677 because there is still no section for an adoption agency representative to sign for the agency as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive parent or prospective adoptive parent, as applicable. Date:_____ _____(name of agency) by:_____(signature) Printed name and title:_____	Please see Committee response to this proposal in Comment 1.
			b. The other, more general modifications proposed to clarify the Adopt-200 are helpful, but do not go far enough. This form is much too long and confusing for most laypersons, and even for many lawyers, as well. Proposed solution: Revise the Adopt 200 form to include only the sections that are applicable to all adoptions. Then create a separate attachment sheet for each type of adoption: domestic agency, domestic independent, international, and step-parent. This would simplify the procedure greatly, especially for unrepresented	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			parties, and would also reduce paper waste. c. The Adopt-200 form has no place to note that parental rights do not need to be terminated under the conditions specified in Family Code Section 7660.5 or Family Code Section 7662(a)(2) and (3). Proposed solution: Revise the Adopt-200 form to add all of the following options to Section 15(a): (6) The presumed father has signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code Section 7660.5. (7) The alleged father has been served as prescribed in Section 7666 with a written notice alleging that the alleged father is or could be the biological father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later. (8) The alleged father has executed a written form developed by the department to waive notice of the adoption proceedings or to deny parentage. 2. Response to Proposed Rule 5.493. This proposed Rule does not adequately address the requirements of AB 677, because it does not make allowance for the fact that the adoption agency is extremely unlikely to have the majority (if any) of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family.	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			Remember, the agency will only be filing this form on behalf of non-compliant adoptive families; these families will almost certainly failed to provide the agency with any of the child's information and documents received when they completed the adoption in the foreign country. The adoption agency has no other means by which to obtain these documents if the adoptive family does not provide them; thus, the agency cannot attach them to the Adopt-200 as mandated.	Please see Committee response to this proposal in Comment 1.
			In addition, many courts will not provide file-marked copies of an Adoption Request until all other required documents for finalization have been received, and the matter has been set for final hearing. In counties where this is the rule, the agency will be unable to comply with the statutory requirement to provide a file-marked copy of the Adopt-200 to the parties listed in (a)(2)(B).	Please see Committee response to this proposal in Comment 1.
			Finally, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200, as this is an expense that the adoptive family should be required to bear. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			accept the form for filing, shall not require payment of any filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200.	
10.	Nightlight Christian Adoptions By Daniel Nehrbass, President Santa Ana, CA	D	The requirement to readopt is an unfair burden on families, adds additional cost to their adoption fees, and serves no purpose in light of the fact that it does not secure citizenship and the adoption decree has already been recognized by the federal government. We fully expect this law to fail in court when the federal government determines that CA is meddling in immigration matters. We also believe this law will be unenforceable with regard to families. It will also be unenforceable with agencies, since it requires agencies to have knowledge that the form was not filed, and it is nearly impossible to demonstrate an agency had knowledge that something was not filed. But if the requirement does go into law, we recommend: The proposed revisions to the Adopt 200 form do not adequately address the requirements of AB 677 because there is still no section for an adoption agency representative to sign for the agency as the filing party. A signature line for the agency representative is mandatory, given that the agency is filing in lieu of non-compliant petitioners who are presumably unavailable or unwilling to sign this form themselves. Proposed solution: Add the following to the end of the Adopt-200 form: The undersigned is an authorized representative of _____ (name of licensed adoption agency), which is filing this Adopt-200 based on the reasonable belief that each party listed hereon as an adoptive parent or prospective	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			adoptive parent has failed to file an adoption request to readopt the child within the time frame required by Family Code Section 8919. The undersigned confirms that all known information about this case has been provided on this form, including the last known contact information for each adoptive parent or prospective adoptive parent, as applicable. Date:_____ _____(name of agency) by:_____(signature) Printed name and title:_____	
			b. The other, more general modifications proposed to clarify the Adopt-200 are helpful, but do not go far enough. This form is much too long and confusing for most laypersons, and even for many lawyers, as well. Proposed solution: Revise the Adopt 200 form to include only the sections that are applicable to all adoptions. Then create a separate attachment sheet for each type of adoption: domestic agency, domestic independent, international, and step-parent. This would simplify the procedure greatly, especially for unrepresented parties, and would also reduce paper waste.	Please see Committee response to this proposal in Comment 1.
			c. The Adopt-200 form has no place to note that parental rights do not need to be terminated under the conditions specified in Family Code Section 7660.5 or Family Code Section 7662(a)(2) and (3). Proposed solution: Revise the Adopt-200 form to add all of the following options to Section 15(a): (6) The presumed father has signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code Section 7660.5.	Please see Committee response to this proposal in Comment 1.

	Commenter	Position	Comment	Committee Response
			(7) The alleged father has been served as prescribed in Section 7666 with a written notice alleging that the alleged father is or could be the biological father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later. (8) The alleged father has executed a written form developed by the department to waive notice of the adoption proceedings or to deny parentage.	
			2. Response to Proposed Rule 5.493. This proposed Rule does not adequately address the requirements of AB 677, because it does not make allowance for the fact that the adoption agency is extremely unlikely to have the majority (if any) of the information and documents needed to complete the Adopt-200 -- other than the name(s) and address of the adoptive family.	Please see Committee response to this proposal in Comment 1.
			Remember, the agency will only be filing this form on behalf of non-compliant adoptive families; these families will almost certainly failed to provide the agency with any of the child's information and documents received when they completed the adoption in the foreign country. The adoption agency has no other means by which to obtain these documents if the adoptive family does not provide them; thus, the agency cannot attach them to the Adopt-200 as mandated.	Please see Committee response to this proposal in Comment 1.
			In addition, many courts will not provide file-marked copies of an Adoption Request until all other required documents for	Please see Committee response to this proposal in Comment 1.

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			finalization have been received, and the matter has been set for final hearing. In counties where this is the rule, the agency will be unable to comply with the statutory requirement to provide a file-marked copy of the Adopt-200 to the parties listed in (a)(2)(B). Finally, adoption agencies should not be required to pay the $20 birth certificate fee that is normally required at the time of filing an Adopt-200, as this is an expense that the adoptive family should be required to bear. Proposed solution: Modify proposed Rule 5.493 on Page 13, at the end of line 35, by adding (a)(2)(C): A licensed adoption agency may submit for filing an Adopt-200 form that is incomplete or lacking any or all of the attachments otherwise required by Family Code Section 8919. As long as the Adopt-200 form includes the name, last known address, and last known phone number of each adoptive parent or prospective adoptive parent, as applicable, the court shall accept the form for filing, shall not require payment of any filing fee or birth certificate fee, and shall immediately provide the agency representative with a file-marked copy of the Adopt-200.	Please see Committee response to this proposal in Comment 1. Please see Committee response to this proposal in Comment 1.
11.	O. Raquel Ramirez Senior Deputy County Counsel Warrant Desk Attorney Los Angeles County Counsel	NI	There were no comments from DCFS or county counsel subject matter experts on these proposed revisions.	The Committee appreciates that this commenter took the time to review the proposal.
12.	Delia M. Sharpe, Executive Director	NI	This letter is in response to the Judicial Council of California's invitation for comments to the proposed amendment to	

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	California Tribal Families Coalition Sacramento, CA		California Rules of Court, Rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215. California Tribal Families Coalition is a statewide organization governed by a thirteen-member Board of Directors comprised of duly elected tribal officials, with a membership of 36 federally recognized Indian tribes located across the state, as well as the Southern, Central and Northern California Tribal Chairman's Associations. The mission of CTFC is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and at the core of tribal sovereignty and tribal governance. The invitation to comment explains the ADOPT forms are being amended, in part, because of the adoption of AB 3176 (2018, Waldron), legislation co-sponsored by CTFC codifying the federal ICWA regulations into state law. AB 3176 amended 32 provisions of the California Welfare and Institutions Code (WIC). However, the proposal only includes a minor change regarding ICWA inquiry, which is insufficient to ensure ICWA compliance in family law cases. Comments: The ADOPT forms confuse the Indian Child Welfare Act (ICWA) and Tribal Customary Adoption (TCA). TCA a permanency option available for Indian children who are the subject of a juvenile dependency case. A TCA is limited in application to dependency cases. ICWA, on the other hand, applies to the full array of adoptions, including agency adoptions, stepparent adoptions and gestational	The Committee appreciates the comments related to Tribal Customary Adoption. The Committee has been informed of upcoming guidance from the California Department of Social Services on Tribal Customary

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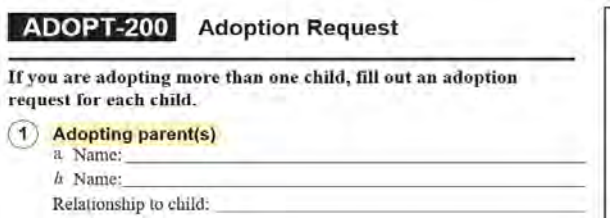
	Commenter	Position	Comment	Committee Response
			surrogacy. The informational form and the forms themselves do not address the substantive requirements of ICWA, including placement, active efforts, reunification services, or qualified expert witness. We strongly recommend a new mandatory ADOPT form be developed (or ADOPT 220 be heavily revised) to address each of ICWA's minimum federal standards and this new form be referenced in every ADOPT form. It is our position that such a form would increase ICWA compliance in adoptions cases, particularly those that do not arise from juvenile dependency matters.	Adoption and will consider additional changes to the forms for a future cycle.
			ADOPT-050-INFO: Information on ICWA is included on this form; however, it is near the bottom. This is problematic since the inquiry requirement of ICWA applies in all cases. Therefore, we highly recommend moving information on Inquiry and Notice under ICWA to the top of the form, before stepparent adoption.	The Committee appreciates this comment and has included the ICWA forms under each type of adoption in the ADOPT-050-INFO.
			We further recommend, that the ICWA-030 regarding notice be added as a checkbox throughout each section of the form.	The Committee appreciates this comment. Because the ICWA-030 is not required in every adoption, but only when there is reason to know that the child is an Indian child, that form is listed in the ICWA section of the form with an explanation of its use.
			Additionally, TCA should have its own heading within this form to clarify that it is only available in juvenile dependency cases pursuant to WIC § 366.24.	The Committee appreciates this comment and will consider it for future revisions of the form.
			ADOPT-200. We recommend adding a box within #4 regarding whether the	The Committee appreciates this comment and

	Commenter	Position	Comment	Committee Response
			child is an Indian child, and a box for the name and contact information for the child's tribe. We also recommend adding a box requiring notice to the Tribe, which is required in stepparent adoptions. We recommend #9a be revised to reflect ICWA's requirement that the certification required by ADOPT-225 must be done in court. ADOPT–206 We recommend adding a #7 that asks whether the surrogate or sperm donor is an Indian person. ADOPT–210 We recommend adding a box regarding whether the child is an Indian child, and a box for the name and contact information for the child's tribe. #6 should reference that TCA is limited in application to dependency cases and include the case number and order affording full faith and credit to the TCA order. ADOPT–215 We recommend adding a box regarding whether the child is an Indian child, and a box for the name and contact information for the child's tribe, and whether the child's tribe has been noticed pursuant to ICWA. #8 addresses the placement preferences of an Indian child and whether there is good cause to deviate from those preferences. Under WIC §361.31 and corresponding Family Code §177, the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or	will consider it for future revisions of the form. The Committee appreciates this comment and has added Item 8c. to this effect. The Committee appreciates this comment and has added language to this effect to Item 9a. The Committee appreciates this comment and will consider it for future revisions of the form. The Committee appreciates this comment and will consider it for future revisions of the form. The Committee appreciates this comment and will consider it for future revisions of the form.

	Commenter	Position	Comment	Committee Response
			extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied. This is confirmed by the Indian child's tribe or a qualified expert witness as defined in WIC §224.6(c). Notice to the Indian child's tribe is required, as well as a hearing on the evidence to deviate from the placement preferences. The court must comply with the requirements of WIC §361.31. The court's order must be made on the record or in writing. #10 references TCA with instructions to attach the TCA order to the form. The California Superior Court order affording full faith and credit to the TCA order should also be attached. #14 must include the Indian child's tribe so the tribe has a record and documentation of the adoption of an Indian child.	The Committee appreciates this comment and will consider it for future revisions of the form.
13.	Family Law Division Superior Court of California, County of Orange	NI	General Comments ▪ The proposed change to ADOPT-200 shows item 1b in italics. Is this correct? If yes, should the (s) in parent(s) also be in italics?  ▪ 5.493. Requirement to request adoption under California law of a child born in a foreign country when the adoption is finalized in the foreign country (Fam. 1Code, §§ 8912, 8919)	The Committee appreciates this comment and has corrected the formatting to remove the italics in item 1b.

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Comment: The rule requires an agency filing a request on behalf of parent to submit a coversheet with blank ADOPT200 forms under section (b)(2)(A). Are these copies for conforming to be sent back to the agency? If so, why are they blank? Also, the rule does not address any actions the court should take if the agency files the request on behalf of the parents and the parents fail to move the case to finalization hearing. Does the case remain stagnant? Request for Specific Comments ▪ Does the proposal appropriately address the stated purpose? • Yes, the proposal eliminates gender specific language from the forms and provides options for non-binary gender preferences. It also incorporates the provisions of AB 677 and AB 1373 to further regulate Intercountry adoptions to prevent human trafficking and allows confirmation of parentage options for Stepparent adoptions required involving surrogates. ▪Do the rule and forms accurately reflect the processes established in legislation? • The proposed changes to existing forms and the proposed new forms accurately reflect the changes in legislation, except for proposed rule 5.493 and the change to form ADOPT-200 item 3. The rule does not address the requirement for the agency to provide a consent and joinder if they are not the party filing the petition. The changes to the form indicate a joinder must be submitted. This requirement is not addressed in FC §8919, although a consent and joinder are referenced in FC§8912. The proposed rule could be amended to address the need for a	CRC Rule 5.493(a)(2)(A) requires that the agency present for filing a cover sheet, the forms required to initiate the adoption request (which may be blank), and any document in the possession of the adoption agency that is required to finalize the adoption. The request must be file-stamped by the court upon receipt and the adoption agency is required to provide the file-marked copy of the adoption request to the adoptive parent(s) and to any other adoption agency involved in the adoption. The Committee appreciates this feedback. The Committee appreciates this feedback.

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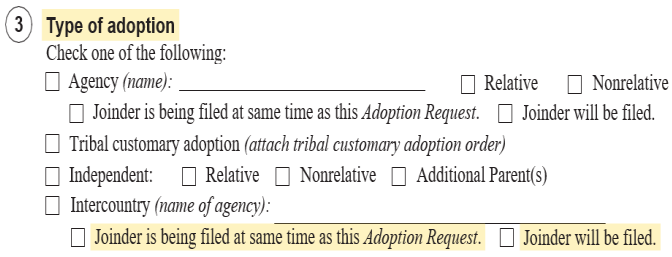
Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			joinder.  3 Type of adoption Check one of the following: ☐ Agency *(name):* _____ ☐ Relative ☐ Nonrelative ☐ Joinder is being filed at same time as this *Adoption Request.* ☐ Joinder will be filed. ☐ Tribal customary adoption *(attach tribal customary adoption order)* ☐ Independent: ☐ Relative ☐ Nonrelative ☐ Additional Parent(s) ☐ Intercountry *(name of agency):* _____ ☐ Joinder is being filed at same time as this *Adoption Request.* ☐ Joinder will be filed. ▪ Would the proposal provide cost savings? If so, please quantify. • No, the proposal does not provide any cost savings to the court unless the amount of Stepparent adoption hearings decreases due to expanding the options to confirm parentage in the case of surrogates and gestational carriers. The savings would be limited to reducing the operating costs of conducting a hearing, but it would depend on the amount of these specific petitions received. It is unknown if the expansion of Stepparent adoptions to confirm parentage will decrease the amount of adoption hearings. The clarification of the language pertaining to ICWA inquiries on the ADOPT-050 and ADOPT-200 has the potential to reduce the number of rejected filings due to lack of service to the tribes, but it is not likely to provide a significant amount of savings to the court. ▪ What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising	The Committee appreciates this comment and does not believe that consent and joinder are required for readoption according to a plain reading of the new statutory language. Item 3 on the ADOPT-300 has been modified to clarify this understanding, by collecting information about potential joinder in a case in a separate section. The Committee appreciates this feedback on operational impacts of the proposal.

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? • The implementation requirements would be minimal to the court. Adoption procedures will need to be updated to include the possibility that Adoption Agencies may be filing petitions for Intercountry adoptions on behalf of the parents. They will also need to be updated to include the expanded opportunity for Stepparent confirmation of parentage along with the new proposed form. A process for confirmation of parentage under certain circumstances already exists, so there will not be a need for developing a new process. The procedures will also need to be updated to include the option for additional parents / waiver of termination of parental rights for Stepparent and Adult adoptions. Most of the implementation will consist of updating procedures and any training materials. Once they are updated, Clerk's Office and Courtroom staff can be advised of the changes in writing. If any training is needed regarding the changes, it should not take more than four hours. A new docket code will not need to be created for the proposed new form as it is an attachment to the petition and is not filed separately. If any hard copy adoption packets are stored and provided to the public, they will need to be replaced to include the revisions and new forms. This could impact staff in the Clerk's Office and the Self-Help Center. ▪ Would 3 months from Judicial Council approval of this	The Committee appreciates this feedback on operational impacts of the proposal.

	Commenter	Position	Comment	Committee Response
			proposal until its effective date provide sufficient time for implementation? • Yes, 3 months would be sufficient time to implement the changes to the forms and the time needed to update procedures and training materials. ▪ How well would this proposal work in courts of different sizes? The proposal should work well for courts of any size. The only impact to operations is a potential increase in Stepparent Adoptions filings to confirm parentage in the case of gestational surrogates. There are no major changes to the process in which adoptions are handled, so a court of any size should be able to implement the proposed changes.	The Committee appreciates this feedback on operational impacts of the proposal. The Committee appreciates this feedback on operational impacts of the proposal.
14.	Juvenile Court Division Superior Court of California, County of Orange	NI	General Comments ▪ The proposed change to ADOPT-200 shows item 1b in italics. Is this correct? If yes, should the (s) in parent(s) also be in italics? ▪ 5.493. Requirement to request adoption under California law of a child born in a foreign country when the adoption is finalized in the foreign country (Fam. Code §§ 8912, 8919) The rule requires an agency filing a request on behalf of parent to submit a coversheet with blank ADOPT200 forms under section (b)(2)(A). Are these copies for conforming to be sent back to the agency? If so, why are they blank? Also, the rule does not address any actions the court should take if the agency files the request on behalf of the parents and the parents fail to move the case to finalization hearing. Does the case remain	CRC Rule 5.493(a)(2)(A) requires that the agency present for filing a cover sheet, the forms required to initiate the adoption request (which may be blank), and any document in the possession of the adoption agency that is required to finalize the adoption. The request

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			stagnant? Request for Specific Comments ▪ Does the proposal appropriately address the stated purpose? Yes, the proposal eliminates gender specific language from the forms and provides options for non-binary gender preferences. It also incorporates the provisions of AB 677 and AB 1373 to further regulate Intercountry adoptions to prevent human trafficking and allows confirmation of parentage options for Stepparent adoptions required involving surrogates. ▪ Do the rule and forms accurately reflect the processes established in legislation? The proposed changes to existing forms and the proposed new forms accurately reflect the changes in legislation, except for proposed rule 5.493 and the change to form ADOPT-200 item 3. The rule does not address the requirement for the agency to provide a consent and joinder if they are not the party filing the petition. The changes to the form indicate a joinder must be submitted. This requirement is not addressed in FC §8919, although a consent and joinder is referenced in FC§8912. The proposed rule could be amended to address the need for a joinder. ▪Would the proposal provide cost savings? If so, please quantify No, the proposal does not provide any cost savings to the court unless the amount of Stepparent adoption hearings decreases due to expanding the options to confirm parentage in the case of surrogates and gestational carriers. The savings would be limited to reducing the operating costs of conducting a hearing, but it would depend on the amount of these specific petitions received. It is unknown if the expansion of Stepparent adoptions to confirm parentage will decrease the amount of	must be file-stamped by the court upon receipt and the adoption agency is required to provide the file-marked copy of the adoption request to the adoptive parent(s) and to any other adoption agency involved in the adoption.

	Commenter	Position	Comment	Committee Response
			adoption hearings. The clarification of the language pertaining to ICWA inquiries on the ADOPT-050 and ADOPT-200 has the potential to reduce the number of rejected filings due to lack of service to the tribes, but it is not likely to provide a significant amount of savings to the court. ▪ 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? The implementation requirements would be minimal to the court. Adoption procedures will need to be updated to include the possibility that Adoption Agencies may be filing petitions for Intercountry adoptions on behalf of the parents. They will also need to be updated to include the expanded opportunity for Stepparent confirmation of parentage along with the new proposed form. A process for confirmation of parentage under certain circumstances already exists, so there will not be a need for developing a new process. The procedures will also need to be updated to include the option for additional parents / waiver of termination of parental rights for Stepparent and Adult adoptions. Most of the implementation will consist of updating procedures and any training materials. Once they are updated, Clerk's Office and Courtroom staff can be advised of the changes in writing. If any training is needed regarding the changes, it should not take more than four hours. A new docket code will not need to be created for the proposed new form as it is an attachment to the petition and is not filed separately. If any hard copy adoption packets are stored and provided to the public, they will need to be replaced to include the revisions	The Committee appreciates this feedback on operational impacts of the proposal. The Committee appreciates this feedback on

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

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	Commenter	Position	Comment	Committee Response
			and new forms. This could impact staff in the Clerk's Office and the Self-Help Center.	operational impacts of the proposal.
			▪ Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Three months would be sufficient time to implement the changes to the forms and the time needed to update procedures and training materials.	The Committee appreciates this feedback on operational impacts of the proposal.
			How well would this proposal work in courts of different sizes? The proposal should work well for courts of any size. The only impact to operations is a potential increase in Stepparent Adoptions filings to confirm parentage in the case of gestational surrogates. There are no major changes to the process in which adoptions are handled, so a court of any size should be able to implement the proposed changes.	The Committee appreciates this feedback on operational impacts of the proposal.
15.	Mike Roddy, CEO Superior Court of California, County of San Diego	NI	GENERAL COMMENTS: Rule 5.493 AB 677 simplified what was previously a very complicated process. We may end up having more intercountry readoptions, but each one should be easier because the same process applies to all of them.	
			Rule 5.493 mostly just restates Family Code section 8919 and does not provide much in the way of helpful clarification.	The Committee appreciates this feedback but opted to adhere closely to legislative language in the rule of court and provide additional details in the ADOPT-050-INFO.
			Rule 5.493(b)(1) should include a list of the required forms.	The list of required forms appears on form ADOPT-050-INFO, in a new category for

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
				Intercountry Adoptions
			Rule 5.493(b)(1)(E): student should be study	The Committee appreciates this comment and the typo has been corrected.
			ADOPT-050-INFO In each section, make it clear that an ICWA-020 form is required for each birth parent. As written, it makes it seem like only one ICWA-020 form is required.	The Committee appreciates this comment and has modified the proposal to recommend the following changes to this form: -page 1, section 1 in third column description of ICWA-020: "One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status." -page 2, section 1 in third column description of ICWA-020: "One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status." -page 3, section 1 in third column description of ICWA-020: "One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status." -page 4, section titled "Inquiry and Notice Under the Indian Child Welfare Act", second checkbox now reads: …OR it should be shown that a good faith attempt was made to provide the form to each birth parent, the Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court.

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Stepparent/Domestic Partner Adoptions to Confirm Parentage: AB 1373 fixed a gap in Family Code section 9000.5. It used to say that one of the partners had to give birth to the child. That made the process available to same sex female partners but technically excluded same sex male partners. That was not the legislative intent and AB 1373 fixed it by adding the part about gestational surrogacy agreements. The language in the statute says that one or both of the spouses or partners can participate in the surrogacy process; it does not have to be the adopting parent. The new second question should read, "Did the adopting parent's spouse or partner give birth to the child, or was the child born through a gestational surrogacy process brought about by one or both of the spouses or partners?" For these adoptions, no report is required [item 3] and the hearing is optional [item 4]. If the petitioner waives the hearing, the ADOPT-210 must be signed in front of the court clerk or a notary. This information is not captured in this form. Intercountry Adoptions: should say to complete items 1 through 6 ADOPT-200 Item 8: either "have attached a completed Indian Child Inquiry Attachment" or "a completed Indian Child Inquiry Attachment (form ICWA-010(A)) is attached" ADOPT-206 Item 5: revise to apply to gestational surrogacy process, which is different than simply using a sperm donor Does the proposal appropriately address the stated purpose? In part. Rule 5.493 should include more detail about the	The Committee appreciates this comment and has changed the second question to read, "Did the adopting parent's spouse or partner give birth to the child, or was the child born through a gestational surrogacy process brought about by one or both of the spouses or partners?" Under Item 2, the Committee has added the statement, "If there is no hearing, the ADOPT-210 must be signed in front of the court clerk or a notary." The Committee appreciates this comment and has corrected this typo. The Committee appreciates this comment and has made this change. The Committee appreciates this comment and has removed references to the sperm donor process from this question.

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

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	Commenter	Position	Comment	Committee Response
			process, including how the state forms are to be used. Do the rule and forms accurately reflect the processes established in legislation? Yes, but rule 5.493 needs more detail. Would the proposal provide cost savings? If so, please quantify. No. 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? Train the adoption clerks and family law facilitators. Update packets with new forms. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update procedures. How well would this proposal work in courts of different sizes? It appears that the proposal will work for courts of various sizes.	The Committee appreciates this feedback but opted to adhere closely to legislative language in the rule of court and provide additional details in the ADOPT-050-INFO. The Committee appreciates this feedback on operational impacts of the proposal. The Committee appreciates this feedback on operational impacts of the proposal. The Committee appreciates this feedback on operational impacts of the proposal.
16.	Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee--Joint Rules	AM	The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following impact to court operations: • Impact on existing automated systems (e.g., case management	

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Family Law: Implementation of Assembly Bills 677 and 1373 Regarding Adoptions (Adopt Cal. Rules of Court, rule 5.493; approve form ADOPT-206; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

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	Commenter	Position	Comment	Committee Response
	Subcommittee		system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)? o Rule and forms will require the addition of a new event, hearing and forms identification along with mapping across work queues, notice generation and other management system functions. There is cost in configuration and time required for testing, training and implementation. • Results in additional training, which requires the commitment of staff time and court resources. o This addition will require training in the clerk's office and courtroom. Procedures will be drafted, and clerks trained to input new filings correctly. Specific notice required by the new rule will require training and additional time to task. Minutes macros for courtroom clerks will need to be drafted, tested and trained to prior to implementation. Postage, copies will be of undetermined cost. • Increases court staff workload. Suggested modification(s): Suggest a change in wording at 5.493(b)(1)(E) from "student" to "study".	The Committee appreciates this feedback on operational impacts of the proposal. The Committee appreciates this comment and this typo has been corrected.
17.	Deborah Wald Certified Family Law Specialist The Wald Law Group San Francisco, CA	NI	When only one member of a married couple is adopting a child, the adopting parent's spouse's consent is required. (See Family Code section 8603.) On the Adopt-210 Adoption Agreement form, there is a place (4(b)) for the consenting spouse *who is not also adopting the child* to sign. This is different from the consent required in a stepparent adoption, which appears on the Adopt-210 at #7. Many courts throughout the state are confused about this, and are requiring the spouse retaining parental rights in a stepparent adoption to sign at BOTH 4(b) and 7. This is a misunderstanding of the purpose of 4(b), and we would appreciate if that could be	

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All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			clarified on the next iteration of the form. *The last effort at clarification, "I am not a party to this adoption" has not been successful. I think we might need to specifically reference Family Code section 8603. I propose adding something along the lines of "Not for use in stepparent adoptions. Use paragraph 7 below instead. (Family Code section 8603.)" to the AD-210, in italics immediately preceding the current language, comparable to the italicized "For stepparent adoptions only" language at paragraph 7.	The Committee appreciates this comment and has modified Item 4 of the ADOPT-210 to read as follows: *If there is only **one** adopting parent and that person is married and not separated, the consent of their spouse is required under section 8603 of the Family Code. Read and sign below. Stepparent adoptions: Go to Item 7.*

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Changes to Supervised Visitation Standard and Form
Amend standard 5.20; adopt form FL-324(P), approve form FL-324(NP), and revoke form FL-324

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle Selden 415-865-8085, Shelly La Botte 916-643-7065

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.

d. AB 1165 (Bauer-Kahan) Child custody: supervised visitation (Ch. 823, Statutes of 2019)
Revises requirements for professional providers of supervised visitation services in child custody matters.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Declaration of Supervised Visitation Provider (form FL-324) circulated for comment proposing just a few changes to reflect additional statutory requirements for professional providers. However, to most effectively comply with Family Code section 3200.5, the committee proposes that this form be revoked. In its place, two forms are proposed to be created; one mandatory for professional providers (Declaration of Supervised Visitation Provider (Professional) (form FL 324(P)) and one optional form for nonprofessional providers (Declaration of Supervised Visitation Provider (Nonprofessional) (form FL 324(NP)).

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24–25, 2020

Title
Family Law: Changes to Supervised Visitation Standard and Form

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Stds. Jud. Admin., standard 5.20; adopt form FL-324(P); approve form FL-324(NP), and revoke FL-324

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 31, 2020

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov
Shelly La Botte, 916-643-7065
shelly.labotte@jud.ca.gov

Executive Summary

To comply with the statutory changes to Family Code section 3200.5, enacted by Assembly Bill 1165 (Bauer-Kahan; Stats. 2019, ch. 823), the Family and Juvenile Law Advisory Committee recommends amending standard 5.20 of the Standards of Judicial Administration, adopting *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)), approving *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)),and revoking *Declaration of Supervised Visitation Provider* (form FL-324).

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend standard 5.20 of the California Standards of Judicial Administration to reflect additional requirements for professional supervised visitation providers that are mandated by Family Code section 3200.5;

2. Adopt *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)) to serve as the mandatory form for professional providers under section 3200.5;
3. Approve optional form *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)) to implement the requirements of section 3200.5 and standard 5.20 for nonprofessional providers; and
4. Revoke *Declaration of Supervised Visitation Provider* (form FL-324), which previously served as the form used by both professional and nonprofessional providers.

The text of the proposed amended standard and the forms are attached at pages 10–16.

Relevant Previous Council Action

Effective January 1, 1998, the Judicial Council adopted standard 5.20 of the California Standards of Judicial Administration to implement the guidelines of Family Code section 3200, first enacted in 1996, concerning supervised visitation providers in contested child custody cases in family court.

In 2012, the Legislature enacted Family Code section 3200.5, which incorporated much of the language in standard 5.20, but elevated many of the suggested best practices provisions of standard 5.20 to mandatory requirements in section 3200.5. The legislation requires that any standards for supervised visitation providers adopted by the Judicial Council conform to sections 3200 and 3200.5.

Analysis/Rationale

The most recent changes to Family Code section 3200.5 create additional requirements for professional supervised visitation providers. Effective January 1, 2020, in addition to current requirements, a professional supervised visitation provider must:

- Complete a Live Scan criminal background check before providing supervised visitation services;
- Register as a TrustLine provider;[1]
- Complete a minimum of 12 hours of classroom instruction in the subjects listed in the statute;
- Complete training on conflicts of interest, including the acceptance of gifts;
- Complete a minimum of 3 hours of training on the screening, monitoring, and termination of visitation; 3 hours on the developmental needs of children; 3 hours on issues relating to substance abuse, child abuse, sexual abuse, and domestic violence; and 1 hour on basic knowledge of family and juvenile law; and

[1] TrustLine was created by the California Legislature in 1987. It is a state registry of in-home childcare providers, tutors, in-home counselors, and childcare staff at ancillary childcare centers who have passed a background screening. For more information, visit *www.trustline.org*. Under the Health and Safety Code, a person will be prohibited from being a professional supervised visitation provider if that person is either denied TrustLine registration by the California Department of Social Services or the person's TrustLine registration is revoked.

- Sign the *Declaration of Supervised Visitation Provider* (form FL-324) to declare that the professional provider meets training and qualification requirements, and sign a separate, updated form FL-324 each time the provider submits a report to the court.

In addition, effective January 1, 2021, professional providers must complete training relating to child abuse reporting laws through an online training course required for mandated reporters provided by the California Department of Social Services.

The author of AB 1165 stated the rationale for the amendments as follows:

> The combination of these enhanced requirements will help ensure that paid visitation monitors are adequately trained to look for warning signs, to understand whether and how they can intervene or report problems, when they might need to terminate a visitation in the interest of child safety, and ensure that these monitors pose no risks to children.[2]

Standard 5.20

The standard is proposed to be amended as follows:

- Reorganize subdivision (b) (Definitions) to include all definitions that are currently in subdivisions (d) and (e), and include and define the term "TrustLine provider."
- Amend subdivision (e) (Qualifications of professional providers) as follows:
  - Require that a professional provider complete a Live Scan criminal background check before providing supervised visitation services;
  - Require a professional provider to register as a TrustLine provider;
  - Add subdivision (e)(11)(A) and (B) to specify that a person is ineligible to be a professional provider if the Department of Social Services denies or revokes that person's TrustLine registration;
  - Require the professional provider to sign and submit to the court a *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)); and
  - Add subdivision (e)(14) to specify that the professional provider must sign a separate, updated form FL-324(P) each time the provider submits a report to the court.
- Amend subdivision (f) (Training for providers) as follows:
  - Change the title to "Training for professional providers";
  - Re-letter subdivision (f)(1) as (r) and rename it "Informational materials; procedures";
  - Add subdivision (r)(2) to read that, by January 1, 2022, each court should develop local rules that establish procedures for processing and maintaining form FL-324(P), along with the professional provider's original report required in standard 5.20(j)(3);

[2] Off. of Assem. Floor Analyses, analysis of Assem. Bill No. 1165 (Sept. 5, 2019), p. 2, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1165.

- Re-letter subdivision (f)(2) as (f)(1) and add that, before providing services, a professional provider must complete 24 hours of training, including at least 12 hours of classroom instruction in the subjects listed in (f)(1)(A) through (K);
- Clarify in subdivision (f)(1)(H) that training on conflicts of interest must include training regarding the acceptance of gifts;
- Add subdivision (f)(2) to provide that at least 3 hours of the 24 hours training requirement must be in the specific subjects listed in the statute; and
- Add subdivision (f)(3) to require a professional provider to complete training relating to child abuse reporting laws through an online training course required for mandated reporters that is provided by the Department of Social Services.

***Declaration of Supervised Visitation Provider* (form FL-324)**

This form circulated for comment proposing just a few changes to reflect additional statutory requirements for professional providers. However, based on comments received, the committee proposes that this form be revoked. In its place, two forms will be created; one mandatory for professional providers and one optional form for nonprofessional providers.

Policy implications

The legislative mandate would result in additional costs to professional supervised visitation providers for one-time fees to complete a Live Scan background check and register with TrustLine. For Live Scan, there is a fee required to be paid to the state Department of Justice for the criminal history record checks. Other fees may vary, including fees to cover the Live Scan operator's cost for rolling the fingerprint images.[3] Currently, the fee payable to the Department of Social Services for TrustLine registration is $124.

In addition, the statutory requirement for classroom training could result in increased costs for professional providers' training. However, the new costs are outweighed by the interest in maintaining a pool of professional providers who are adequately trained and skilled in providing family court-ordered supervised visitation and exchange services.

The impact to the courts includes costs to accept and review updated form FL-324(P) submitted by professional providers of supervised visitation. This cost is outweighed by the benefit to judicial officers that the professional provider was qualified to make the report regarding the parent-child contact for the supervised visit at the time the report was submitted to the court.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the regular spring comment cycle. Fifteen organizations submitted comments on this proposal. Six commenters agreed with the proposal. Six organizations agreed if the proposal is modified. One commenter expressed no concerns with the proposed changes, as they are made to conform with AB 1165; two others stated that the proposal appropriately addresses the stated purpose. One

[3] For a list of Live Scan processing fees, visit *https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/fees.pdf*.

commenter did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 17–31.

Standard 5.20

The committee received four comments about the proposed changes to the standards of practice. One commenter, Rally Family Visitation Services, stated, "The changes to the standard are good[,] as they meet the requirements of the bill." However, the commenter also had questions about oversight of the providers, as this issue is not addressed in the standard. Specifically, the commenter asked, "Who will be responsible for [e]nsuring that they have met the minimum training requirements?" and "Who will approve the type of training or trainers?" One other commenter, Safe Haven Child Visitations, raised the same issue, stating:

> I do[,] however, believe there needs to be a "Governing Board" overseeing all Professional Providers. Professional Providers should be occasionally [a]udited for report accuracy, professionalism, and ethical guidelines. [¶] Lastly, trainings for Professional Providers should be treated as Trade/Vocational Schooling, like Pharmacy Technicians, Behavioral Therapist, etc. There needs to be a proper credentialing website, just like the BACB [Behavior Analyst Certification Board] website.

Similarly, Andrea Armstrong, a supervised professional monitor, suggested that the standard be amended to provide that mandated reporter training must be completed every five years.

While the committee understands that the commenters' suggestions would support the stated goal of the Legislature to help ensure that paid visitation monitors are adequately trained for the protection of the children involved, these actions are outside the scope of the proposal.

Under Family Code section 3200.5, providers of supervised visitation are responsible for ensuring that they have met the minimum training requirements. Providers are encouraged to check with their local court to determine if the court has any guidance or requirements regarding meeting training requirements for appointment. For example, some courts that maintain a list of professional supervised visitation providers may require that professional providers complete only trainings conducted by the Judicial Council or by those individuals or organizations that have worked closely with the council's Access to Visitation Grant Program. Professional providers may also contact Access to Visitation Grant Program staff in the Judicial Council's Center for Families, Children & the Courts with any questions about trainings.

Further, the committee received one comment from the Superior Court of Orange County, Family Law Division, in support of the proposal to amend the standard to require local courts to develop local rules by January 1, 2022, that establish procedures for processing and maintaining form FL-324, along with the professional provider's original report.

To reflect the committee's recommendation to create separate forms for professional and nonprofessional providers (discussed below), subdivision (r)(2) of standard 5.20 is proposed to be amended to reference the new forms, as follows:

> By January 1, 2022, each court must develop and adopt local rules that establish procedures for processing and maintaining:
>
> (A) *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)), along with the professional provider's original report required in (j)(3) of this standard; and
>
> (B) The nonprofessional supervised visitation provider's declaration regarding qualifications, whether the provider uses the court's local form or *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)).

In addition, subdivision (d)(3) would be added to specify that the nonprofessional provider must also "[s]ign a local court form or *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP) stating that all requirements to be a nonprofessional provider have been met."

Revised form FL-324

The committee received four comments about the form. One commenter, Rich Moscowitz, MSW, stated that form FL-324 *(now forms FL-324(NP) and FL-324(P))* is not needed and should not be required because local courts have their own forms for providers to complete. Effective January 1, 2020, Family Code section 3200.5(e)(12) specifically requires that the professional provider of supervised visitation sign a separate, updated *Declaration of Supervised Visitation Provider* each time the provider submits a report to the court. Further, because local courts may not adopt local rules and forms regarding family law actions and proceedings that are in conflict with or inconsistent with California law or the California Rules of Court, under rule 5.4, local courts will be required to accept only the form adopted by the Judicial Council for professional providers.

Another commenter, the Family Violence Appellate Project, suggested that the form should include check boxes for the professional provider to specify if (1) the form is being submitted to demonstrate eligibility before providing initial services in the case or (2) whether the provider is complying with the new requirement of Family Code section 3200.5 to update the form when submitting a report to the court. The committee agreed with this suggestion and proposed form FL-324(P) incorporates the addition.

Two commenters, the Family Violence Appellate Project and the Superior Court of Riverside County, noted that Family Code section 3200.5 mandates that professional providers complete form FL-324 but does not require nonprofessional providers to do so. For this reason, they stated that the Judicial Council needs to have two forms: one for professional supervision providers and one for nonprofessional supervision providers. The committee agreed with the commenters and

in response proposes that the Judicial Council adopt a mandatory form for the professional provider and an optional form for the nonprofessional provider.

To reflect the requirement of the statute that the professional provider sign a *Declaration of Supervised Visitation Provider*, each form is proposed to maintain that title, but include a parenthetical on each form and a separate numbering convention to indicate the type of provider. Specifically, the mandatory form is proposed to be titled and numbered *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)) and the optional form is proposed to be titled and numbered *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)).

The Family Violence Appellate Project also suggested revising form FL-324 to require the professional provider to "solicit[] the name and contact information of the organization that employs the professional provider." The commenter stated that "it can be useful to know not only the name of each supervisor [professional provider] but also their employer." In response, the committee noted that while the information could be useful, it is not relevant to the form's purpose, which is to serve as the provider's declaration of their own individual qualifications and not those of the provider's employer. In addition, the information about the professional provider's employment is not mandated by the statute to be disclosed. For this reason, the committee prefers not to revise the form as the commenter suggested.

The committee was unable to address some of the comments and suggestions received regarding technical and procedural issues about completing the form, submitting the form to the court, and delivering copies to the parties or their attorneys. The committee suggests that local courts review the comments in this report to assist in the drafting of local rules that would respond to the concerns of the commenters about these issues.

New form FL-324(NP)

As previously described, the committee proposes this new form for nonprofessional supervised visitation providers to complete before providing services in the case. Because the statute only mandates that professional providers use *Declaration or Supervised Visitation Provider*, having a separate form for nonprofessional providers will benefit local courts that have relied on form FL-324 and have no local form to implement the requirements of Family Code section 3200.5 for nonprofessional providers.

The content of the new form is substantially the same as that which appears in the current version of form FL-324, except that content relating only to professional providers has been removed. The information has also been reorganized to improve its readability. For example, information is sorted under the headings "Purpose" and "Qualifications." The "Qualifications" section is further divided into "Standard Qualifications" and "Alternative Qualifications" to better illustrate the requirements for nonprofessional providers. In addition, hyperlinks to Family Code section 3200.5 and standard 5.20 are included in item 1b and the notice at the bottom of the form is rewritten in plain language. In light of the above, and because these are minor changes

unlikely to cause controversy, the committee recommends approval of the form without soliciting further public comment.

Other comments
In response to specific questions to local courts:

- Four commenters stated that the proposal appropriately addresses the stated purpose;
- Two commenters stated the proposal would not provide any cost savings;
- One court stated that three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation. Another court stated that this time would be sufficient if the final version of the forms is provided to the court at least 30 days before the effective date to allow time for courts to update their procedures and train staff.
- Two commenters stated that the proposal will work for courts of various sizes.
- Two commenters shared their thoughts about implementation requirements and how the proposal would work for courts of different sizes. Their responses are included below in Fiscal and Operational Impacts.

Alternatives considered

In response to comments received about form FL-324, the committee considered whether to separate the requirements for professional and nonprofessional supervised visitation providers into two different forms. Because Family Code section 3200.5 mandates the use of *Declaration of Supervised Visitation Provider* for professional providers and does not require nonprofessional providers to sign the form, the committee decided that the nonprofessional qualifications must be removed from form FL-324. Therefore, the committee decided to propose *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)) for optional use.

Fiscal and Operational Impacts

The impact to the courts includes costs to accept and review new forms FL-324(NP) and FL-324(P) submitted by providers of supervised visitation and remove references to form FL-324 from local rules and training materials One local court identified the implementation requirements as "updating the case management system, internal procedures, and notifying staff." The other court that responded added other implementation requirements, including configuring the forms as confidential based on the content and name on the form and creating email notices and other internal publications to advise judicial officers, Family Court Services, and Court Operations about the changes to the standard and forms. On balance, these implementation costs are outweighed by the benefit to judicial officers that the provider was qualified to make the report regarding the parent-child contact for the supervised visit at the time the report was submitted to the court.

Attachments and Links

1. Cal. Stds. Jud. Admin., standard 5.20, at pages 10–13
2. Forms FL-324(NP), FL-324(P), and revoked form FL-324, at pages 14–16

3. Chart of comments, at pages 17–31
4. Link A: Senate Bill 368 (Stats. 2011, ch. 471), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB368&search_keywords=*

Standard 5.20 of the California Standards of Judicial Administration is amended, effective January 1, 2021, to read:

Standard 5.20. Uniform standards of practice for providers of supervised visitation

(a) * * *

(b) Definitions

~~Family Code section 3200 defines the term "provider" as including any individual or supervised visitation center that monitors visitation. Supervised visitation is contact between a noncustodial party and one or more children in the presence of a neutral third person.~~For purposes of this standard, the following definitions apply:

(1) A "nonprofessional provider," as defined in Family Code section 3200.5, is any person who is not paid for providing supervised visitation services.

(2) A "professional provider," as defined in Family Code section 3200.5, is any person who is paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency.

(3) A "provider," as defined in Family Code section 3200, includes any individual who functions as a visitation monitor, as well as supervised visitation centers.

(4) "Supervised visitation" is contact between a noncustodial party and one or more children in the presence of a neutral third person.

(5) A "TrustLine provider," is a professional supervised visitation provider who is registered on TrustLine, a database that is administered by the California Department of Social Services.

(c) * * *

(d) Qualifications of nonprofessional providers

~~A "nonprofessional provider" is any person who is not paid for providing supervised visitation services.~~ Unless otherwise ordered by the court or stipulated by the parties, the nonprofessional provider must:

(1)–(2) * * *

(3) Sign a local court form or *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)) stating that all requirements to be a nonprofessional provider have been met.

(e) Qualifications of professional providers

~~A "professional provider" is any person paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency.~~ The professional provider must:

(1)–(9) * * *

(10) ~~Meet the training requirements stated in (f); and~~ Complete a Live Scan criminal background check, at the expense of the provider or the supervised visitation center or agency, before providing visitation services;

(11) ~~Sign a declaration or *Declaration of Supervised Visitation Provider* (form FL-324) stating that all requirements to be a professional provider have been met.~~ Be registered as a TrustLine provider under chapter 3.35 (commencing with section 1596.60) of division 2 of the Health and Safety Code. Notwithstanding any other law, a person is ineligible to be a professional provider if the California Department of Social Services either:

(A) Denies that person's TrustLine registration under Health and Safety Code sections 1596.605 or 1596.607; or

(B) Revokes that person's TrustLine registration under Health and Safety Code section 1596.608;

(12) Meet the training requirements listed in (f);

(13) Sign a *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)) stating that all requirements to be a professional provider have been met; and

(14) Sign a separate, updated form FL-324(P) each time the professional provider submits a report to the court.

(f) Training for professional providers

~~(1) Each court is encouraged to make available to all providers informational materials about the role of a provider, the terms and conditions of supervised~~

~~visitation, and the legal responsibilities and obligations of a provider under this standard.~~

~~(2)~~(1) ~~In addition,~~ Before providing services, professional providers must ~~receive~~ complete 24 hours of training, including at least 12 hours of classroom instruction in the following subjects:

(A)–(G) * * *

(H) Conflicts of interest, including the acceptance of gifts;

(I)–(K) * * *

(2) Of the 24 hours of training required in (1), the training must include at least:

(A) Three hours on the screening, monitoring, and termination of visitation;

(B) Three hours on the developmental needs of children;

(C) Three hours on issues relating to substance abuse, child abuse, sexual abuse, and domestic violence; and

(D) One hour on basic knowledge of family law.

(3) On or after January 1, 2021, to complete the required training in child abuse reporting laws under (1)(B), a professional provider must complete an online training required for mandated reporters that is provided by the California Department of Social Services. This mandatory online training is not intended to increase the total of 24 hours of training required in (1).

(g)–(q) * * *

(r) Informational materials; procedures

(1) Each court is encouraged to make available to all providers informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider under this standard.

(2) By January 1, 2022, each court must develop and adopt local rules that establish procedures for processing and maintaining:

(A) *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)), along with the professional provider's original report required in (j)(3) of this standard; and

(B) The nonprofessional supervised visitation provider's declaration regarding qualifications, whether the provider uses the court's local form or *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)).

SUPERVISED VISITATION PROVIDER *(Name and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*:	*DRAFT:*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*Not approved by the Judicial Council*
PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	*07/31/2020*
DECLARATION OF SUPERVISED VISITATION PROVIDER (NONPROFESSIONAL)	CASE NUMBER:

1. **Purpose.** I submit this form to declare that *(check all that apply):*
   - a. ☐ I am not being paid to provide supervised visitation services.
   - b. ☐ I am in compliance with all mandatory requirements for a nonprofessional provider of supervised visitation as defined in Family Code section 3200.5 and standard 5.20 of the Standards of Judicial Administration.
   - c. ☐ I am in compliance with the alternative qualifications specified in 2b.
2. **Qualifications** *(complete a or b):*
   - a. ☐ *Standard qualifications.* I meet the qualifications to provide nonprofessional supervised visitation services under Family Code section 3200.5 as follows *(check all that apply):*
     - (1) ☐ I have no record of a conviction for child molestation, child abuse, or other crimes against a person.
     - (2) ☐ I will not be transporting the child.
     - (3) ☐ I will be transporting the child by automobile and I have proof of automobile insurance.
     - (4) ☐ I agree to adhere to and enforce the court order regarding supervised visitation.
     - (5) ☐ There is no current or past court order in which I (the nonprofessional provider) was the person being supervised.
   - b. ☐ *Alternative qualifications.* I meet other qualifications to provide nonprofessional supervised visitation services, as follows *(check all that apply):*
     - (1) ☐ The court has ordered other qualifications and I meet those qualifications *(see attached copy of the court order).*
     - (2) ☐ The parties have stipulated (agreed) to different qualifications and I meet those qualifications *(see attached copy of the parties' stipulation (agreement), which was approved and signed by the court).*

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 DECLARANT)

NOTICE: Additional requirements may apply to be able to serve as a nonprofessional supervised visitation provider. See Standard 5.20 of the Standards of Judicial Administration.

SUPERVISED VISITATION PROVIDER *(Name and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*:	*DRAFT:* *Not approved by the Judicial Council* *07/31/2020*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	
DECLARATION OF SUPERVISED VISITATION PROVIDER (PROFESSIONAL)	CASE NUMBER:

1. **Purpose.** I submit this form to declare that I comply with all mandatory requirements for professional providers of supervised visitation under Family Code section 3200.5 and standard 5.20 of the Standards of Judicial Administration.
2. **Type of submission.** I am *(check a or b)*:
   a. ☐ completing this form before I provide initial supervised visitation services in the case.
   b. ☐ updating this form and attaching an original report of the supervised visitation that I monitored.
      (1) The report is dated *(specify date)*:
      (2) ☐ Copies of the report were also sent to all parties and their attorneys ☐ and the attorney for the child.
3. I am paid to provide supervised visitation services as an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency.
4. **Qualifications.** I meet the qualifications listed in Family Code section 3200.5(d) for this position as follows *(check all that apply)*:
   a. ☐ I am 21 years of age or older.
   b. ☐ I have no record of a conviction for driving under the influence (DUI) within the last five years.
   c. ☐ I have not been on probation or parole for the last 10 years.
   d. ☐ I have no record of a conviction for child molestation, child abuse, or other crimes against a person.
   e. ☐ I have proof of automobile insurance for transporting the child.
   f. ☐ I have had no civil, criminal, or juvenile restraining orders within the last 10 years.
   g. ☐ There is no current or past court order in which I am the person being supervised.
   h. ☐ I agree to speak the language of the party being supervised and of the child, or I will provide a neutral interpreter over the age of 18 years who is able to do so.
   i. ☐ I agree to adhere to and enforce the court order regarding supervised visitation.
   j. ☐ I completed a Live Scan criminal background check before providing services.
   k. ☐ I am registered as a TrustLine provider.
5. **Training.** I meet the training requirements under Family Code section 3200.5(d) as follows *(check all that apply)*:
   a. ☐ I completed 24 hours of training, including at least 12 hours of classroom instruction in all required subjects.
   b. ☐ I completed the California State Department of Social Services' online training course required for mandated reporters.

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 DECLARANT)

NOTICE: See standard 5.20 of the California Standards of Judicial Administration for further requirements that may apply.

Form Adopted for Mandatory Use
Judicial Council of California
FL-324(P) [Rev. January 1, 2021]

SUPERVISED VISITATION PROVIDER *(Name and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:	
DECLARATION OF SUPERVISED VISITATION PROVIDER	CASE NUMBER:

1. As a: ☐ professional provider ☐ nonprofessional provider,
   I submit this form to indicate compliance with all applicable requirements for a provider of supervised visitation as defined under Family Code section 3200.5. All of the following requirements are necessary to meet the qualifications under Family Code section 3200.5.
2. ☐ I declare that I am a professional provider of supervised visitation and I am paid for providing supervised visitation services as an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency and I meet the qualifications under Family Code section 3200.5 as follows *(check all that apply):*
   - ☐ I am 21 years of age or older.
   - ☐ I have no record of a conviction for driving under the influence (DUI) within the last five years.
   - ☐ I have not been on probation or parole for the last 10 years.
   - ☐ I have no record of a conviction for child molestation, child abuse, or other crimes against a person.
   - ☐ I have proof of automobile insurance for transporting the child.
   - ☐ I have had no civil, criminal, or juvenile restraining orders within the last 10 years.
   - ☐ There is no current or past court order in which I am the person being supervised.
   - ☐ I agree to speak the language of the party being supervised and of the child, or I will provide a neutral interpreter over the age of 18 years of age who is able to do so.
   - ☐ I agree to adhere to and enforce the court order regarding supervised visitation.
   - ☐ I meet the training requirements set forth under Family Code section 3200.5(d).
3. ☐ I declare that I am a nonprofessional provider of supervised visitation and I am not being paid to provide supervised visitation services.
   - ☐ I meet the qualifications under Family Code section 3200.5 as follows *(check all that apply):*
     - ☐ I have no record of a conviction for child molestation, child abuse, or other crimes against a person.
     - ☐ There is no current or past court order in which I am the person being supervised.
     - ☐ I agree to adhere to and enforce the court order regarding supervised visitation.
     - ☐ I will be transporting the child. ☐ I will not be transporting the child.
       - ☐ I will be transporting the child and I have proof of automobile insurance.
   - ☐ The court has ordered or the parties have stipulated to different qualifications *(see attached).*

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 DECLARANT

NOTICE: See standard 5.20 of the California Standards of Judicial Administration for further requirements that may apply.

Form Approved for Optional Use
Judicial Council of California
FL-324 [New January 1, 2014]

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	Andrea Armstrong Supervised Professional Monitor	AM	See comments on specific provisions below.	See responses to specific comments below.
2.	Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	A	No specific comment.	No response required.
3.	California Association of Supervised Visitation Service Providers by Debbie Comstock, Board Chair El Cajon	A	See comments on specific provisions below.	See responses to specific comments below.
4.	California Partnership to End Domestic Violence by Christine Smith, Public Policy Coordinator Sacramento	AM	The proposal addresses its stated purpose and seems straightforward to fill out. However, we are concerned about the requirements of potential supervisors not needing attached evidence to support their assertions, including proof of a clean background check. Without this requirement, this could be an area ripe for conflict and further discovery demands. We recommend requiring attached evidence be attached to support assertions where appropriate.	No response required. Providers who do not have a "clean background check" will not be listed in the Trustline state registry of qualified care providers. By completing the *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P) that the provider is registered as a Trustline provider, that person's assertion can be verified through a search on the Trustline web site.
5.	Gary Cyr Orange County	AM	See comments on specific provisions below.	See responses to specific comments below.
6.	The Executive Committee of the Family Law Section of the California Lawyers Association	A	No specific comment.	No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
	(FLEXCOM) by Saul Berkovitch Director of Governmental Affairs			
7.	Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	AM	See comments on specific provisions below.	See responses to specific comments below.
8.	Los Angeles County Department of Children and Family Services and Office of County Counsel	N/I	There are no concerns with the proposed changes as they are being made to conform with AB 1165.	No response required.
9.	Rich Moscowitz, MSW Corona	N	See comments on specific provisions below.	See responses to specific comments below.
10.	Orange County Bar Association by Scott B. Garner, President Newport Beach	A	No specific comment.	No response required.
11.	Rally Family Visitation Services of Saint Francis Memorial Hospital by Sonia Melara, Executive Director San Francisco	A	See comments on specific provisions below.	See responses to specific comments below.
12.	Safe Haven Child Visitations by Therran Todd Robinson Torrance	A	I absolutely agree with the proposed changes! I do however, believe there needs to be a 'Governing Board' overseeing all Professional Providers. Professional Providers should be occasionally Audited for report accuracy, professionalism, and ethical guidelines. Lastly, trainings for Professional Providers should be treated as Trade/Vocational	No response required. The proposed changes would likely require action from the California Legislature. The proposed changes would require action from the California Legislature.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Schooling, like Pharmacy Technicians, Behavioral Therapist, etc. There needs to be a proper credentialing website, just like the BACB website (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.bacb.com%2Frbt%2F&data=02%7C01%7CGabrielle.Selden%40jud.ca.gov%7Cee120015b6384442be1208d80bd10da2%7C10cfa08a5b174e8fa245139062e839dc%7C0%7C0%7C637272339790587991&sdata=riZ1Q91lbCDlAi9ytRWS34heuIaKjqDBYY5xcL8l%2BdQ%3D&reserved=0). There has to be proper training programs in place, to ensure generalized Standards across all Professional Providers.	Providers of supervised visitation are encouraged to check with their local court to determine if the court has any guidance or requirements regarding meeting training requirements for standard 5.20. For example, some courts that maintain a list of professional supervised visitation providers may require that professional providers complete only trainings conducted by the Judicial Council or by those individual or organizations that have worked closely with the Judicial Council's Access to Visitation Grant Program. Professional providers may contact the Access to Visitation Grant Program in the Judicial Council's Center for Families, Children & the Courts for any questions about trainings.
13.	Superior Court of Orange County Family Law Division Orange	N/I	Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide cost savings? If so,	No response required. No response required.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			please quantify. No. 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? • Case Management system Create a new event code for the filing, making sure it is configured as a confidential document based on the content and name. • Family Court Services (FCS) Inform all staff of the amended rule and new form. • Training Judicial officers to be informed of the amended rule and new form via memorandum. Case Processing and Courtroom Operations to be informed at their monthly meeting and by weekly email Blast of the new form, event code and purpose.	No response required. No response required. No response required.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months is sufficient time for implementation. How well would this proposal work in courts of different sizes? • The impact in small courts is less, not only because they have less staff members to facilitate the information to, but also the amount of cases where they will apply these changes is potentially small too.	No response required. No response required. No response required.
14.	Superior Court of Riverside County by Susan Ryan	AM	See comments on specific provisions below.	See responses to specific comments below.
15.	Superior Court of San Diego County by Michael Roddy, Executive Director		* The proposal appropriately addresses the stated purpose. * The proposal does not provide cost savings. * The implementation requirements for courts would be updating case management system, internal procedures, and notifying staff. * Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation, provided the final version of the form is	No response required. No response required. No response required. It is the Judicial Council's goal to post the forms to the Judicial Resources Network no later than 30 days before effective date.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff. It appears that the proposal will work for courts of various sizes.	 No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)

All comments are verbatim unless indicated by an asterisk (*).

Standard 5.20		
Commenter	**Comment**	**Committee Response**
Andrea Armstrong Supervised Professional Monitor Thousand Oaks	*The commenter recommends amending subdivision (f)(3) to provide that mandated reporter training must be completed every 5 years.	The committee does not recommend that the Judicial Council amend the standard as proposed. The proposed language is not required by Family Code section 3200.5.
Gary Cyr Orange County	The cost for providers to obtain a live scan is around $40. If the Trustline registration is required at a cost of around $130, which also utilizes a background check with fingerprints, it seems the live scan is redundant.	The Judicial Council is not authorized to change the requirements of the statute. The cost of live scans and Trustline registration were addressed by the California Legislature in Family Code section 3200.5 (c)(11), which requires providers to complete a Live Scan criminal background check, at the expense of the provider or the supervised visitation center or agency, prior to providing visitation services. Further, under section (c)(13)(A), beginning January 1, 2021, each provider must be registered as a TrustLine provider.
Rally Family Visitation Services of Saint Francis Memorial Hospital by Sonia Melara, Executive Director San Francisco	The changes to the 5.20 standards are good as they meet the requirements in the bill. However, there are still a few questions to be answered regarding oversight. The vast majority of providers are independent providers. Who will be responsible for insuring that they have met the minimum training requirements? Who will approve the type of training or trainers?	No response required. Under standard 5.20, each provider of supervised visitation is responsible for ensuring that they have met the minimum training requirements before providing services. Providers of supervised visitation are encouraged to check with their local court to determine if the court has any guidance or requirements regarding meeting training requirements for standard 5.20. For example, some courts that maintain a list of professional supervised visitation providers may require that professional providers complete only trainings conducted by the Judicial Council or by those individuals or organizations

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

Standard 5.20		
Commenter	**Comment**	**Committee Response**
		that have worked closely with the Judicial Council's Access to Visitation Grant Program. Professional providers may contact the Access to Visitation Grant Program in the Judicial Council's Center for Families, Children & the Courts for any questions about trainings.
Superior Court of Orange County Family Law Division Orange	Should the standard be amended to require courts to have a local rule to handle form FL-324? Is there an alternative that your court would suggest? • Standard 5.20(r) (2) indicates "By January 1, 2022, each court must develop local rules that establish procedures for processing and maintaining form FL-324, along with the professional provider's original report required by (j)(3) of this standard." The proposed changes meet the needs of the court and allow time to develop local rules. • In the alternative the court will act to properly maintain and incorporate the form to cases when used, as described in a previous question regarding implementation requirements.	No response required.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

Form FL-324		
Commenter	**Comment**	**Committee Response**
California Association of Supervised Visitation Service Providers by Debbie Comstock, Board Chair El Cajon	Requiring an FL-324 form to be attached to each court report reinforces that there is accountability of a Provider to meet all the mandated requirements for Standard 5.20. Each time a report is filed, that Provider is reaffirming their commitment to the professionalism being expected in this service.	No response required to the commenter's statement.
	We would encourage the Courts to be mindful of some attempts to submit reports by Providers who have not obtained the necessary training as outlined by the Standards. As an Organization invested in providing quality, affordable training we are still facing opposition within the State from Providers who do not believe the training mandates are necessary or really required.	No response required to the commenter's statement.
	We would further ask that there be support of the different court jurisdictions to lead through the process of providing a list by the courts of the names of Providers. While we recognize that Courts do not endorse Providers, they are able to hold to accountability to all the training requirements including the FL-324 concerning training requirements. We would hope that there would be some consistency between court jurisdictions regarding how often and how these forms are submitted along with any other requirements to "raise the bar" in the professionalism of Supervised Visitation Services	No response required, as this does not relate to the requirements of Family Code section 3200.5.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-18
Family Law: Changes to Supervised Visitation Standard and Form (Amend Cal. Stds. Jud. Admin, standard 5.20, revise form FL-324)
All comments are verbatim unless indicated by an asterisk (*).

California Association of Supervised Visitation by Debbie Comstock, Board Chair El Cajon (continued)	We would further ask that there be some consideration of support for an oversite group within the State who could receive reports of providers who are negligent in providing their services established through Standard 5.20. This could include, but not be limited to, writing and providing minimum security procedures prior to visits occurring. Demonstrate and document a comprehensive intake and screening that identifies that the Provider can determine the nature and degree of risk for each case. We would further ask that there begin to be consideration of the qualifications of those individuals in the State who are providing the required training for providers. Would support a demonstrable means that the trainer has experience, is able to articulate an understanding of the Standards through curriculum based content reflecting evidence informed or evidence based instruction practice, as well that significant parts of the training be in person where there is opportunity for participants to demonstrate learning skills and competency skills in their profession.	The proposed changes are not within the purview of the Judicial Council, but would require action from the California Legislature. The proposed changes are not within the purview of the Judicial Council, but would require action from the California Legislature.
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	There should be two forms, one for professional supervision providers and one for nonprofessional supervision providers. Having one form for both types of providers can be confusing, and cramping all of the information onto one page, unnecessarily, makes the form much harder to read and use. Moreover, the requirements for the different types of providers are a bit different, and the likely level of education, training, and sophistication between the two types are distinct. There is information the form should request of professional supervisors that is not necessary for nonprofessional supervisors, such as the name and contact information of the organization, if any, that employs the professional supervisor.	The committee agrees with the commenter and recommends that the Judicial Council revoke form FL-324, and adopt *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)) and approve a new, optional form titled and numbered *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)).

	Nonprofessional supervisors are primarily family members or friends of one or both of the parties. They are likely to be known to, and may have contact with, one or both parties outside the context of any supervised visitation. Nonprofessional supervision is not always a choice because costs and lack of availability of professionals force many to go nonprofessional. In some case, parties feel caught between allowing nonprofessional supervisor or unsupervised visitation. Additionally, nonprofessional supervisors may be more likely to have changes in their circumstances over time, which will require the need to amend the form as time goes on. Form FL-324 should be filed for each visitation report. Form FL-324 serves multiple purposes. One is to have a written statement in the record declaring the requirements have been met, including regarding training and background checks. Another is to inform the parties of the same, so they know the provider's responsibilities, like providing an interpreter. Requiring this form to be filed with each visitation report would advise the parties and court of any changes since the original or last form was filed, and would confirm for the record that the statutory requirements have been met for each visit. To best achieve these purposes, form FL-324 should use plain language, and should solicit information from professional supervisors regarding their compliance with visitation requirements during the visits themselves. Since multiple forms FL-324 may be filed, there should be an item added, perhaps at the top of the form, to allow designation whether this is an initial form or an amended form (like with the form CLETS-001). If the form is being submitted with a report, there should be a checkbox for that which includes	The commenter's observation does not require a response. Same as above response. The form is consistent with Family Code section 3200.5(e)(12), which does not require the professional provider to file a *Declaration of Supervised Visitation Provider* for each visitation report. Instead, (e)(12) requires that the professional provider of supervised visitation sign a separate, updated *Declaration of Supervised Visitation Provider* each time the provider submits a report to the court.

	filling in the date of the report. Adopting this modification will be helpful to distinguish between what will likely be multiple copies of the same form for the same provider. Unrepresented parties may find the form overwhelming and having to distinguish the differences between multiple dates of the same form should be made as easy as possible. Form FL-324 should be modified in additional ways to improve usability. As mentioned briefly above, form FL-324 should have space in item 1 that solicits the name and contact information of the organization that employs the professional supervisor. Many agencies employ multiple providers, and it can be useful to know not only the name of each supervisor but also their employer.	The committee agrees with the suggestion to change the form to indicate whether the form is the initial or updated submission, whether a report is attached, and the date of the report. The committee agrees to recommend additional changes to the form to improve usability. The committee does not agree to recommend the change proposed by the commenter. The form meets the requirements of the statute to specify information about the provider. The statute does not require information about the provider's employer or organization. Therefore, the information is not relevant for purposes of the declaration.
Rich Moscowitz, MSW	Will a FL-324 be needed if the report is being emailed to a parent and their attorney because I am not the one filing it with the court? If the FL-324 is going to be required with every report, even if the report is going to be emailed to a parent and their attorney, will the form be provided in a format where the boxes able to be typed in? Most PDF forms don't allow you to type in them. The reason I ask about this is most professional supervisors work from home and while we all have computers and printers many of us do not have scanners. If I fill out a FL324 and sign	Family Code section(e)(12) requires that the professional provider of supervised visitation sign a separate, updated Declaration of Supervised Visitation Provider each time the provider submits a report to the court. Further, standard 5.20 provides that: the original report must be sent to the court if so ordered, or to the requesting party or attorney, and copies should be sent to all parties, their attorneys, and the attorney for the child.

	it and do not have the ability to scan it into the computer how can I email the form to the client or their attorney? Many years ago I faxed a report to the Indio Family Law court only to get a call from a clerk there telling me to have the family or the attorney file it because they would not take faxes from providers because they could not confirm authenticity as to who was faxing it.	Neither the statute nor the standard specify the method for delivering the report to the court, parent, or attorney. Local courts may wish to draft local rules that address the issue of how the mandatory form is to be submitted to the court.
	Will the courts expect the professional monitors to deliver and file the reports and FL-324's in person? I live in Corona. The Riverside Family Law court is only 15 miles away but the Hemet Family Law Court is over 60 miles away and the Indio Family Law court is about 75 miles away.	Same as above response.
	Currently we all have to submit a FL 012 and FL 013 annually to the family law court manager to maintain our names on the monitoring list. These forms have essentially the same info as is being required by the FL324. The only difference is that the "324" asks for the specific case info as to names and case number and the "012 / 013" forms are more generalized.	Local courts will be required to use form FL-324(P) for cases involving professional providers under Family Code section 3200.5(e)(12). Further, rule 5.4 of the California Rules of Court provides that: Each local court may adopt local rules and forms regarding family law actions and proceedings that are not in conflict with or inconsistent with California law or the California Rules of Court. Effective January 1, 2013, local court rules and forms must comply with the Family Rules.
	The FL-324 is just an additional requirement which becomes a time, effort and energy burden to the monitor to fill out with every report and it is also a burden to the court and clerical to have to deal with when a report is filed. It serves no independent purpose or need because to be on the list the FL 012 and FL 013 captures all of that info already.	Effective January 1, 2020, Family Code section 3200.5(e)(12) requires that the professional provider of supervised visitation sign a separate, updated *Declaration of Supervised Visitation Provider* each time the provider submits a report to the court. Thus, the law now requires the form to be used by all professional providers of supervised visitation services.

	Is it reasonable to ask the judicial council to look at the FL 324 and consider dropping the requirement it be submitted with each and every report? If the judicial council is going to keep the "324" as a requirement can the form at least be provided in a "Word" format to make the boxes fill-able and so an original signature can be saved by each provider for repeated use? My recommendation is deleting the requirement for the "324". I have considerable experience working with the court system as I spent 15 years with Riverside CPS and have learned that when new requirements are added to the process rarely if ever is anything deleted from the process. The FL 324 is really not needed. Most judicial officers read our reports which have our name, the names of the parties and the case number on the heading on the first page. In the rare instance I'm called to court to testify in person I'm always asked if I was the one who wrote the report after being sworn in and deemed an expert witness.	The Judicial Council is required to implement the law that professional providers use the Judicial Council's *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)). Judicial Council forms are not made available to the public as Word documents. For the reasons previously stated, the Judicial Council cannot delete the requirement that professional providers use *Declaration of Supervised Visitation Provider*. The form is required by law. See Family Code section 3200.5(e)(12).
Superior Court of Orange County Family Law Division Orange	Recommendation: Header/parties names area; ALL Petitioner/Respondent and Other Parent/Party items can be indented to the left to be consistent with all other JCC forms.	The caption is consistent with current standard Judicial Council forms, which align the last letter (and colon) of the terms Petitioner, Respondent, and Other Parent/Party.
Superior Court of Riverside County by Susan Ryan	While the new form clearly provides the additional requirements for supervised visitation provider, it goes further and mandates non-professionals to use the form to report they have meet Family Code section 3200.5 qualifications. We do not agree that the form should become mandatory. The form or equivalent declaration could be required of the professionals.	The committee agrees with the commenter and recommends that the Judicial Council approve a new, optional form for nonprofessional providers of supervised visitation services.

	The nonprofessional supervisor is such a varied group that self-represented litigants in regard to English literacy or consistency of use, that it may be challenging to get their supervisors to sign this court form.	Training materials and online content in several language created by the Judicial Council's Center for Families, Children & the Courts can help educate the parents and nonprofessional providers about their roles and responsibilities for supervised visitation.

Item number: 20

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Changes to Spousal Support and Property Division Forms
(Approve form FL-349; revise forms FL-157, FL-343, and FL-345)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle Selden 415-865-8085, Gregory Tanaka 415-865-7671

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Item 3 of the annual agenda. Project Summary: Under current law spousal support orders terminate upon the remarriage of the obligee unless there is a stipulated order to the contrary, but as the Court of Appeal noted in In re Marriage of Martin (2019) 32 Cal.App.5th 1195, the Judicial Council form order for spousal support requires that a box terminating support upon remarriage be checked in order for that to apply. The court expressly directed the council to revise the form to make that a mandatory order with a check box only for those stipulating that it not apply.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 24, 2020

Title
Family Law: Changes to Spousal Support and Property Division Forms

Rules, Forms, Standards, or Statutes Affected
Approve form FL-349; revise forms FL-157, FL-343, and FL-345

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 6, 2020

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends approving one new optional form (FL-349) and revising two optional forms (FL-157 and FL-343) relating to spousal support, as well as revising one optional form (FL-345) relating to property division in family law cases.

Proposed revisions to form FL-157 incorporate amendments to Family Code section 4320. The Court of Appeal urged the Judicial Council and local courts to change the language in form FL-343 relating to Family Code section 4337. Form FL-349 responds to the requests of judicial officers for a form to make findings under Family Code section 4320 when issuing or modifying a judgment for spousal or partner support. And proposed revisions to form FL-345 respond to requests made by judicial officers to simplify a specific item relating to the assignment of debts in a judgment.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Revise *Spousal or Partner Support Declaration Attachment* (form FL-157) to:

   (a) Include the amendments to Family Code section 4320 enacted by Assembly Bill 929 (Rubio; Stats. 2018, ch. 938) that describe the types of documented evidence of domestic violence that a party may submit for the court to consider before issuing a judgment for support;

   (b) Change all references of "partner" and "partnership" to "domestic partner" and "domestic partnership," including in the title of the form; and

   (c) Reorganize the form's content to reflect the same construction as that of new form FL-349, and make other clarifying changes;

2. Revise *Spousal, Partner, or Family Support Order Attachment* (form FL-343) to:

   (a) Strike the current language in item 6b and add language that is consistent with the opinion of the Court of Appeal in *In re Marriage of Martin* (2019) 32 Cal.App.5th 1195 that a party should not have to check a box (affirmatively "opt in") to have the support payor's obligation to pay support end on the death of either party or the remarriage or registration of a new domestic partnership of the support payee;

   (b) Include a new item for the court to indicate that its findings on permanent spousal support orders under Family Code section 4320 are either specified on the form itself, included in a numbered attachment, or specified in proposed new form FL-349;

   (c) Reorganize the content of the items under more specific subject headings; and

   (d) Expand the form to three pages to allow more space for the court to make its orders or the parties to write their agreement;

3. Approve optional *Spousal or Domestic Partner Support Factors Under Family Code Section 4320—Attachment* (form FL-349) to serve as the court's mandated findings or the parties' stipulations (the form could serve as an attachment to *Findings and Order After Hearing* (form FL-340), *Restraining Order After Hearing* (CLETS—OAH) (form DV-130), *Judgment* (form FL-180), the parties' written agreement, or another document specified by the parties); and

4. Revise *Property Order Attachment to Judgment* (form FL-345) at item 2c and 2d, to list the debts assigned to petitioner and respondent, respectively; delete the phrase "hold harmless"; and simplify the notice about creditors not being bound by the judgment.

Note: Due to the extensive changes that are proposed to Judicial Council forms FL-157 and FL-343, the proposed changes are not highlighted to ensure that they are easy to read.

Analysis/Rationale

Spousal or Partner Support Declaration Attachment (form FL-157)

This optional form helps a party seeking a judgment for spousal or domestic partner support comply with the factors that the courts must consider before issuing a judgment under Family Code section 4320. The form includes each statutory factor that the court must consider in ordering support and provides space for the party to write facts that address each factor.

The committee recommends revising this form to include the amendments to Family Code section 4320 enacted by AB 929. That bill amended section 4320(i) by describing the types of documented evidence of domestic violence that a party may submit for the court to consider before issuing a judgment for support. Specifically, the documented evidence of domestic violence under section 4320 can include but is not limited to (1) a plea of nolo contendere (no contest), (2) emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, (3) any history of violence against the supporting party by the supported party, (4) issuance of a protective order after a hearing under Family Code section 6340, and (5) a finding by the court during the pendency of a divorce, separation, or child custody proceeding that the spouse or domestic partner has committed domestic violence.

To conform to the changes to Family Code section 4320 enacted by AB 929, a new item is proposed to be added to form FL-157 to include the kind of "documented evidence of any history of domestic violence … between the parties" that is listed in the statute.

Spousal, Partner, or Family Support Order Attachment (form FL-343)

The committee recommends extensive changes to form FL-343, including a major reorganization that will expand the form from two to three pages. As noted below, the major substantive changes proposed to the form relate to the termination of support and findings that the court must make under Family Code section 4320 before ordering support.

Termination of support

This form can be used by the court to make temporary orders and permanent orders in a judgment for spousal or domestic partner support. The committee recommends several changes to this form.

The first change will be to make revisions that are consistent with the opinion of the Court of Appeal in *In re Marriage of Martin* (2019) 32 Cal.App.5th 1195. In that case, the court urged the Judicial Council and local courts to change the language in their forms relating to Family Code section 4337.

Section 4337 provides that "[e]xcept as otherwise agreed by the parties in writing, the obligation of a party under an order for the support of the other party terminates upon the death of either party or the remarriage of the other party."

Form FL-343 currently includes a check box at item 6b to incorporate the language of section 4337. Item 6b provides that "[s]upport must be paid by check, money order, or cash. The support payor's obligation to pay support will terminate on the death of either party, remarriage, or registration of a new domestic partnership of the support payee."

Because section 4337 applies by operation of law, the Court of Appeal stated that a party should not have to check a box (affirmatively "opt in") to have section 4337 apply to the party's case. Instead, the court stated that:

> logic suggests that the parties should affirmatively "opt out" of the statutory requirement in order to waive section 4337's application. We urge the Judicial Council of California and the local courts to revise their forms so that the parties must specifically check a box to waive section 4337's application.

(*In re Marriage of Martin* (2019) 32 Cal.App.5th 1195.)

In response, the committee recommends striking the current language in item 6b and reorganizing the text under a new heading. In the revised form, items 6a and 6b will be added, as later described in the report.

Findings on Family Code section 4320 factors

The second substantive change to the form is to include a new item for the court to indicate that its findings under Family Code section 4320 are either specified on the form itself, included in a numbered attachment, or specified in proposed new form FL-349, attached to form FL-343.

The proposed changes to form FL-343 relating to section 4320 factors (along with proposed new form FL-349 [described below]) will help judicial officers comply with their obligations before issuing or modifying an order for permanent spousal or domestic partner support. Whereas Family Code section 4320 states that the court must "consider" each factor, case law provides that courts must make the findings.

For example, the court in *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278 stated that "the trial judge must both recognize and *apply* each applicable statutory factor in setting spousal support. … Failure to do so is reversible error."

More recently, in *In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, the court held that before terminating spousal support based on the changed circumstances, the trial court was required to issue a statement of decision and make findings on all the statutory factors for ordering spousal support because the court determined that obligor's counsel had made a request for findings.

Reorganization of form

The committee also recommends reorganizing the content of the items under more specific subject headings, breaking content up under the specific heading to make it easier to read and

understand, and adding a third page to allow more space for the court to make its orders or the parties to write their agreement.

Property Order Attachment to Judgment **(form FL-345)**

From time to time, committee staff receive suggestions to improve rules of court and Judicial Council forms from court professionals outside the regular invitation to comment cycle. These suggestions are recorded and considered for inclusion with other relevant proposals.

Staff received requests from judicial officers to change language in form FL-345, at item 2, Division of community property debts, relating to the assignment of debts in a judgment. Rather than circulating the form in its own invitation to comment, the committee recommended including it with forms FL-157 and FL-343 because, like those forms, FL-345 also relates to orders issued in a judgment.

Judicial officers requested that the following crossed out sentences in item 2f be stricken from the form because they are not court orders:

> Each party will be solely responsible for paying the debts assigned to him or her and will hold the other harmless from those debts. ~~The parties understand that the creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party.~~

In response to the comment, the first sentence of 2f will be incorporated into another item on the form. However, the committee sought public comments about whether the form should still include language in the above section to inform the parties about how a creditor is not bound by the judgment, but that the person who has to pay the debt can go back to court and seek an order for reimbursement. Based on comments received, as further described in this report, the committee recommends keeping the information on the form, but modifying it so that it is easier to understand.

Spousal or Domestic Partner Support Factors Under Family Code Section 4320—Attachment **(form FL-349)**

As previously described, this new form will respond to the request of judicial officers who need to make findings before issuing or modifying a judgment for spousal or domestic partner support.

The form will serve as an attachment to *Findings and Order After Hearing* (form FL-340), *Restraining Order After Hearing* (form DV-130), *Judgment* (form FL-180), the parties' written agreement, or another document specified by the party. The form itself will organize all Family Code section 4320 factors under specific headings, instead of organizing by the specific subdivision of Family Code section 4320.

Policy implications

There were no policy implications that contributed to controversy or intense debate within the committee about any form in the proposal. The decision to further expand form FL-157 so that it mirrors the organization of the proposed new court order (form FL-349), made in response to comments, serves the policy of access and fairness to the parties in family court. The changes to the form will help parties overcome barriers to obtaining or modifying a judgment for spousal or domestic partner support. Specifically, the revised form will help parties better organize and present the facts of their case and comply with Family Code section 4320.

The recommended changes to form FL-157 and new form FL-349 also serve a policy goal to modernize management and administration by implementing effective practices to foster the fair, timely, and efficient processing and resolution of all cases. The forms will assist the judicial officer to more easily gather information from the parties seeking a support order and also draft the mandatory findings, thereby increasing court efficiencies. Overall, the committee's recommendations help implement effective practices in a high-volume court such as family law.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the regular spring comment cycle. Nine organizations submitted comments on this proposal. Three commenters agreed with the proposal. Three organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, agreed if the proposal is modified. Three organizations did not specifically indicate a position but suggested changes. No commenters disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached.

Form FL-157

Five organizations commented about this form. Overall, commenters suggested numerous changes to improve the form. The committee agreed with the following and are recommending them, with some modifications:

- Restructure the form to reflect the improvements and additions made to form FL-349 (for example, group the factors by topic rather than Family Code section (a)–(n));
- List *Request for Order* (form FL-300) on the first page as one of the forms to which form FL-157 can be attached;
- Provide more space to answer questions;
- Include an item to allow the declarant to identify as the petitioner, respondent, support payee (party asking for support), or support payor (party being asked to pay support);
- Simplify the sections about domestic violence and criminal convictions so that they are easier to understand;
- Improve the instructions that require the party to attach actual documents to support responses, including how to label the documents;
- Provide an item on the form to indicate how many pages are attached to the form;
- Instead of "Additional Factors" for section 4320 (i–n), separate each of the factors into individual questions;

- Use “domestic partner” throughout the form, instead of “partner” (note: this change applies to all forms in the report); and
- Include that the party can provide information from the income tax return and the ability to save for retirement to describe the standard of living of the marriage or domestic partnership.

Although the committee did agree with a commenter that an information sheet would be helpful to explain how to complete form FL-157 and explain legal terms such as “standard of living,” the committee is unable to recommend that the Judicial Council adopt an information sheet in the current cycle because the form would be a substantive change that would require public comment. However, the committee does recommend that such a form be considered in a future cycle.

Another commenter expressed concern that, with all the references to attachments on the form, there could potentially be 17 attachments to the form. (The issue is the 10-page limit to attachments to declarations under rule 5.111(a). of the California Rules of Court.) The commenter questioned whether the 10-page limit applies to this form. In response, the committee notes that there is no intention to change rule 5.112.1. Like most Judicial Council forms, form FL-157 anticipates the need for some parties to use attachments, but also provides space that may be sufficient to include facts to support each Family Code section 4320 factor. If a party does find that the attachments to the form will exceed the limit, then rule 5.111 allows the party to request permission to extend the length of the declaration.

Form FL-343

Seven commenters provided feedback about the proposed changes to the form. One commenter stated that “[t]he revisions to this form overall are positive and should be helpful to unrepresented litigants.” This commenter, along with others, then proposed specific changes to improve the form. These changes included:

- Inserting an area where the court can clearly make a finding on the parties’ agreement (such as, “The Court finds that the parties knowingly, intelligently, and voluntarily entered a stipulation”);
- Maintaining the item on the form that provides that “Support must be paid by check, money order, direct deposit, cash, or _____”;
- Maintaining all references to “family support” on the form, because this type of support continues in California;
- Revising all sections of the form to clearly indicate that they relate to either the court’s findings or the parties’ agreements;
- Eliminating item 1 (Temporary Support) because it “is very confusing and out of place”; and
- Providing alternative language for item 6b, which is used by parties to state their agreement to “opt out” and have support continue at the death of either party, remarriage of the supported spouse, or registration of a new domestic partnership.

The committee agreed to incorporate the suggestions listed in the first four of the above bullet points to improve the form. In response to the fifth bullet point, to avoid confusion, the committee recommends adding a notice above item 1 to clarify that the parties or the court must select either item 1 or item 2 to indicate whether the form relates to a request for temporary support (item 1) or a request for permanent orders in a judgment for support (item 2).

As to the sixth bullet point regarding item 6b, one commenter stated that it is confusing because "[i]t lumps all categories together, but a party might agree to pay support after one of the conditions in 6.a., but not another." After considering all comments received about this item, the committee decided to recommend that item 6a and 6b be revised to state:

a. By law, unless the parties otherwise agree in writing, the support payor's obligation to pay support will end when either party dies or the support payee remarries or registers a new domestic partnership.

b. ❑ **Parties' agreement**
The parties agree that the support payor's obligation to pay support will not end as described in 6a. Instead, the support payor's obligation to pay support will continue until *(specify below the terms of your agreement about when the support payor's obligation to pay support will end).*

The changes recommended to 6b will clarify that form FL-343 will itself serve as the written agreement referred to in 6a and under the Family Code. The language in item 6b is also sufficiently open-ended to allow the parties to draft their own conditions.

Form FL-345

Commenters responded to the primary question posed by the committee, which was whether to remove the caveat—in the orders assigning responsibility for payment of community debt—that creditors may not honor the assignment and may seek payment from the other spouse or domestic partner. Judges had wanted it removed because it is technically information, not an order. All commenters who responded to this question stated that the caveat should remain on the form. Others believed it should stay on the form but be written more clearly, especially because self-represented parties may find the concept and the legal terms difficult to understand. For example, the form does not explain the legal phrase "will hold [the other party] harmless." In general, the commenters suggested revising the notice to "convey this concept plainly."

In response, the committee decided to revise items c and d (and the notice), replacing the phrase "will hold the [respondent or petitioner] harmless," with "will not hold the petitioner legally responsible for the debts listed below" and shortening and simplifying the notice under a new item e.

Finally, two technical changes are proposed to item 1.g. in this form. Specifically, the reference to "spouse" is proposed to be expanded to "spouse or domestic partner" and "his or her" is proposed to be deleted to make the sentence gender neutral.

Form FL-349

Three commenters provided feedback about the proposed changes to form FL-349; two supported the form, and one was opposed. The following comments reflect the general feedback:

- "Overall, the addition of this form is welcome and necessary. The form fills a crucial gap in the way that orders on spousal support are made by allowing for the findings laid out by the judge, which would benefit the court making the decision (to have to reason it through), as well as the parties and reviewing courts (to understand why the court made its order) and future courts hearing modification requests. The form helps to prevent missing or inappropriately minimizing statutory factors, which is more likely to happen when using local forms, individual lists, or other tools. There is no reason for this form not to be mandatory."

- "This document was created to aid the judicial officers and stating findings. This form is odd and unlike any other findings form used in Family Law. Rather than provide checkboxes for findings as you would see, for example, in FL 341(B) Child Abduction Orders. This form would probably not be utilized since the judges would need to attach multiple documents if the allotted space under each section was insufficient. [¶] The committee should receive feedback from judicial officers before pursuing this form."

- "Good idea. Form to be used as attachment to FL-343 cross-referenced to Form 343 item 2.d.(2)."

In response to the comment in the second bullet point, the committee notes that the required findings under Family Code section 4320 are far more complicated than the findings under Family Code section 3048, which are specified in *Child Abduction Prevention Order Attachment* (form FL-341(B)). Both forms allow the court to attach documents to specify terms of the orders, but attachments are not required in either form. Proposed new form FL-349 can be used by the court or by the parties who have a stipulation. Other than this comment, the recommendation to adopt the form with modifications is supported.

Two of the above commenters suggested specific changes to the form, which the committee incorporated into the form recommended for approval by the Judicial Council. Some of the recommendations follow:

1. Add the phrase "or the parties stipulate" where appropriate to reflect that the form can be used by the court to make findings or by the parties as their agreement;

2. Title the form *Spousal or Domestic Partner Support Factors Under Family Code Section 4320—Attachment*, removing the term "findings" for the same reason as in item 1;

3. Simplify the party designations from "the supported party" and the "supporting party" to "the party asking for support" and "the party being asked to pay support (or the "other party");

4. Include an entry on page 1 to clarify which party is asking for support and which is being asked to pay support.

5. Organize the form under section titles, as follows:

   a. Section 1: ❑ Findings ❑ Stipulations About Both Parties
   b. Section 2: ❑ Findings ❑ Stipulations About the Party Asking for Support
   c. Section 3: ❑ Findings ❑ Stipulations About the Party Being Asked to Pay Support
   d. Section 4: ❑ Findings ❑ Stipulations About Other Factors

6. Reorganize some factors under different headings—for example, move "Goal to be self-supporting" under section 2 because it relates only to the party who is asking for support, include an entry for "tax consequences" for each of the parties, and move "Documented history of domestic violence" under the section for both parties;

7. Simplify and make the item about misdemeanor and felony convictions easier to understand;

8. Add an item to reference Family Code section 4320(d), which was inadvertently omitted from the form that circulated for comment;

9. Revise the information about "earning capacity" to better reflect the language in the Family Code;

10. Revise "Care for children" to include the preliminary question about whether there were children in the care of the party asking for support;

11. Provide more blank space to complete the items that require an explanation; and

On balance, the committee believes that the above revisions to form FL-349 improve the ability of the court and the parties to present a more complete analysis of the mandatory factors under Family Code section 4320.

Alternatives considered

Form FL-343

The committee considered different ways to revise the form before proposing the specific language to respond to the suggestions from the court in *In re the Marriage of Martin*. Because of the clear direction from the court, the committee did not consider delaying the proposed changes to a future cycle.

The committee also considered removing references to "family support" from the form because of the changes made to the Internal Revenue Code with the enactment of the Tax Cuts and Jobs

Act (TCJA) of 2018.[1] For federal tax purposes, family support used to be treated like spousal support (taxable as income to the recipient and tax deductible to the payor). After December 31, 2018, initial orders for spousal support are no longer taxable as income to the recipient and tax deductible to the payor for federal purposes. Modifications of spousal support, however, will maintain pre-TCJA tax treatment, unless the parties otherwise expressly agree in writing.

Although the federal tax laws changed relating to spousal and family support, state law did not change. California Revenue and Taxation Code was not amended to reflect the new federal tax treatment of spousal support. Thus, spousal support (or domestic partner support) and family support will continue to be taxable as income to the recipient and tax deductible to the payor for state tax purposes after December 31, 2018. So, despite the change to the federal tax laws, the committee decided to maintain references on the form to "family support" because the form could still be used by a party seeking an initial order for family support for *state* tax purposes. Similarly, it might be used to modify support orders.

Forms FL-157 and FL-345

The committee considered proposing changes to these optional forms in a later cycle but believed that combining them with the proposed changes to form FL-343 was appropriate.

Fiscal and Operational Impacts

The committee anticipated that this proposal would result in minor costs incurred by the courts to revise the form, train staff, and create new codes for case management programs. In response to the question about impacts, some courts responded that the operational impacts would be minimal or would require courts to:

- Revise workshop presentations of the Self-Help Center and Facilitator's Office;
- Advise the clerks in the front and back offices that additional information is a part of the forms;
- Increase review time by the clerks and judicial officers because the forms will most likely include attachments;
- Revise procedures for Judgments and Request for Orders; and
- Update case management systems.

Generally, the above costs would likely be outweighed by the time saved by the court in obtaining the information necessary to make appropriate orders and findings.

[1] The Tax Cuts and Jobs Act (Pub.L. No. 115-97 (Dec. 22, 2017) 131 Stat. 2054) amended the spousal support provisions of the Internal Revenue Code (IRC) by repealing the income tax deduction to the person who pays spousal support under a divorce or separation instrument. In addition, the new law repeals the corresponding inclusion of spousal support in the gross income of the recipient. These amendments apply to (1) any divorce or separation instrument executed after December 31, 2018, and (2) any modification of a divorce or separation instrument that expressly provides that the amendments made by this section of the IRC apply to such modifications.

Attachments and Links

1. Forms FL-157, FL-343, FL-345, and FL-349, at pages 13–31
2. Chart of comments, at pages 32–66.
3. Link A: *In re the Marriage of Martin*, *https://law.justia.com/cases/california/court-of-appeal/2019/e069481.html*
4. Link B: Assem. Bill 929, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB929*

PETITIONER: RESPONDENT:	CASE NUMBER:

SPOUSAL OR DOMESTIC PARTNER SUPPORT DECLARATION ATTACHMENT

☐ ***Declaration for Default or Uncontested Judgment*** **(form FL-170)** ☐ ***Supporting Declaration for Attorney's Fees and Costs Attachment*** **(form FL-158)**

☐ ***Request for Order*** **(form FL-300)**

☐ **Other** *(specify):*

1. **Spousal or domestic partner support.**
   a. I am the *(specify all that apply):*
      (1) ☐ petitioner ☐ respondent.
      (2) ☐ support payee (party asking for support) ☐ support payor (party being asked to pay support).
   b. I request that the court *(check all that apply)*
      (1) ☐ enter a judgment for spousal or domestic partner support for ☐ petitioner ☐ respondent.
      (2) ☐ modify the judgment for spousal or domestic partner support for ☐ petitioner ☐ respondent.
      (3) ☐ deny the request to modify the judgment for spousal or domestic partner support.
      (4) ☐ terminate jurisdiction to award spousal or domestic partner support to ☐ petitioner ☐ respondent.
2. ☐ **Attorney fees and costs.** I request that the court *(check one)*
   a. ☐ order my attorney fees and costs to be paid by ☐ my spouse or domestic partner ☐ a joined party *(specify):*
   b. ☐ deny the request for attorney fees and costs.

SECTION 1: FACTS ABOUT BOTH PARTIES

3. **Length of marriage or domestic partnership**(Family Code section 4320(f))
   a. (1) Date of marriage:
      (2) Date of separation:
      (3) Time from date of marriage to date of separation:..... _____ years _____ months
   b. (1) Date domestic partnership was registered:
      (2) Date of separation:
      (3) Time from date of registration of the domestic partnership to date of separation: _____ years _____ months
   c. If applicable, total combined years and months for the marriage (a(3)) and the domestic partnership (b(3))..... _____ years _____ months

4. **Standard of living of the marriage or domestic partnership** (Family Code section 4320(a)) ☐ See Attachment 4
   The standard of living established during the marriage or domestic partnership was *(describe, for example, information from your income tax return, type and frequency of vacations, value of home and other real estate, value of investments, type of vehicles owned, credit card use or nonuse, ability to save for retirement):*

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5. **Age and health of the parties** (Family Code section 4320(h))
   a. The age of the party asking for support is:
   b. The age of the party being asked to pay support is:
   c. The health condition of the party asking for support is *(describe):* ☐ See Attachment 5c
   d. The health condition of the party being asked to pay support is *(describe):* ☐ See Attachment 5d

6. **Documented history of domestic violence** (Family Code section 4320(i)) ☐ See Attachment 6
   The court will consider all documented evidence of any history of domestic violence between the parties or perpetrated by either party against either party's child, including but not limited to the following:
   a. A plea of nolo contendere ("no contest").
   b. Emotional distress resulting from domestic violence against the party asking for support by the party being asked to pay support.
   c. Any history of violence against the party being asked to pay support by the party asking for support.
   d. A *Restraining Order After Hearing* (form DV-130).
   e. A finding by a court as part of a case involving divorce, separation, or a child custody proceeding, or any other proceeding in family court in which the court has found that the spouse or domestic partner committed domestic violence.
   f. Other evidence of any history of violence between the parties.
   Attach to this form copies of the documents that you want the court to consider. Label them "Attachment 6."

7. **Documented evidence of criminal conviction** (Family Code section 4320(m))
   a. ☐ **Felony conviction of the party asking for support**
   The party being asked to pay support requests that the court find that the party asking for support is prohibited by law from receiving support (including medical, life, or other insurance benefits or payments) under Family Code section 4324.5 because:
   (1) The party asking for support was convicted of a violent sexual felony or domestic violence felony against the party being asked to pay support within five years after the conviction (and any time served in custody, on probation or on parole); and
   (2) The petition for divorce was filed within five years after the spouse's or domestic partner's conviction (and any time served in custody or on parole).
   b. ☐ **Misdemeanor conviction of the party asking for support** ☐ See Attachment 7b
   (1) There is a rebuttable presumption that the party asking for support is prohibited from receiving support from the party being asked to pay support under Family Code section 4325 because:
   (A) The party asking for support was either convicted of a domestic violence misdemeanor against the party being asked to pay support in this case or convicted of a misdemeanor against the other party that resulted in a term of probation under Penal Code section 1203.097*)*; and
   (B) The conviction was entered by the court within five years before the petition for divorce was filed (or the conviction was entered at any time during the divorce case).
   (2) Based on a preponderance of the evidence,
   (A) ☐ The party being asked to pay support asks the court to find that the presumption has not been rebutted.
   (B) ☐ The party asking for support asks the court find that the presumption has been rebutted.
   Attach to this form a declaration and documents that you want the court to consider. Label them "Attachment 7b"

PETITIONER: RESPONDENT:	CASE NUMBER:

SECTION 2: FACTS ABOUT THE PARTY ASKING FOR SUPPORT

8. **Earning capacity** (Family Code section 4320(a)(1)

a. The marketable skills (training, job skills, and work history) of the party asking for support *(describe):* ☐ See Attachment 8a

b. The current job market for the job skills of the party asking for support is *(specify):* ☐ See Attachment 8b

c. The time and expenses required for the party asking for support to acquire the appropriate education and training to develop the skills for the job market described in (b) *(specify):* ☐ See Attachment 8c

d. The possible need for retraining or education to acquire other, more marketable skills or employment *(specify):* ☐ See Attachment 8d

e. Indicate the extent to which the party asking for support is able to earn enough money to maintain the standard of living established during the marriage or domestic partnership.

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9. **Earning capacity** (Family Code section 4320(a)(2)) ☐ See Attachment 9

   a. The party asking for support ☐ has ☐ has not had periods of unemployment because of the time needed to attend to domestic duties. *(Complete (b) if there were periods of unemployment.)*

   b. Specify the extent to which the present or future earning capacity of the party asking for support is impaired by periods of unemployment to devote time to domestic duties during the marriage or domestic partnership.

10. **Contributions to the education and training of the party being asked to pay support** ☐ See Attachment 10

   a. The party asking for support ☐ did ☐ did not contribute to the education, training, career position, or license of the party being asked to pay support *(If the party asking for support did contribute, complete item b below.)*

   b. Specify the extent to which the party asking for support contributed to the education, training, career position, or license of the party being asked to pay support.

11. **Care for children** (Family Code section 4320(g)) ☐ See Attachment 11

   a. The party asking for support ☐ has ☐ has not had periods of unemployment to care for the children of the marriage or domestic partnership. *(Complete (b) if there were periods of unemployment.)*

   b. The party asking for support ☐ is ☐ is not able to be gainfully employed without unduly interfering with the interests of the children in the care of the party asking for support *(specify):*

12. **Needs of the party asking for support** (Family Code section 4320(d)) ☐ See Attachment 12

   Specify the needs of the party asking for support based on the standard of living established during the marriage or domestic partnership, as described in question 4.

13. **Assets and debts** (Family Code section 4320(e)) ☐ See Attachment 13

   a. The assets, including separate property, of the party asking for support are *(specify):*

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b. The debts, including separate property, of the party asking for support are *(specify):*

14. **Tax consequences** (Family Code section 4320(j)) ☐ See Attachment 14
The immediate and specific tax consequences for the party asking for support are (specify):

15. **Goal to become self-supporting** (Family Code section 4320(*l*)) ☐ See Attachment 15

Notice: When ordering spousal or domestic partner support in a judgment, the court may advise (warn) the party asking for support to make reasonable efforts to become self-supporting within a reasonable period of time, considering all the factors in Family Code section 4320. The court may decide that this warning (often called a "Gavron" warning) is not appropriate if the case involves a marriage or domestic partnership of long duration (about 10 years or longer). Generally, failure to become self-supporting after the court gives the warning can result in an order to reduce the amount of the support award.

a. This ☐ is ☐ is not a marriage or domestic partnership of long duration (ten years or more).

b. The party asking for support ☐ is ☐ is not self-supporting *(If not, specify below what steps, if any, the party asking for support will take to become self-supporting within a reasonable period of time):*

c. Other *(specify below):*

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SECTION 3: FACTS ABOUT THE PARTY BEING ASKED TO PAY SUPPORT

16. **Ability to pay support / earning capacity** (Family Code sections 4320(a) and (c)) ☐ See Attachment 16

a. The earned income of the party being asked to pay support is *(specify):* ☐ unknown

b. The unearned income of the party being asked to pay support is *(specify):* ☐ unknown

c. This party ☐ does ☐ does not have the ability to earn enough money to maintain the standard of living described in 4 for both spouses or domestic partners. *(If not, explain why below.)*

d. Based on the above responses, this party ☐ is ☐ is not able to pay spousal or domestic partner support.

17. **Needs of the party being asked to pay support** (Family Code section 4320(d)) ☐ See Attachment 17

Specify the needs of the party being asked to pay support based on the standard of living established during the marriage or domestic partnership, as described in question 4.

18. **Assets and debts** (Family Code section 4320(e)) ☐ See Attachment 18

a. The assets, including separate property, of the party being asked to pay support are *(specify):*

b. The debts, including separate property, of the party being asked to pay support are *(specify):*

19. **Tax consequences** (Family Code section 4320(j)) ☐ See Attachment 19

The immediate and specific tax consequences for the party being asked to pay support *(specify):*

PETITIONER: RESPONDENT:	CASE NUMBER:

SECTION 4: BALANCE OF HARDSHIPS AND OTHER FACTORS

20. **Balance of hardships** (Family Code section 4320(k)) ☐ See Attachment 20
Describe below any special financial difficulties to the party if ordered to pay support compared to the hardship to the party who is asking for support. *(For example, consider the ability of a party to pay support versus the need of the other other party to receive financial support).*

21. Indicate below other factors, if any, that the court should consider that are just and equitable in ordering spousal or domestic partner.(Family Code section 4320(n)) ☐ See Attachment 21

Number of pages attached: _____

PETITIONER: RESPONDENT:	CASE NUMBER:

SPOUSAL, DOMESTIC PARTNER, OR FAMILY SUPPORT ORDER ATTACHMENT

TO ☐ ***Findings and Order After Hearing*** **(form FL-340)**
☐ ***Restraining Order After Hearing (CLETS-OAH)*** **(form DV-130)**
☐ **Parties' Stipulation (Written Agreement) dated** *(specify):* _____
☐ ***Judgment*** **(form FL-180)**
☐ **Other** *(specify):*

☐ **THE COURT FINDS** ☐ **THE PARTIES STIPULATE (AGREE)**

Specify if this attachment is about an order for temporary support or a judgment for permanent support (check either 1 or 2 below).

1. ☐ **This attachment relates to temporary spousal or domestic partner support.**
   a. ☐ This order attachment modifies an order or agreement for temporary support entered on *(date):*
   b. **Net income.** The parties' monthly income and deductions are as follows *(complete (1), (2), or both):*

	Total gross monthly income	Total monthly deductions	Total hardship deductions	Net monthly disposable income
(1) Petitioner: ☐ receiving TANF/CalWORKS	$	$	$	$
(2) Respondent: ☐ receiving TANF/CalWORKS	$	$	$	$

   c. ☐ A printout of a computer calculation of the parties' financial circumstances is attached for all required items not filled out above *(for temporary support only).*

2. ☐ **This attachment relates to a judgment for permanent spousal or domestic partner support.**
   a. ☐ This order attachment modifies a judgment entered on *(date):*
   b. ☐ The parties were married for *(specify):* months and years.
   c. ☐ The parties were registered as domestic partners or the equivalent for *(specify):* months and years.
   d. Family Code section 4320 factors *(check either (1) or (2) below, then complete (3)).*
      (1) ☐ The parties agreed to some or all of the factors as stated in *Spousal or Domestic Partner Support Declaration Attachment* (form FL-157) or in a similar written declaration filed with the court.
      (2) ☐ The court considered the parties' declarations and supporting documents regarding each Family Code section 4320 factor as stated in testimony, in *Spousal or Domestic Partner Support Declaration Attachment* (form FL-157), or in a similar written declaration filed with the court.
      (3) The parties' agreement, or the court's findings, on Family Code section 4320 factors are *(specify):*
         (A) ☐ included in Attachment 2d(3)(A).
         (B) ☐ included in *Spousal or Domestic Partner Support Factors Under Family Code Section 4320—Attachment* (form FL-349).
         (C) ☐ specified below:

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2. e. ☐ The parties are both self-supporting.
   f. ☐ The standard of living established during the marriage or domestic partnership was *(describe):* ☐ See Attachment 2f.

   g. ☐ The Court finds that the parties have knowingly, intelligently, and voluntarily entered into a stipulation.

3. **Jurisdiction**
   a. ☐ The issue of support for the ☐ petitioner ☐ respondent is reserved for later determination.
   b. ☐ The court terminates jurisdiction over the issue of support for the ☐ petitioner ☐ respondent.
   c. ☐ The court's jurisdiction over the issue of support will end on *(specify date):*

4. **Support amount and payment terms**
   a. The ☐ petitioner ☐ respondent must pay to the ☐ petitioner ☐ respondent
      as ☐ temporary ☐ permanent ☐ spousal support ☐ family support ☐ domestic partner support
      the following amount each month: $
   b. Support payments will begin *(date):*
   c. Support payments are:
      (1) ☐ payable through *(specify end date):*
      (2) ☐ payable on the: day of each month.
      (3) ☐ Other *(specify):*

   d. ☐ Support must be paid by ☐ check, money order, or cash ☐ other method *(specify):*

5. **Earnings assignment**
   a. ☐ An earnings assignment for the support will issue as requested by ☐ petitioner ☐ respondent.
      Note: The payor of spousal, family, or domestic partner support is responsible for the payment of support directly to the recipient until support payments are deducted from the earnings, and for any support not paid by the assignment.

   b. ☐ Service of the earnings assignment is stayed provided the payor is not more than *(specify number):* days late in paying spousal, family, or domestic partner support.

6. **Termination (end) of support**
   a. By law, unless the parties otherwise agree in writing, the support payor's obligation to pay support will end when either party dies or the support payee remarries or registers a new domestic partnership.

   b. ☐ **Parties' agreement**
      The parties agree that the support payor's obligation to pay support will not end as described in 6a. Instead, the support payor's obligation to pay support will continue until *(specify below the terms of your agreement about when the support payee's obligation to pay support will end):*

PETITIONER: RESPONDENT:	CASE NUMBER:

7. ☐ **Family support orders.** This order is for family support.
   a. Both parties must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this order.
   b. The parents must notify the court of any change of information submitted within 10 days of the change by filing an updated form.
   c. A *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached to the court order.

8. ☐ **Notice of change of employment**
   The parties must inform each other in writing within 10 days of any change of employment, and include the new employer's name, address, and telephone number.

9. ☐ **Duty to become self-supporting**
   a. Notice: It is the goal of this state that each party must make reasonable good-faith efforts to become self-supporting as provided in Family Code section 4320. Failure to make reasonable good-faith efforts may be one of the factors considered by the court as a basis for modifying or terminating support.
   b. ☐ The ☐ petitioner ☐ respondent should make reasonable good-faith efforts to become self-supporting.
   c. ☐ Other *(specify):*

10. ☐ **Attachment to *Restraining Order After Hearing* (form DV-130)**
    a. This form is attached to *Restraining Order After Hearing (CLETS-OAH) (Order of Protection)* (form DV-130).
    b. The orders issued on this form (FL-343) do not expire on termination of the restraining orders issued on form DV-130.

11. ☐ **Other orders or agreements *(specify):***

(1) ☐ The parties agree that the support payor's obligation to pay support will not end as described in 6a, but will continue on the death of either party, remarriage, or registration of a new domestic partnership of the supported party.

(2) ☐ The parties agree that the support payor's obligation to pay support will end on *(specify):*

NOTICE: Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

THIS IS A COURT ORDER.

PETITIONER: RESPONDENT:	CASE NUMBER:

PROPERTY ORDER ATTACHMENT TO JUDGMENT

1. **Division of community property assets**
   a. ☐ There are no community property assets.
   b. ☐ The court finds that the net value of the community estate is less than $5,000 and that the ☐ petitioner ☐ respondent cannot be found. Under Family Code section 2604, the entire community estate is awarded to the ☐ petitioner ☐ respondent.
   c. ☐ The petitioner will receive the following assets: ☐ See Attachment 1c.

   d. ☐ The respondent will receive the following assets: ☐ See Attachment 1d.

   e. The ☐ petitioner ☐ respondent will be responsible for preparing and filing a *Qualified Domestic Relations Order* (QDRO) to divide the following plan or retirement account(s) *(specify):*

   The fee for preparation of the QDRO will be shared as follows:

   f. ☐ Other orders:

   g. ☐ Each spouse or domestic partner will receive the assets listed above as sole and separate property. The parties must execute any and all documents required to carry out this division.

2. **Division of community property debts**
   a. ☐ There are no community property debts.
   b. ☐ All community debts have been paid by the ☐ petitioner ☐ respondent.
   The ☐ petitioner ☐ respondent must reimburse the other party: $
   The payment plan is as follows:

   c. ☐ The petitioner
   (1) is assigned the debts listed below;
   (2) is solely responsible for paying the debts listed below; and
   (3) will not hold the respondent legally responsible for the debts listed below. ☐ See attachment 2c.

Form Approved for Optional Use
Judicial Council of California
FL-345 [Rev. January 1, 2021]

Family Code, §§ 299, 2500–2660
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

2. d. ☐ The respondent
   (1) is assigned the debts listed below;
   (2) is solely responsible for paying the debts listed below; and
   (3) will not hold the petitioner legally responsible for the debts listed below. ☐ See attachment 2d.

e. **Notice regarding division of community property (items c. and d.):**
Creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a *Request for Order* (form FL-300) to seek reimbursement from the party who was assigned the debt.

f. The court reserves jurisdiction to divide any community debts not listed here and to enforce the terms of this judgment. This enforcement may include ordering a defaulting party to reimburse the other party for failing to follow the terms of this judgment.

g. ☐ Other orders:

3. ☐ **Equalization of division of property and debt orders.** To equalize the division of the community property assets and debts, the ☐ petitioner ☐ respondent must pay to the other the sum of: $, payable as follows:

4. **Separate property**
   a. ☐ The court confirms the following assets or debts as the sole separate property, or sole responsibility, of the petitioner:

   b. ☐ The court confirms the following assets or debts as the sole separate property, or sole responsibility, of the respondent:

5. ☐ The settlement agreement between the parties dated: is attached and made a part of this judgment.

6. ☐ **Sale of property.** The following property will be offered for sale and sold for the fair market value as soon as a willing buyer can be found, and the net proceeds from the sale will be ☐ divided equally ☐ other *(specify):*

7. ☐ Other orders *(specify):*

PETITIONER: RESPONDENT:	CASE NUMBER:

SPOUSAL OR DOMESTIC PARTNER SUPPORT FACTORS UNDER FAMILY CODE SECTION 4320—ATTACHMENT

TO ☐ ***Findings and Order After Hearing*** **(form FL-340)**
☐ ***Restraining Order After Hearing (CLETS-OAH)*** **(form DV-130)**
☐ **Parties' Stipulation (Written Agreement)** *(dated):*
☐ ***Judgment*** **(form FL-180)**
☐ **Other** *(specify):*

SECTION 1: ☐ **FINDINGS** ☐ **STIPULATIONS ABOUT BOTH PARTIES**

1. Petitioner is the ☐ support payee (party asking for support) ☐ support payor (party being asked to pay support).
2. Respondent is the ☐ support payee (party asking for support) ☐ support payor (party being asked to pay support)
3. **Standard of living of the marriage or domestic partnership** (Family Code section 4320(a)) ☐ See Attachment 3
   The standard of living established during the marriage or domestic partnership was *(describe):*

4. **Length of marriage or domestic partnership** (Family Code section 4320(f))
   a. (1) Date of marriage:
      (2) Date of separation:
      (3) Time from date of marriage to date of separation:..... _____ years _____ months
   b. (1) Date domestic partnership was registered:
      (2) Date of separation:
      (3) Time from date of registration of the domestic partnership to date of separation: _____ years _____ months
   c. If applicable, total combined years and months for the marriage (a(3)) and the domestic partnership (b(3))..... _____ years _____ months

5. **Age and health of the parties** (Family Code section 4320(h))
   a. The age of the party asking for support is:
   b. The age of the party being asked to pay support (the other party) is:
   c. The health condition of the party asking for support is: *(describe):* ☐ See Attachment 5c

   d. The other party's current health condition is *(describe):* ☐ See Attachment 5d

Form Approved for Optional Use
Judicial Council of California
FL-349 [New January 1, 2021]

Family Code, §§ 270, 2030, 2032, 4320, 6344, 7640
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

6. **Documented history of domestic violence** (Family Code section 4320(i)) ☐ See Attachment 6

a. There ☐ is ☐ is not documented evidence of a history of domestic violence *(specify):*

(1) ☐ between the parties.

(2) ☐ perpetrated by: ☐ petitioner ☐ respondent against *(specify)*: ☐ petitioner ☐ respondent ☐ either party's child.

(3) ☐ perpetrated by: ☐ petitioner ☐ respondent against *(specify)*: ☐ petitioner ☐ respondent ☐ either party's child.

b. ☐ The court received the following documented evidence of domestic violence in this case:

(1) ☐ A plea of nolo contendere ("no contest").

(2) ☐ Emotional distress resulting from domestic violence perpetrated against the party asking for support by the party being asked to pay support.

(3) ☐ Any history of violence against the party being asked to pay support by the party asking for support.

(4) ☐ A *Restraining Order After Hearing* (form DV-130).

(5) ☐ A finding by a court as part of a case involving divorce, separation, or a child custody proceeding, or other proceeding in family court in which the court has found that the spouse or domestic partner has committed domestic violence.

(6) ☐ Other *(specify):*

7. **Criminal conviction of the party asking for support**(Family Code section 4320(m)) ☐ See Attachment 7

a. ☐ This item does not apply to the party asking for support.

b. ☐ **Felony conviction of the party asking for support**

The party asking for support is prohibited by law from receiving support from the party being asked to pay support (including medical, life, or other insurance benefits or payments) under Family Code section 4324.5 because:

(1) The party asking for support was convicted of a violent sexual felony or domestic violence felony against the party being asked to pay support within five years after the conviction (and any time served in custody, on probation or on parole); and

(2) The petition for divorce was filed within five years after the spouse's or domestic partner's conviction (and any time served in custody, on probation, or on parole.

c. ☐ **Misdemeanor conviction of the party asking for support**

(1) There is a rebuttable presumption that the party asking for support is prohibited from receiving support from the party being asked to pay support under Family Code section 4325 because:

(A) The party asking for support was either convicted of a domestic violence misdemeanor against the party being asked to pay support in this case or convicted of a misdemeanor against that party which resulted in a term of probation under Penal Code section 1203.097*)*; and

(B) The conviction was entered by the court within five years before the petition for divorce was filed (or the conviction was entered at any time during the divorce case).

(2) Based on a preponderance of the evidence, the party asking for support ☐ has ☐ has not rebutted the presumption in (b)(1), as follows:

PETITIONER: RESPONDENT:	CASE NUMBER:

SECTION 2: ☐ **FINDINGS** ☐ **STIPULATIONS** **ABOUT THE PARTY ASKING FOR SUPPORT**

8. **Earning capacity** (Family Code section 4320(a)(1)

a. The marketable skills (training, job skills, and work history) of the party asking for support *(describe):* ☐ See Attachment 8a

b. The current job market for the job skills of the party asking for support is *(specify):* ☐ See Attachment 8b

c. The time and expenses required for the party asking for support to acquire the appropriate education and training to develop the skills for the job market described in (b) *(specify):* ☐ See Attachment 8c

d. The possible need for retraining or education to acquire other, more marketable skills or employment *(specify):* ☐ See Attachment 8d

e. Indicate the extent to which the party asking for support is able to earn enough money to maintain the standard of living established during the marriage or domestic partnership. ☐ See Attachment 8e

PETITIONER: RESPONDENT:	CASE NUMBER:

9. **Earning capacity** (Family Code section 4320(a)(2)) ☐ See Attachment 9

   a. The party asking for support ☐ has ☐ has not had periods of unemployment because of the time needed to attend to domestic duties. *(Complete (b) if there were periods of unemployment.)*

   b. Specify the extent to which the present or future earning capacity of the party asking for support is impaired by periods of unemployment to devote time to domestic duties during the marriage or domestic partnership.

10. **Contributions to the education and training of the party being asked to pay support** ☐ See Attachment 10

   a. The party asking for support ☐ did ☐ did not contribute to the education, training, career position, or license of the other party. *(If the party asking for support did contribute, complete item b below.)*

   b. Specify the extent to which the party asking for support contributed to the education, training, career position, or license of the party being asked to pay support.

11. **Care for children** (Family Code section 4320(g)) ☐ See Attachment 11

   a. The party asking for support ☐ has ☐ has not had periods of unemployment to care for the children of the marriage or domestic partnership. *(Complete (b) if there were periods of unemployment.)*

   b. The party asking for support ☐ is ☐ is not able to be gainfully employed without unduly interfering with the interests of the children in the care of the party asking for support *(specify):*

12. **Needs of the party asking for support** (Family Code section 4320(d)) ☐ See Attachment 12
   Specify the needs of the party asking for support based on the standard of living established during the marriage or domestic partnership, as described in item 3.

13. **Assets and debts** (Family Code section 4320(e)) ☐ See Attachment 13

   a. The assets, including separate property, of the party asking for support are *(specify):*

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b. The debts, including separate property, of the party asking for support are *(specify):*

14. **Tax consequences** (Family Code section 4320(j)) ☐ See Attachment 14
The immediate and specific tax consequences for the party asking for support are (specify):

15. **Goal to become self-supporting** (Family Code section 4320(*l*)) ☐ See Attachment 15
In considering the goal that the party asking for support will be self-supporting in a reasonable period of time, the court finds, or the parties stipulate, that:

a. This ☐ is ☐ is not a marriage or domestic partnership of long duration (about ten years or more).

b. The party asking for support ☐ is ☐ is not currently self-supporting.

c. ☐ Advisement of the duty to become self-supporting.

(1) The party asking for support is advised to make good-faith efforts to become self-supporting in a reasonable period of time.

(2) Failure to make good-faith efforts to become self-supporting can be considered a change in circumstances that could result in a reduction in the amount of spousal or domestic partner support.

(3) The plan for the party to become self-supporting, including the expectation of what is a "reasonable period of time to become self-supporting" is *(specify):*

d. Other *(specify below):*

PETITIONER: RESPONDENT:	CASE NUMBER:

SECTION 3: ☐ **FINDINGS** ☐ **STIPULATIONS** **ABOUT THE PARTY BEING ASKED TO PAY SUPPORT**

16. **Ability to pay support / earning capacity** (Family Code sections 4320(a) and (c)) ☐ See Attachment 16

a. The earned income of the party being asked to pay support is *(specify):* ☐ unknown

b. The unearned income of the party being asked to pay support is *(specify):* ☐ unknown

c. This party ☐ does ☐ does not have the ability to earn enough money to maintain the standard of living described in 3 for both spouses or domestic partners. *(If not, explain why below.)*

d. Based on the above responses, this party ☐ is ☐ is not able to pay spousal or domestic partner support.

17. **Needs of the party being asked to pay support** (Family Code section 4320(d)) ☐ See Attachment 17

Specify the needs of the party being asked to pay support based on the standard of living established during the marriage or domestic partnership, as described in item 3.

18. **Assets and debts** (Family Code section 4320(e)) ☐ See Attachment 18

a. The assets, including separate property, of the party being asked to pay support are *(specify):*

b. The debts, including separate property, of the party being asked to pay support are *(specify):*

19. **Tax consequences** (Family Code section 4320(j)) ☐ See Attachment 19

The immediate and specific tax consequences for the party being asked to pay support are *(specify):*

PETITIONER: RESPONDENT:	CASE NUMBER:

SECTION 4: ☐ **FINDINGS** ☐ **STIPULATIONS** **ABOUT OTHER FACTORS**

20. **Balance of hardships** (Family Code section 4320(k)) ☐ See Attachment 20
Describe below any special financial difficulties to the party being asked to pay support if ordered to pay support compared to the hardship to the party who is asking for support.

21. Indicate other factors that the court, or the parties, determined to be just and equitable to consider in ordering spousal or domestic partner. (Family Code section 4320(n)) ☐ See Attachment 21

Number of pages attached: _____

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	A	See comments on specific provisions below.	See committee response below.
2.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Saul Berkovitch Director of Governmental Affairs Sacramento	A	No specific comment.	No response required.
3.	Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	AM	The titles of forms FL-157, FL-343, and FL-349 should use "domestic partner" rather than just "partner" as that is what is used throughout and is more specific to that legal arrangement as noted in item 1 in form FL-157. Partner is a generic word but it, as opposed to "domestic partner," seems to have a particular meaning under the law for purposes of these forms. These forms would also benefit from clarification of at the top of who is the declarant, and who are the supported and supporting parties. For instance, for form FL-157: "I am the Petitioner/Respondent in this matter," preceded or followed by a check box. While these forms are not intended to be siloed documents filed by themselves, with the number of attachments and different documents involved it would be better for unrepresented litigants to have that clarification at the top.	The committee agrees to revise the form to use the term "domestic partner," instead of "partner." The committee agrees with this suggestion and has incorporated it, with modifications, into the amendments that it is recommending for adoption.

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Moreover, the forms would benefit from larger fonts for the number titles, and the section headings, as well as more consistency in use of terms and language throughout. See comments on specific provisions below.	The committee agrees with these suggestions and has incorporated them, with amendments, into the amendments that it is recommending for adoption.
4.	Harriett Buhai Center for Family Law by Rebecca L. Fischer Staff Attorney Los Angeles	AM	See comments on specific provisions below.	See responses to provisions below.
5.	Orange County Bar Association by Scott B. Garner, President Newport Beach	A	No specific comment.	No response required.
6.	Superior Court of Orange County	N/I	* The proposal appropriately addresses the stated purpose. Would the proposal provide cost savings? If so, please quantify. FL-157 - No. FL-343 - Yes. Based on the revisions there is less possibility of a Court order being overturned by the Court of Appeal resulting in additional processing in the originating court to make it part of the file. FL-345 - No FL-349 - No What would the implementation requirements be for courts—for example, training staff	No response required. No response required. No response required. No response required. No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			(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? • SHC/Facilitators Office Revise workshops presentations to include changes in the forms. This change may impact the amount of time spent on presentation and also on time spent completing the forms with the litigants. • Clerk's Office (both offices; front and back and OFS assignees) Staff will need to be advised that additional information is part of the forms, and why. Also, time reviewing the documents when submitted in person, by mail or thru OFS will increase as well. • Courtroom Staff to be advised that additional information is part of the forms, so when they are reviewing them for accuracy or while preparing calendars for their judicial officers, they can capture the appropriate information needed for the hearing on calendar. • Judicial officers to be reminded of changes	No response required. No response required. No response required. No response required.

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Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			and will need to spend more time reviewing and analyzing the additional facts on the forms. • Procedures to be revised; o Judgments o Request for Order Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months would be sufficient time. How well would this proposal work in courts of different sizes? This proposal is intended to benefit both the court and the litigants, with a significant impact on time spent processing the documentation submitted by the litigants and produced by the Court. The impact as far as time and resources will depend on the size of each court.	No response required. No response required. No response required.
7.	Superior Court of Riverside County by Susan Ryan	N/I	See comments on specific provisions below.	See responses to provisions below.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	N/I	* The proposal appropriately addresses the stated purpose. * The proposal does not provide cost savings.	No response required. No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			* The implementation requirements for courts would be updating case management system, internal procedures, and notifying staff. * Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation, provided the final version of the form is provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff. It appears that the proposal will work for courts of various sizes.	No response required. Generally, forms approved by the Judicial Council are posted to the Judicial Resources Network site within three months before their effective date. No response requires.
9.	Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee	AM	The proposal would not provide any cost savings. It would also have very little operational impact. The proposal would not require any significant additional training for staff or any need to revise processes and procedures. It would not have any significant impact on case management systems. No obvious issues are raised by making the proposal effective three months after JC approval. The proposal does not have any significant difference in its impact from small, medium or large courts. See comments on specific provisions below.	No response required. No response required. See responses to specific provisions below.

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)

All comments are verbatim unless indicated by an asterisk (*).

Form FL-157		
Commenter	**Comment**	**Committee Response**
Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	On the FL-157 form, just need Attachment 13, not separate attachments for 13a-f. How does the reference to all the attachments on the form affect the 10-page limit? The issue is now potentially having approximately 17 attachment pages to Form-157 (attachments 4, 5a, 5b, 6, 7, 8, 10, 10b, 11, 12b, 12c, 13a-e, 14, etc.). Is there a page limit for the various attachments? Have we now done away with the 10-page limit as set forth in Rule 5.112.1 of the California Rules of Court because one can now provide an unlimited amount of information on various attachments to Form FL-157?	The committee agrees with this suggestion and has incorporated it into the amendments that it is recommending for adoption. The attachments listed on form FL-157 do not change rule 5.112.1. Like most Judicial Council forms, form FL-157 anticipates the need for some parties to use attachments, but also provides space which may be sufficient to include facts to support each Family Code section 4320 factor. If a party does find that the attachments to the form will exceed the limit, then rule 5.111 allows the party to request permission to extend the length of the declaration.
Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	This form would greatly benefit from an FL-157-INFO form. This form is essentially asking a litigant to make their case using the law as to why spousal support should or should not be ordered. Asking an unrepresented litigant to do that without an explanation of what the terms in the code sections mean or what is really being asked does not help them or the court in making a correct determination. While FL-157 is being revised to reflect the changes to the considerations on domestic violence, this form also reflects the improvements and additions that have been made to FL-343 and created in FL-349. The documents to which this form is attached should include the FL-300-Request for Order as one of the options particularly as this form is explicitly referred to in the FL-300 on page 3.	Because recommending a new information sheet for form FL-157 would be an important substantive change to the proposal, the committee believes public comment should be sought. The committee may consider this suggestion in a future cycle. The committee agrees to recommend revising form FL-157 to reflect the improvements made to forms FL-343 and FL-349. The committee agrees with these suggestions and has incorporated it into the amendments that it is recommending for adoption.

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
All comments are verbatim unless indicated by an asterisk (*).

Form FL-157		
Commenter	**Comment**	**Committee Response**
	In general, Items #5-13 would benefit from having the descriptions of the factors as their titles rather than the code sections that will likely have no meaning to an unrepresented litigant. The new FL-349 uses this method and it is even more important in this document, which is a declaration of a party rather than a document completed by the court.	The committee agrees with these suggestions and has incorporated it into the amendments that it is recommending for adoption.
	It would be helpful if it was clear to the declarant whether they should attach actual documents to support their responses and if those should be labeled as an attachment to that question.	The committee agrees with these suggestions and has incorporated it into the amendments that it is recommending for adoption.
	Standard of living of the marriage or domestic The marital standard of living is a threshold determination under Family Code 4320. Unrepresented parties need an information sheet with a clear explanation of what this phrase means in the legal context and where it fits in with the other factors. Without an information sheet on what is marital standard of living the examples provided unfortunately will not be clear enough for an unrepresented party. The examples reflect an implicit wealth that does not have to exist for spousal or partner support to be involved. It may cause an unrepresented litigant who does not see themselves in these examples to believe that it does not apply to them. For example, a declarant could describe information from tax return, which can be used as evidence of the marital standard. Without an information sheet to explain marital standard of living, an unrepresented litigant may not know that this factor is required and may skip it in favor of other questions, which would be to their detriment.	Because recommending a new information sheet for form FL-157 would be an important substantive change to the proposal, the committee believes public comment should be sought. The committee may consider this suggestion in a future cycle. For the current form, the committee recommends including more examples to describe the standard of living.
		The committee agrees with these suggestion and has

Form FL-157		
Commenter	**Comment**	**Committee Response**
	Family Code Section 4320(i) In general, it is always difficult when any form requires an unrepresented litigant to know or refer to a separate code section in order to know what something means. This is another reason why descriptive question titles and having an FL-157-INFO sheet would be helpful. As an example, this question uses the term "documented evidence" where up until now the declarant has been asked to provide any facts in support. Without more information, it is unclear how an unrepresented litigant is supposed to know how or if "documented evidence" is different. For example, an unrepresented party is unlikely to know if a separate declaration from them on the history of violence or emotional distress is "documented evidence" and therefore can be attached. In other areas of the form, there have been examples provided to assist with answering the question and this may be an area where that is also necessary. In addition, this question that asks the declarant to actually provide the information. As noted, it is not clear in the other questions whether the declarant should provide supporting evidence for their responses.	incorporated them, with modifications, into the amendments that it is recommending for adoption.
	This question also highlights why having an overview of the number of attachments and the total number of pages at the beginning of the form would be helpful.	The number of pages attached is generally more applicable to the main form to which the forms are attached. If included, the entry for the total pages in Judicial Council forms appears on the last page of the main form. Due to the possibility of a greater number of attachments to the form, the committee recommends an entry "Number of pages attached____" at the end of this form.
	For Line #13(e): The code section uses the word "or other	The committee agrees with the suggestion and has incorporated it into the amendments that it is

Form FL-157		
Commenter	**Comment**	**Committee Response**
	proceeding" but using that literally could be misleading. A finding of domestic violence in a divorce or a child custody case does not necessarily happen in a proceeding under Family Code section 6200 et seq. (DVPA). The use of the term "or other proceeding" implies that the prior court actions are also proceedings under the DVPA. The use of the phrase "a proceeding" or "any proceeding" is clearer and more accurate description of what the declarant is being asked. The description accurately recognizes that the court is not limited to only #13(a)-(e), but because there is no space or an "other" option it may appear on the form as if it only includes the five items. The "other" option is included in the new form FL-349 an should be included here as well. *Additional Factors (Family Code section 4320(j)-(n))* These factors should be separated as individual questions. It is unclear why these factors put together and the declarant is asked to talk about them in a combined space below. These factors are not more or less important than the other lettered considerations as laid out in the statute. They are not subfactors of another factor but individual factors in their own right about which the court must make findings. Separate questions are necessary to help an unrepresented litigant to understand that each of these is a distinct item about which the declaration can give testimony and supporting evidence. This will be difficult to achieve if the questions are put under one number and the declarant is asked to talk about all or some of them together in the space below in one attachment.	recommending for adoption. The committee agrees with the suggestion and has incorporated it into the amendments that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with modifications, into the amendments that it is recommending for adoption.
Superior Court of Orange County	Item 3 in the form has been revised to include information not related to the party's job skills, for that reason the following	The committee agrees with the suggestion and has incorporated it into the amendments that it is

Form FL-157		
Commenter	**Comment**	**Committee Response**
	change is needed: 5 (a) (1) The current job market for the job skills of the supported party described in item 3 (a)(1) is: should be changed to**;** 5 (a) (1) The current job market for the job skills of the supported party described in item 5 (a)(1) is: The proposal would not provide a cost savings.	recommending for adoption. No response required.
Superior Court of Riverside County by Susan Ryan	The new section #13 is awkwardly constructed. Rule FL 4320(i) requires the courts to consider documented evidence of domestic violence. The examples of documentation are listed in item #13 of the form. The form then adds attachment boxes to each example. Question #14 provides a better example of how this subsection should be handled. "The court will also consider all documents evidence of any history of domestic violence before making a judgment for spousal or domestic partner support: a. A plea of nolo contendere ("no contest") b. Emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party. c. Any history of violence against the supporting party by the supported party. d. Issuance of a protective order after hearing under Family Code section 6340. e. A finding by a court during the pendency of a divorce, separation, or child custody proceeding, or other proceeding under Family Code sections 6200–6409, that the spouse or domestic partner has committed domestic violence. List and attached as Attachment #13, the documented evidence	The committee agrees with the suggestion and has incorporated it, with modifications, into the amendments that it is recommending for adoption.

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Form FL-157		
Commenter	**Comment**	**Committee Response**
	of any history of domestic violence that will assist the court in considering the above factor."	
Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee	Item 4 includes a list in the parentheses that is either not necessary, or too limiting. If there are to be examples given, recommend those examples from case law and treatises be included, such as a reference to the parties' "general station in life", ability to save for retirement (Marriage of Kerr) Item 5 did not include items (3) and (4) from current Form item 3 and that are included in FC Sec 4320(a)(1). Propose return those sections from old for item 3 to new form item 5. Item 14 does not include the prohibition of an award of support pursuant to FC Sec. 4324.5. Propose including that. Item 14 Additional Factors includes a single line for 4320(l) without room for any explanation. This is often an important issue and factor and suggest it be given its own line item.	The committee agrees with these suggestions and has incorporated them, with modifications, into the amendments that it is recommending for adoption. However, the committee prefers not to use the phrase "general station in life," as it may cause confusion. The committee agrees with these suggestions and has incorporated them into the amendments that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the amendments that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the amendments that it is recommending for adoption.

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Form FL-343		
Commenter	**Comment**	**Committee Response**
Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	*Family support references should stay since some parties still have family support orders.	The committee recommends retaining the reference to "family support" on the form.
Harriett Buhai Center for Family Law by Rebecca L. Fischer Staff Attorney Los Angeles	While having the form used for both stipulations and for orders after a hearing is reasonable, the set-up of the form makes that process a little confusing. There is now a place to mark in the caption of the form whether the form is being completed as "the court finds" or the "parties stipulate". This seems useful. However, the language in later sections focuses only on court findings. For example, if parties make an agreement that includes stipulating to some or all of the 4320 factors, how do they make that clear in item 2? If they mark one of the boxes under 2d, the language at the start of 2d suggests that the court has made findings even when the court may have never heard the issue.	No response required. The committee agrees with these suggestions to revise the form so that it consistently addresses parties who are using it as a stipulation.
Superior Court of Orange County	Include an area where the Court can clearly make a finding of the parties' agreement; 3 (f) □ The Court finds the parties knowingly, intelligently and voluntarily entered a stipulation. Making changes on forms to ensure litigants understand the	The committee agrees with this suggestion and has incorporated it, with modifications, into the amendments that it is recommending for adoption.

Form FL-343		
Commenter	**Comment**	**Committee Response**
	terms is complicated. The changes as proposed remain confusing, and since and since it has been recognized that majority of litigants are self-represented in Family Law, my recommendation for section 1 - Termination (end) of support is as follows; 6. Parties' Agreement Regarding Termination (end) of support By law, unless the parties otherwise agree in writing, the parties' agreement is as follows: 1. The support payor's obligation to pay support will continue on the death or either party, remarriage, or registration of a new domestic partnership of the supported party. 2. The support payor's obligation to pay support will end on (specify):	The committee agrees with this suggestion and has incorporated it, with modifications, into the amendments that it is recommending for adoption.
	Should references to “family support” be removed from form FL-343? No.	The committee agrees and recommends retaining the reference to “family support” on the form.
	*The proposed changes to FL-343 would provide a cost savings. Yes. Based on the revisions there is less possibility of a Court order being overturned by the Court of Appeal resulting in additional processing in the originating court to make it part of the file.	No response required.

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Form FL-343		
Commenter	**Comment**	**Committee Response**
Superior Court of Riverside County by Susan Ryan	The sentence construction could clarify the parties waiver of the default rule as follows: 6b. __ Parties' agreement. The parties agree that the support payor's obligation to pay support will not end as described in 6a, but: (1) will continue on the death of either party, remarriage, or registration of a new domestic partnership of the supported party. (2) will end on (specify): _____	The committee agrees to recommend revisions to item 6 to make this section easier to understand and complete.
Superior Court of San Diego County by Michael Roddy, Executive Officer	* References to "family support" should not be removed from form FL-343.	The committee agrees and recommends retaining the reference to "family support" on the form.
Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	The revisions to this form overall are positive and should be helpful to unrepresented litigants. At the same time, the fact that the form is optional does not prevent issue such as what happened in Marriage of Martin from happening again so long as local courts continue to allow or in some cases required their own forms. The change of "Stipulated" to "Parties Stipulated" is a helpful change. The form does a good job in adding the distinction between "The Court Finds" and "The Parties Agree", the addition of requirements for the title and date of the written agreement would be more protective of unrepresented litigants. It would be helpful and clearer if the section title "The Court Orders" were in a larger font and was similar to "The Court	No response required. The committee agrees to add space for the parties to include the date of their stipulation. The committee agrees with this suggestion and has incorporated it, with modifications, into the amendments

Form FL-343		
Commenter	**Comment**	**Committee Response**
	Finds" used earlier in the form. *Findings on Family Code section 4320 factors* The statement here should clarify whether these findings are based on the court or based on agreement, as the language about what the court used to determine the factors would not apply in a stipulation. Form FL-349 was created to address concerns with the variances and error that happen when courts go through these required findings. In order to support those efforts, FL-349 should be a required attachment to the form FL-343. Allowing the findings to be listed below or in a separate attachment would merely continue the problems already identified because it does not provide a clear checklist of factors, which the court must go through carefully and systematically. Assuming the form is accepted, there is no reason that is should not be a better option than an attachment or open space below to go through each factor. *Termination (end of) support* This addition would likely address the issue raised in Marriage of Martin. One recommendation for #6(b)(1) is to at the word "and after", so that it is clear that both on and after the death, remarriage or registration support will continue. For Line #10: Attachment to Restraining Order After Hearing (DV-130): The revised version of the information is clear and easier to read than in the current version and is a helpful change.	that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the amendments that it is recommending for adoption Because recommending form FL-349 as a mandatory attachment to form FL-343 would be an important substantive change to the proposal, the committee believes public comment should be sought before either form they are considered for adoption as mandatory form. The committee may consider these suggestions in a future cycle. The committee recommends changing item 6 as follows because it better simplifies the language used in Family Code section 4337: a. By law, unless the parties otherwise agree in writing, the support payor's obligation to pay support will end when either party dies or the support payee remarries or registers a new domestic partnership. b. The parties agree that the support payor's obligation to pay support will not end as described in 6a. Instead, the support payor's obligation to pay support will continue until *(specify below the terms of your*

Form FL-343		
Commenter	**Comment**	**Committee Response**
		agreement about when the support payor's obligation to pay support will end). The notice currently states that failure to make reasonable, good-faith efforts may be one of the factors considered by the court as a basis for modifying or terminating support; however, the committee recommends additional changes to this section to highlight this issue.
	For Line #9(a): Duty to become self-supporting: The notice here should clarify that the failure to make reasonable good faith efforts may be a factor where it is actually ordered by the court.	
Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee	The proposed change was necessary to address issue raised in In Re Marriage of Craig and Martin. This is addressed in item 6. Termination of Support. Some of the reorganization changes are confusing and should be modified or retracted.	The committee recommends retaining the reference to "family support" on the form.
	Item 6. Termination of Support Suggest the following change to be consistent with the statute (FL Sec. 4337.) o Item 6.a. now reads "By law, unless the parties otherwise agree in writing, the support payor's obligation to pay support will end on the death of party, remarriage, or registration of a new domestic partnership of the support payee."	No response required.
	Propose Item 6.a to read: "By law, unless the parties otherwise agree in writing, the support payor's obligation to pay support will end on the death of either party, remarriage of the support payee, or registration of a new domestic partnership of the support payee." Obviously, support does not terminate with remarriage of support payor. Item 6b. is confusing. It lumps all categories together, but a party might agree to pay support after one of the conditions in 6.a., but not another. Suggest it be changed: o [ ] The parties have agreed in writing that the support payor's obligation to	The committee appreciates the commenter's suggestion for improving the form. However, after considering all comments on this item, the committee recommends that item 6 state the following, as it better simplifies the requirements of Family Code section 4337: a. By law, unless the parties otherwise agree in writing, the support payor's obligation to pay support will end when either party dies or the support payee remarries or registers a new domestic partnership. b. The parties agree that the support payor's obligation to pay support will not end as described in 6a. Instead,

Form FL-343		
Commenter	**Comment**	**Committee Response**
	pay support will not end as set forth in item 6.a. The parties have agreed in writing that the support payor's obligation to pay support will continue as provided in [ ] the attached written agreement [ ] as follows: Reorganization changes: First, the changes to the top of the form are confusing. Propose the following: o Eliminate the box below The Court Finds that states the parties stipulate. It is already one of the boxes at the very top of the form. Eliminate the number 1 Temporary Support. This is very confusing and out of place. Net income should be a standalone item, not placed beneath "Temporary spousal or partner support." There is already a box for modification in item 2.a. Perhaps include that this order modifies a temporary support order as new box in item 2. Item 4. Item 4 is the support amount. Item 6.b. in the old form included language that "Support must be paid by check, money	the support payor's obligation to pay support will continue until *(specify below the terms of your agreement about when the support payor's obligation to pay support will end)*. The committee appreciates the commenter's suggestions, however, does not agree with the specific suggestion for revising the form. The reference to findings and stipulation serve as the header for this first section of the form and are not duplicative of the choices above the headers. To better clarify this point, the committee recommends reorganizing the form to clearly indicate that each section of the form relates either to an order or a stipulation. The form separates "Temporary Support" from "Judgment." because there are different requirements when presenting documentation in support of each. For example, a computer printout of the parties' financial condition is not permitted to determine a judgment for support and findings are not required for temporary orders. To further clarify this item, the committee recommends adding check boxes in front of item 1 and item 2, so the form user can specify whether this attachment relates to temporary spousal or domestic partner support or a judgment for spousal or domestic partner support. In addition, the committee recommends that an instruction above item 1 state the party or the court needs to check item 1 or item 2. The committee agrees with the commenter and

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Form FL-343		
Commenter	**Comment**	**Committee Response**
	order, or cash." This language did not carry over from old form. Suggest adding an item 4.d. that provides that that "Support must be paid by check, money order, direct deposit, cash or by_____"	recommends revising the form as suggested, with modifications.
	Item 8. Propose that Notice of change of employment be expanded to include change in other sources of income or wealth.	The committee appreciates the commenter's suggestion, however, the committee recommends revising the form so that the language is consistent with existing Judicial Council forms.
	Item 10. Is somewhat redundant. The top of the form includes a space that this order could be an attachment to a Restraining Order after Hearing. Propose maintain the form as set forth in current form Item 10.	The committee appreciates the commenter's suggestion, however, does not agree that item 10 is redundant. The committee recommends revising the form as proposed to make the form easier to read and highlight the fact that the support orders do not expire upon termination of the restraining orders.
	Should references to family support be removed from FL – 343? No, the references are important given that a party can still seek an initial order for family support for state tax purposes.	The committee recommends that the form retain the reference to family support.

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Form FL-345		
Commenter	**Comment**	**Committee Response**
Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	Yes, keep language (below) on FL-345. Seems clear as-is. The parties understand that the creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party.	The committee recommends that the form be revised to include a more plain-language statement about division of community property debt and creditors.
Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	For Line #2f: The primary question whether or not to remove the caveat in the orders assigning responsibility for payment of debt that creditors will not honor these orders. Judges have wanted it removed because it is technically not an order. While it is not an order and should be presented differently, it should not be removed altogether. The language should be kept with its own checkbox to say that the parties have been or are notified and keep the same language. The fact that creditors do not honor these orders assigning debts is an ongoing problem. As a party, it is difficult to understand why the creditors do not have to follow a court order. Notifying them of the fact that creditors will likely still go after them for unpaid debt is consistent with expecting litigants to understand the order that they "will hold [the other party] harmless" a phrase which uses words that have different meanings in the legal and non-legal context and yet are not explained. For Lines #2c and #2d: While the invitation does not specifically seeking comment on these changes, the changes to 2(c) and 2(d) are helpful. The changes add the attachment checkbox that is used in other lines on the same form, which helps to make it consistent. The other changes are additions that specifically state that the	The committee agrees to retain a notice in the form about creditors not being bound by the judgment, but simplify the language. The committee recommends that the form be revised to provide a plain-language notice about creditors not being bound by the judgment. No response required. The committee agrees with these suggestions and has

Form FL-345		
Commenter	**Comment**	**Committee Response**
	party is assigned the debt listed below, is solely responsible for the debts listed below and will hold the party harmless from the debts in three separate lines are helpful. The last item #2(c)(3) should also say "debts listed below" rather than "the debts" to be clear and consistent with the other two statements.	incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
Harriett Buhai Center for Family Law by Rebecca L. Fischer Staff Attorney Los Angeles	Should the information on current Form FL-345 [regarding creditors/ judgment] continue to be included on the form? Yes. This information is particularly critical to pro per litigants who may be unaware of a judgment's lack of effect on creditors as well as their own rights for seeking reimbursement. It is important for pro per litigants to know that the court would have the authority to address the reimbursement issue. If it should be included, please provide suggestion on the best way to convey the information. The information could be listed at the end of the form as "for information only" or as a "notice", possibly separated in a text box for further contrast, if the language continues to include the information regarding creditors not being bound by the judgment. Other Judicial Council forms provide similar types of notice of potential consequences for not following an order, such as the notice contained at the end of the FL-342 regarding interest. If the focus of the language is on the right for reimbursement, the language could be rephrased as an order for retention of jurisdiction. For example, in section 1 h, the revised draft of the form makes it clear the court reserves jurisdiction to divide any assets that were not listed and enforce the terms of the order.	The committee recommends that the form retain the language regarding creditors. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption. No response required.

Form FL-345		
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	Similar language could be added to section 2f, such as "the court reserves jurisdiction to divide any community debts not listed here and to enforce the terms of this order. This may include ordering a defaulting party to reimburse the other party for failing to follow the terms of this order."	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
Superior Court of Riverside County by Susan Ryan	Should references to "family support" be removed from form FL-343? Family Support should remain in the forms since state tax law still contains provision for family support. Questions about form FL-345: (1) Should the information on the current form FL-345 (underlined below) continue to be included on the form? <u>The parties understand that the creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party.</u> Yes. This statement is useful. The new language in the form does not convey this concept plainly since it states the indebted party "will hold the [other] harmless from the debts." (2) If it should be included, please provide suggestions on the best way to convey the information. The underlined should be included as statement at #2.c.3.	The committee agrees to maintain the reference to "family support" on the form. No response required. See above response.

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Commenter	**Comment**	**Committee Response**
Superior Court of Orange County	Keep the language: Each party will be solely responsible for paying the debts assigned to him or her and will hold the other harmless from those debts. The parties understand that the creditors are not bound by this judgment. If a creditor seek payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party. It has been helpful in the current form and keeping it in the revised proposed form can continue to be useful at later litigation in this case or a civil matter. See Request for Specific Comments below. Questions about form FL-345: 1. Should the information on the current form FL-345 (underlined below) continue to be included on the form? <u>The parties understand that the creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party.</u> Yes. 2. If it should be included, please provide suggestions on the best way to convey the information. Currently FL-345 #2(g) states: <u>Each party will be solely responsible for paying the debts assigned to him or her and will hold the other harmless from those debts. The parties</u>	The committee recommends that the form be revised to provide a plain-language notice about creditors not being bound by the judgment. No response required. See above response. No response required.

Form FL-345		
Commenter	**Comment**	**Committee Response**
	understand that the creditors are not bound by this judgment. If a creditor seek payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party. The revised proposed FL-345 can list this information as 2(g). Keep the language as it can be useful at later litigation in this case or a civil matter. The proposal would not provide a cost savings.	The committee recommends that the form be revised to provide a plain-language notice about creditors not being bound by the judgment.
Superior Court of San Diego County by Michael Roddy, Executive Officer	* The information on the current form FL-345 (underlined below) should continue to be included on the form. The parties understand that the creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party. Given the number of SRLs, it is helpful to include information on the form. We propose that language be included as a notice in item 2 as follows: "Notice: Creditors are not bound by this judgment. If a creditor seeks payment from the party who is not listed as responsible for the debt, that party can file a motion to seek reimbursement from the defaulting party."	The committee recommends that the form be revised to provide a plain-language notice about creditors not being bound by the judgment.
Trial Court Presiding Judges	Should the creditor information on FL 345 continue to be	The committee recommends that the form be revised to

Form FL-345		
Commenter	**Comment**	**Committee Response**
Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee	stated? Yes, the creditor information should continue to be provided. Recommend it be placed parenthetically on FL345 at the end of 2. c. (3) and also at the end of 2. d. (3).	provide a plain-language notice about creditors not being bound by the judgment.

Form FL-349		
Commenter	**Comment**	**Committee Response**
Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	Overall, the addition of this form is welcome and necessary. The form fills a crucial gap in the way that orders on spousal support are made by allowing for the findings laid out by the judge, which would benefit the court making the decision (to have to reason it through), as well as the parties and reviewing courts (to understand why the court made its order) and future courts hearing modification requests. The form helps to prevent missing or inappropriately minimizing statutory factors, which is more likely to happen when using local forms, individual lists, or other tools. There is no reason for this form not to be mandatory. Even in cases where parties are represented, determining the findings from the court on the record or as part of the order can be difficult. The court may not go through the factors in a particular order, may forget to state that certain factors are not applicable, and otherwise engage in ways that are vulnerable to human error. Or a prior hearing may have had no court reporter present, and no settled statement as to what happened. Transcripts and other media may not show clearly what the court said and may include errors. The analysis and steps in the form are a visual written representation of what judges are	Recommending that the Judicial Council adopt the form as mandatory would be a substantive change requiring public comment, absent a legislative mandate. No response required.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	supposed to be doing already. For an appeal, the findings of the court are a critical part of analyzing whether there is an appealable issue. The use of this form will be of particular benefit in understanding a court's rationale behind its order. In family law in particular, where most parties are unrepresented and many are survivors of abuse, litigants should not be stuck battling against "implied findings" where the court has the ability to lay out its findings, and is otherwise required to do so. Requiring the court to take a few extra minutes in laying out its findings could save more time that would otherwise be needed, in the future, to figure out why the court ruled the way it did. Courts interested in protecting their rulings from appeal have nothing to lose and everything to gain from writing their specific findings of fact with regard to spousal support on the record. While it is interesting that the Council wants to encourage the use of this form as an option for stipulations, there are some concerns in doing it as presented. The needs of, and consequences to, unrepresented litigants are a priority when looking at documents to be used in a stipulation. These needs and consequences must be considered particularly where one party is represented and the other is not, leading to an unequal power dynamic. Anytime a form can be used as part of a written agreement, there should be clarity as to the exact document it is being attached to and the date of that document. Here, while the other forms are Judicial Council forms, there is no further explanation as to what the written agreement is titled, date, or what it is for. Adding a line requiring the parties	No response required. The committee agrees with the commenter and recommends that the form be revised to prompt the parties to include the date of their stipulation.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	to name and date the written stipulation would provide clarity for unrepresented litigants. Furthermore, using the "the Court finds" as the only phrase could be confusing because the court is not necessarily making the findings when accepting a stipulation. At best, the court would be signing an order that incorporates agreed-upon findings. A better option would be to add the phrase "The Parties Stipulate (Agree)" as in the updated FL-343.	The committee agrees with the commenter and recommends that the form be revised to also reflect the use of the form as the parties' stipulations.
	The Section Headings are helpful but should be numbered to allow for easier reference and clarity.	The committee recommends that the form include an organization scheme that divides the form into 4 sections ("Section 1, Section 2, Section 3, and Section 4).
	And the form needs to state if and why a factor does not apply, rather than just leaving it blank.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	Goal to be self-supporting Regarding the listed Family Code section 4320 factors, it is unclear why the "Goal to be self-supporting" is listed as item 3 on page 1, before the age and health of the parties, since this section is called "Preliminary Findings" and applies to both parties. There is no reason this factor should not be included somewhere under the heading of "Findings Regarging [sic] the Supported Party." It is helpful that the Family Code Section 4320 subdivisions are right there near each heading.	The committee agrees with the commenter and recommend that the "Goal to be self-supporting" be placed in the section about the supported party.
	Earning capacity (supported) Organizing the factors around those applying to the Supported Party and those applying to the Supporting Party is helpful. It is	No response required.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	great that the form does not simply follow the order of the 4320 subsections (see my earlier comment on FL-157, where this should also be done). *Earning ability & contributions* Each of these factors in Family Code section 4320 are "the extent to which" questions. In other words, it is not just about whether it is or it is not, but about degree. The degree is part of the finding. In Line #7, it is listed as two separate pieces, and then there is a tiny parenthetical direction to explain. In Line #8, there is no directive to explain and it is listed as one statement. If the supported party did contribute that is only the threshold question. There has to be explanation about the extent so that should be clear in the form for both #7 and #8. *Care for children* This is again a compound question, which rests first on the idea that there are children in the supported party's care. That should be a separate subsection question first similar to the way it is laid out in Line #7. It is not clear why for this particular factor only there is an added "if needed use the space below to clarify the finding." We should be encouraging the court to be clear in its findings and the support for those findings. Making the explanation optional and leaving a finding to merely a checkbox does not serve the purpose of making it clear what findings were based on and how the court looked at the facts. *Assets and obligations* As with the other forms, the term "values and balances" is not	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the

Form FL-349		
Commenter	**Comment**	**Committee Response**
	clear. It would also be better to split this into assets and obligations as two separate subsections.	amendments that it is recommending for adoption.
	Other findings regarding the supported party There is no catch-all for other findings under 4320 outside of 4320, subdivision (n), which is "any other factors the court determines just and equitable." The statute does not ask for other findings. This question encourages considerations that may not be allowed and may not be appropriate. If the court finds there are other factors that are just and equitable it needs to identify those factors first and explain why they are just and equitable and then make its findings. There is already a Line #20 which is specific to 4320, subdivision (n), so there is no need for this section about findings without clarification as to the factors they relate to on this issue and what makes those factors just and equitable.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	Earning capacity (supporting) The form would benefit from added space to explain the court's finding here separate from an attachment despite this being a critical threshold issue. The court should explain why it is finding that the party's earning capacity is not sufficient right there in the form as with the other factors.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	Ability to pay support Items 13(b)-(e) are actually factors in determining (a), and should be listed that way rather than as equal facts. While there is space listed below b-d it is again not clear that the court needs to explain what is the basis for its finding after discussing #13e.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	Family Code section 4320, subdivision (c) specifies "earned and unearned income" but that is not reflected in the statements. Line #13b refers to gross income, c to investment income and d to assets and their values and balances.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	It is also not clear why values and balances is being listed as part of the finding when in other places it is part of the parenthetical including in Line #14. The code section only says "assets" and does not use the added words. If "values and balances" are going to be asked for it should be in a consistent way throughout the form and consistent with section 4320 which does not use that term directly.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	In addition, there is nothing in the statute that uses the word "current" to describe these items and in other parts of the form that word is not used. Again, there should be consistency when making factual findings about numbers that the time periods are clear.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	For line #13e, it is not appropriate to have a parenthetical about what a court should describe when making a finding on a party's standard of living. The court should itself explain how it determined the marital standard of living and it may have nothing to do with what the parenthetical asks it to describe (this seems like it was cut and pasted from FL-157 which is a declaration not an order).	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	Other findings regarding the supporting party See comment for Line #11 for this same form. There is no catch-all for additional findings that the court may want to make in 4320. The purpose of this form in part is to keep the	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	court on track with the factors it is supposed to make findings on, not leave an open ended option at the end.	
	Documented history of domestic violence It is nice that it is a separate section but there should be clarification with the other section headings as this and the factors below are related to both parties. Perhaps "Preliminary Findings for Both Parties," then acknowledging this section is for both parties and the following section as well. This is also why it would be good to have numbers for the Sections. This section could also go earlier than the sections on separate findings for the other parties, since for Line #17 it could be a basis for prohibiting support altogether.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	I think it is important for the findings section to include the information about which party or party were the subject of the no contest plea, the restraining order etc. There is also nothing here which asks the court to describe the documented evidence that it admitted or credited or found which is particularly important for findings made based on #16(b)(2) and #16(b)(3) which are less clear and specific.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	The statute asks the court to consider domestic violence "between the parties". While there are situations where there is mutual acts of domestic violence with no dominant aggressor or acts in self-defense this is hardly the norm or the majority. The evidence of domestic violence being perpetrated by either the proposed supported or supporting party so including the details of what documented evidence was found and who is implicated in that evidence is important for parties to know and	Same as above response.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	understand and for use of the findings in appeal or as support. This section is designed to address the additional factors created by Assembly Bill 929. According to the author Senator Rubio, the bill was in part prompted by a case where the perpetrator of abuse was able to use the litigation process to engage in abuse and further acts of coercive control which is something at FVAP we know occurs frequently. Clarity and directness in both what is asked for and what is found is part of the key to addressing these issues.	
	Documented evidence of criminal conviction This is an awkward section because it relies on reference to other code sections rather than description. Under #17(a) there is a line that says "Based on the criminal conviction, described in a". This sentence is a part of "a" so that is confusing. It is also awkward since this would only be relevant if the first sentence checked "is". There is also no room for detail or description after affirming that there is or is not a conviction.	The committee agrees with these suggestions and recommends simplifying this item on the form.
	There needs to be space there to say what is the evidence or what is the conviction and against whom (the supported or supporting party).	The conviction will necessarily relate to the party asking for support. Therefore, the committee recommends simplifying this section accordingly.
	Since the sub-questions in #17(a) and #17(b) both have a threshold question which may or may not make the sub-questions irrelevant, it should be laid out in that way.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
	Tax consequences This is under a section called "Findings on Other Factors." Since this question asks for the tax consequences on each party individually, it is not clear why this could not be separated into	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
All comments are verbatim unless indicated by an asterisk (*).

Form FL-349		
Commenter	**Comment**	**Committee Response**
	and included under the separate headings for Findings Regarding the [ ] Party." This would be more consistent with the organization of the form and allow someone to more easily find the findings specific only to each person. *Balance of hardships for each party* It would be more effective if the court were required to actually state what if finds to be the hardships of each party or if the court thinks they are none. Sentences which say "On balance the hardships of each party are the same," or, "On balance the level of hardship to each party is appropriate" may be findings but say nothing for a litigant who should have the information about the basis for the finding. *Other factors* This title should be changed to be more consistent with the language of the code section. It should be "Other factors which the court finds just and equitable" to inform litigants that this where the court can and will add additional factors that they may not have been aware of but that there has to be an argument for why the court thinks these additional factors are just and equitable. This clarifies to some extent that this is something that could be pushed back on or appealed if the party believes it does not meet those definitions.	The committee recommends revising this item on the form to prompt the court or the parties to describe the analysis used in the balancing of the hardships to the parties. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.
Superior Court of Riverside County by Susan Ryan	This document was created to aid the judicial officers and stating findings. This form is odd and unlike any other findings form used in Family Law. Rather than provide checkboxes for findings as you would see, for example, in FL 341(B) Child	The required findings under Family Code section 4320 are more complicated than the findings under Family Code section 3048. Form FL-341(B) also allows the court to attach documents to specify terms of the orders,

SPR20-19
Family Law: Changes to Spousal Support and Property Division Forms (Revise forms FL-157, FL-343, and FL-345; approve form FL-349)
All comments are verbatim unless indicated by an asterisk (*).

Form FL-349		
Commenter	**Comment**	**Committee Response**
	Abduction Orders. This form would probably not be utilized since the judges would need to attach multiple documents if the allotted space under each section was insufficient. The committee should receive feedback from judicial officers before pursuing this form.	but attachments are not required in either form. The committee is attempting to provide a form for use by the court or by the parties who have a stipulation. Based on the comments received, the recommendation to adopt the form with modifications is supported.
Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee	Good idea. Form to be used as attachment to FL-343 cross-referenced to Form 343 item 2.d.(2). The factors the court is required to consider pursuant to FC Sec. 4320 are included in a logical manner. Only factor 4320 (d) is missing. o **Suggest including space for findings related to 4320(d)**. The form does not provide a space for how the findings are balanced together and the court makes its actual award for support. It only lists each of the findings but does not prompt a place for analysis for how the various findings resulted in the amount of support. **Suggest a final space where the court can set forth its decision as a result of balancing all of the factors**. **13(e)** includes a list in the parentheses that is either not necessary, or too limiting. If there are to be examples given, recommend those examples from case law and treatises be included, such as a reference to the parties' "general station	No response required. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption. The committee appreciates the commenter's suggestions. Form FL-349 is designed to be an attachment to a judgment or order and is intended to give the judicial officer an optional form for making findings required by Family Code section 4320. The court's decision would be entered on a separate document as part of the court's judgment or order, for which the Judicial Council provides other forms (e.g., FL-340 and FL-180). For that reason, the committee recommends not including a space on this particular form for the court to set forth its decisions. The committee appreciates the commenter's suggestions. Based on other comments, the committee prefers to recommend deleting the examples given in the form to describe examples of "standard of living," as it is more appropriate for the parties declaration (form FL-

Form FL-349		
Commenter	**Comment**	**Committee Response**
	in life", ability to save for retirement (Marriage of Kerr)	157) than for a document completed by the court.
	Item 17. Propose following changes: o 17.a. refers to FC Sec. 4324.5. This section applies to **felony** convictions and an award of spousal support to the convicted spouse from the injured spouse is prohibited.	The committee agrees to simplify this section of the form. For example, the party asking for support will, under the Code, be the convicted party. Therefore, the section could be simplified accordingly.
	Suggest 17a be simplified to provide: There is documented evidence that [ ] Petitioner [ ] Respondent was convicted of a violent sexual felony or a domestic violence felony and [ ] Petitioner [ ] Respondent was the victim of that offense. Based on this finding the convicted spouse is prohibited from receiving an award of spousal support from the injured spouse. (Family Code Sec. 4324.5)	The committee appreciates the commenter's suggestions for improving this part of the form. After considering other comments, the committee recommends revising this part of the form using simplified language that still reflects the requirements of the statute.
	Item 17b. Applies to misdemeanor convictions. As written, it does not comport with the language in FC Section 4325 because there is not a complete prohibition of an award of support in that section, only a rebuttable presumption against an award of support.	Same as above response.
	Suggest 17b be simplified to provide: There is documented evidence that [ ] Petitioner [ ] Respondent was convicted of a domestic violence misdemeanor or a criminal conviction for a misdemeanor that results in a term of probation pursuant to Penal Code Section 1203.097 and [ ] Petitioner [ ] Respondent was the victim of that offense. Based on this finding, there is a rebuttable presumption that the convicted spouse is prohibited from receiving an award of spousal	Same as above response.

Form FL-349		
Commenter	**Comment**	**Committee Response**
	support from the injured spouse. The court finds that the presumption: [ ] has not been rebutted by a preponderance of the evidence, and based on this finding the convicted spouse is prohibited from receiving an award of spousal support from the injured spouse. [ ] has been rebutted by a preponderance of the evidence.	

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Changes to Child Custody Evaluations Rule and Form
Amend Cal. Rules of Court, rule 5.220; revise forms FL-327; adopts forms FL-327(A) and form FL-329

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle Selden 415-865-8085, Gregory Tanaka 415-865-7671

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.

e. AB 1179 (Rubio) Child custody: allegations of abuse: report (Ch. 127, Statutes of 2019)

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
In response to public comment, the committee proposes revising an additional form and adopting a form, which did not circulate for comment. The forms are needed to comply with the requirements of Family Code section 3118 that predate the amendments recently enacted by AB 1179 relating to evaluations in cases involving a serious allegation of child sexual abuse or an allegation of child abuse.

The committee proposes revising Order Appointing Child Custody Evaluator (form FL 327), as it is not complete as it relates to child custody evaluations involving a serious allegation of child sexual abuse or an allegation of child abuse under Family Code section 3118.

To accommodate the amount of information required to be included in the order relating exclusively to these proceedings, the committee further proposes that the Judicial Council adopt a new attachment to the order, Additional Orders for Child Custody Evaluations Under Family Code Section 3118 (form FL 327(A)).The form is proposed to include the language of Family Code section 3118(b) and (e)–(g).

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-187
For the business meeting on September 24, 2020

Title
Family Law: Changes to Child Custody Evaluations Rule and Forms

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.220; revise form FL-327; and adopt forms FL-327(A) and FL-329

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 13, 2020

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of court and adopting a new mandatory child custody evaluation report form to comply with recent statutory changes to Family Code section 3118. Effective January 1, 2021, Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127) creates new requirements for the confidential written report that is filed with the court and served on the parties following a child custody evaluation, assessment, or investigation in which the court has determined that there is a serious allegation of child sexual abuse or an allegation of child abuse in any other circumstance. To comply with other requirements for Family Code section 3118 evaluations, the committee further recommends revising the order that appoints the child custody evaluator and adopting a new attachment that enumerates the rights and responsibilities of the evaluator.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.220 to refer to the general requirements for evaluations under Family Code section 3118 and identify the new confidential report that the evaluator must use in these cases;

2. Revise *Order Appointing Child Custody Evaluator* (form FL-327) to indicate that there are additional orders that apply to evaluators appointed under Family Code section 3118 and to refer to the attachment with those additional orders, new proposed form FL-327(A);

3. Adopt *Additional Orders for Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)) as the mandatory attachment to form FL-327 that states the rights and responsibilities of the evaluator and includes further court orders; and

4. Adopt *Confidential Child Custody Evaluation Report* (form FL-329) to serve as the statutorily mandated form that is a standardized template for all information necessary to provide a full and complete analysis relating to a serious allegation of child sexual abuse or an allegation of child abuse in the proceeding under Family Code section 3118.

The text of the proposed amended rule and proposed new and revised forms are attached at pages 9–11.

Relevant Previous Council Action

Effective July 1, 2003, the Judicial Council amended rule 5.220 to conform to the requirements under Family Code section 3118 for evaluations in cases where the court has determined that there is a serious allegation of child sexual abuse or an allegation of child abuse.

Effective January 1, 2002, the Judicial Council approved *Order Appointing Child Custody Evaluator* (form FL-327) to facilitate uniform statewide implementation of rule 1257.4 (now rule 5.220), which includes evaluations under Family Code section 3118. The form was revised, effective January 1, 2010, to reference a new mandatory form (form FL-328) under Family Code section 3111 and to conform to case law by adding provisions regarding the scope and purpose of the evaluation and the determination of fees and costs of the evaluation.

Analysis/Rationale

In contested proceedings in family court involving child custody or visitation rights, a judicial officer may appoint a court-connected or private evaluator under Family Code section 3111 to provide recommendations to the court if the judicial officer determines the appointment is in the best interests of the child. Under section 3118, in cases involving a serious allegation of child sexual abuse, the court *must* appoint an evaluator to conduct an evaluation, investigation, or assessment. For allegations of child abuse that arise in a proceeding for child custody and

visitation rights, the court is not required to, but may appoint an evaluator or investigator to conduct an evaluation, investigation, or assessment under section 3118.

Family Code section 3118(b)(6)(A)–(H) lists the minimum information that the evaluator or investigator must cover in the confidential written report, summarized as follows:

- Documentation of material interviews of the child, parents, and other witnesses;
- A summary of any law enforcement investigator's investigation;
- Relevant background material, including but not limited to a summary of written reports from any therapist treating the child for suspected child sexual abuse;
- The written recommendations of the evaluator or investigator about the therapeutic needs of the child and how to ensure the child's safety;
- A summary of other child abuse investigations, if any, and disposition and any relevant dependency court orders or findings;
- Any information from a child protective agency or law enforcement agency about the presence of domestic violence or substance abuse in the family;
- Whether any family members are known to be eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence; and
- Any other information believed to be helpful for the court in determining what is in the best interests of the child.

Effective January 1, 2021, Family Code section 3118(b)(6) requires that the report with the above information be made on a form adopted by the Judicial Council. To comply with the legislation, the council must adopt one new form and amend rule 5.220 as described in the following section. In addition, the committee recommends that the Judicial Council revise *Order Appointing Child Custody Evaluator* (form FL-327) and approve a new attachment to that order (form FL-327(A)) so that the order includes the statutorily required content for these appointments.

Rule 5.220 (Court-ordered child custody evaluations)

Rule 5.220 is proposed to be reorganized to differentiate the requirements for confidential evaluation reports written to comply with Family Code section 3111 and those that must comply with Family Code section 3118. Specifically, the rule is proposed to include a new subdivision (g) titled "Confidential written report; requirements," in which (g)(1) would list the requirements for section 3111 reports and (g)(2) would list the requirements for section 3118 reports. Subdivision (g)(2) is proposed to reference the name and number of the proposed new Judicial Council form FL-329, among other requirements. In addition, because both new subdivisions would include the language in current subdivision (i) relating to another required form, subdivision (i) would be deleted to avoid redundancy in the rule.

Other technical changes would include re-lettering affected subdivisions in the rule and updating subdivision (b) by deleting the reference to section 2032 of the Code of Civil Procedure and updating it to section 2032.010.

***Confidential Child Custody Evaluation Report* (form FL-329)**
This new mandatory form is proposed to comply with Family Code section 3118 by serving as the standardized template for all information necessary to provide a full and complete analysis of the allegations raised in the proceeding. To this end, the form is proposed to include all actions listed in section 3118(b)(6)(A)–(H).

***Order Appointing Child Custody Evaluator* (form FL-327)**
This form is proposed to be revised to specify that the court must complete and attach a separate, more extensive form (form FL-327(A)) when the appointment relates to a case involving a serious allegation of child sexual abuse or an allegation of child abuse under Family Code section 3118. Along with other minor changes, the revisions are needed in order to comply with all requirements under the statute in these proceedings.

***Additional Orders for Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A))**
This new mandatory attachment is proposed to fill a need for a court order that complies with each requirement under Family Code section 3118 each time a child custody evaluator is appointed in these proceedings.

Policy implications
There were no policy implications that contributed to controversy or intense debate within the committee about any form in the proposal.

The decision to recommend extensive changes to form FL-329, made in response to comments, serves the policy of access and fairness to the parties in family court. Providing a form that helps the evaluator organize and present summaries and recommendations about the child under Family Code section 3118 will help the parties overcome barriers to understanding the evaluator's process; specifically, how the evaluator reached the stated recommendations. This will help the parties prepare any arguments supporting or opposing the recommendations. Further, this will help the judicial officer make decisions on the parties' positions relating to the evaluator's recommendations. Thus, with respect to the court, the revised form also serves the policy goal to modernize management and administration by implementing effective practices to foster the fair, timely, and efficient processing and resolution of all cases.

The committee's recommendation to add two forms to the proposal in response to comments (form FL-327 and its attachment, form FL-327(A)) serves the policy goal of maintaining forms that are consistent with the requirements of the Family Code. Recently amended Family Code section 3118 brought to the committee's attention that the current order form is incomplete as it relates to appointments in cases involving a serious allegation of child sexual abuse or an allegation of child abuse. For example, an evaluator commented that they experienced difficulty obtaining copies of juvenile court records because the current order does not reflect the evaluator's right to obtain those records. The proposed new attachment will clearly state that the evaluator has access to those records. It will also include the evaluator's responsibilities as to the information obtained from those records, as well as the evaluator's responsibilities to the juvenile

court. Ultimately, the committee's recommendations will also help implement effective practices in family court by eliminating the need for evaluators to seek additional orders to allow access to juvenile court records.

Comments

This proposal was circulated for public comment from April 10 through June 9, 2020, as part of the regular spring comment cycle. Eleven organizations submitted comments on this proposal. Two commenters agreed with the proposal. Four organizations agreed if the proposal is modified; one did not agree; and four did not indicate a position but provided comments on the proposal.

Rule 5.220

Four organizations submitted comments about the rule. Some requested additional changes, one approved of the changes as circulated, and none disapproved of the proposed changes.

One organization requested that the rule include specific language in Family Code section 3118 to further describe the obligations of the evaluator. The committee concluded that this change was not necessary, because the proposed new form FL-329 includes the specific language that the commenter requested appear in rule 5.220. Under rule 5.7 of the California Rules of Court, "[a]ll forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL … series, are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution; and other applicable law."

Another commenter requested that subdivision (g)(1)(A) of the rule be changed to include that the evaluator must also serve the report on any counsel appointed for the child pursuant to Family Code section 3150. The committee agreed with the comment and proposes to include this language in the rule in subdivision (g)(1)(A) and (2)(A), as the change applies equally to evaluations under Family Code section 3111 and section 3118.

A final commenter requested removing all references to child custody evaluations under Evidence Code section 730. The committee did not agree with this suggestion because Family Code section 3110.5(b)(1) requires the rule to include "730 evaluations." Specifically, it provides that

> [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

The same organization requested that the rule include language about the evaluator's compensation. The committee did not agree with the suggestion because the issue of the

evaluator's fees is already covered in *Order Appointing Child Custody Evaluator* (form FL-327), and because the change is not required to implement AB 1179.

Form FL-329

Several commenters expressed significant concern about the draft form FL-329, in its entirety as circulated for comment, generally stating that it does not address the stated purpose. For example:

- The Association of Certified Family Law Specialists stated that the form needs to be modified "to ensure that the proposal adequately addresses the stated purpose to adopt a new mandatory form to comply with recent statutory changes to Family Code § 3118";
- The Legislative Coalition to Prevent Child Abuse suggested specific changes to 13 items in the form to conform them to the language in Family Code section 3118;
- The California Partnership to End Domestic Violence and the Family Violence Appellate Project expressed concern about the form and suggested specific changes to the item on the form relating to the Victims of Crime Program; and
- Mothers of Lost Children and the Legislative Coalition to Prevent Child Abuse called for a major revision of the form so that it better reflects all requirements of Family Code section 3118. They submitted a draft form to illustrate the changes being requested (see Attachment A), and also requested that the form include the language from section 3118 that authorizes the evaluator to access juvenile court records.

In response to the comments, the committee proposes a completely new version of the form. The proposed form:

- Reframes the report template in the first person "voice" of the evaluator;
- Includes each requirement of the statute using the same statutory language;
- Includes the same headings found in the statute;
- Adds check boxes in certain items in the report to specify if the evaluator reviewed the reports being summarized or obtained copies of the reports being summarized, which is a distinction that may be needed because the evaluator is prohibited from photocopying documents in the child welfare agency's file, and that file might contain information about reports from therapists, medical personnel, and other professionals who treated the child for suspected child abuse;
- Consolidates requirements where possible to avoid redundancy in the report; and
- Is expanded from 3 to 7 pages to indicate the statutorily required acts that the evaluator must complete and to include blank space to summarize information obtained from investigations, documents, or interviews.

Addition of forms FL-327 and FL-327(A) to proposal

While conducting additional research in response to a comment, the committee discovered that Family Code section 3118(b) authorizes evaluators to access juvenile court records. Moreover, the statute *requires* that (1) the order appointing the evaluator provide that the evaluator have access to all juvenile records pertaining to the child who is the subject of the evaluation and (2) the evaluator maintain confidential any juvenile court records or information gained from those records and only release those records or information as specified in section 3111.

In addition, Family Code section 3118(g) requires that the evaluator suspend the evaluation, investigation, or assessment if a petition is filed to declare the child a dependent of the juvenile court and make available to the juvenile court all information that the evaluator gathered.

Further, the statute requires that the court do the following:

- Order further evaluations beyond the minimum requirements of evaluation when necessary to determine the safety needs of the child (Fam. Code, § 3118(e)); and

- Consider whether the best interests of the child require that a temporary order be issued that limits, suspends, or denies visitation with the parent against whom the allegation of child sexual abuse has been made (Fam. Code, § 3118(f)).

All of the above-mentioned subdivisions of Family Code section 3118 predate the amendments recently enacted by AB 1179; however, none of the requirements are reflected in the mandatory form used to appoint all child custody evaluators, *Order Appointing Child Custody Evaluator* (form FL-327). Thus, form FL-327 is not complete as it relates to child custody evaluations conducted under section 3118.

The committee proposes to revise form FL-327 by including the language of Family Code section 3118(b) and (e)–(g). To accommodate the amount of information required to be included in the order relating exclusively to evaluations involving a serious allegation of child sexual abuse, the committee further proposes that the Judicial Council adopt a new attachment form to the order, *Additional Orders for Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)).

Alternatives considered

With respect to forms FL-327 and FL-327(A), the committee considered whether to include them in this proposal to the Judicial Council without circulating them for public comment or circulating them for comment in a separate invitation to comment in the winter cycle. After discussion, the committee decided that it is imperative that forms FL-327 and FL-327(A) be included in this proposal to thoroughly comply with all of the requirements of Family Code section 3118, and not only comply with the recent amendments enacted by AB 1179. Taking this action will provide legally complete and accurate court orders along with a comprehensive report template for evaluations under section 3118, effective January 1, 2021.

Although forms FL-327 and FL-327(A) will not have circulated for comment before being recommended for adoption, they were developed directly in response to comments received in the spring 2020 cycle. Further, the proposed revisions to form FL-327 are minor and the entire content of form FL-327(A) so closely mirrors the language in Family Code section 3118 that the forms are unlikely to create controversy.

To address the fact that forms FL-327 and FL-327(A) did not circulate for comment, the committee recommends that staff from the Center for Families, Children & the Courts educate the courts, including Family Court Services directors, about the changes to the report template (form FL-329), revised form FL-327, and the new attachment (form FL-327(A)).

Fiscal and Operational Impacts

The impacts to the courts include costs to copy the new and revised forms, as well as the cost to educate court-connected child custody evaluators and judicial officers on the new procedures for issuing orders and completing a child custody evaluation, investigation, or assessment under Family Code section 3118. Courts would also need to update their case management systems. However, these impacts would be outweighed by the benefit of producing court orders as well as reports that satisfy the requirements of section 3118.

Attachments and Links

1. Cal. Rules of Court, rule 5.220, at pages 9–11
2. Forms FL-327, FL-327(A), and FL-329, at pages 12–19
3. Chart of comments, at pages 20–44
4. Attachment A: Draft of form FL-329 submitted by commenters for consideration
5. Link A: Assem. Bill 1179, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1179*

Rule 5.220 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 5.220. Court-ordered child custody evaluations

(a) Authority

This rule of court is adopted under Family Code sections 211 and 3117.

(b) Purpose

Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interests of children with regard to disputed custody and visitation issues. This rule governs both court-connected and private child custody evaluators appointed under Family Code section 3111, Family Code section 3118, Evidence Code section 730, or ~~Code of Civil Procedure section 2032.~~ chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.

(c)–(d) * * *

(e) Scope of evaluations

All evaluations must include:

(1)–(2) * * *

~~(3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:~~

~~(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;~~

~~(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;~~

~~(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and~~

~~(D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan.~~

(f) Presentation of findings

All evaluations must include a written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must do all of the following:

(1) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(2) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(3) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interests of the child; and

(4) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interests of the child if making any recommendations to the court regarding a parenting plan.

(g) Confidential written report; requirements

(1) *Family Code section 3111 evaluations*. An evaluator appointed under Family Code section 3111 must do all of the following:

(A) File and serve a report on the parties or their attorneys and any attorney appointed for the child under Family Code section 3150; and

(B) Attach a *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

(2) *Family Code section 3118 evaluations*. An evaluator appointed to conduct a child custody evaluation, investigation, or assessment based on (1) a serious allegation of child sexual abuse; or (2) an allegation of child abuse under Family Code section 3118 must do all of the following:

(A) Provide a full and complete analysis of the allegations raised in the proceeding and address the health, safety, welfare, and best interests of the child, as ordered by the court;

(B) Complete, file, and serve *Confidential Child Custody Evaluation Report* (form FL-329) on the parties or their attorneys and any attorney appointed for the child under Family Code section 3150; and

(C) Attach *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) as the first page of the child custody evaluation report in (B) to inform the parties or their attorneys of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

~~(i)~~ **~~Service of the evaluation report~~**

~~A *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) must be attached as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.~~

~~(f)–(j)~~ **(h)–(k)** * * *

PARTY WITHOUT ATTORNEY *or* ATTORNEY	STATE BAR NO.:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		**08/12/2020xyz**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
OTHER PARENT/PARTY:		
ORDER APPOINTING CHILD CUSTODY EVALUATOR		CASE NUMBER:

THE COURT ORDERS AS FOLLOWS:

1. The court appoints:
   a. ☐ a local court-connected child custody evaluation service *(specify):*
   b. ☐ a private child custody evaluator *(specify):*
   c. ☐ family court services
   d. ☐ other *(specify):*

   in this matter to perform *(check one):*
   e. ☐ a full child custody evaluation
   f. ☐ a partial child custody evaluation

   under the statutory authority of:
   g. ☐ Family Code section 3111.
   h. ☐ Family Code section 3118.
   (You must attach Additional Orders for Child Custody Evaluations Under Family Code Section 3118 *(form FL-327(A)).*
   i. ☐ Evidence Code section 730.
   j. ☐ Chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.
2. The names and dates of birth of the children are (*specify):*
   ☐ See attachment.

Name	Date of birth

3. The purpose and scope of the evaluation is (*specify):*
   ☐ See attachment.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

4. **DETERMINATION OF FEES AND PAYMENT**

☐ See attached order on fees and costs.

a. The evaluator will be compensated as follows:
(Specify amount or rate and terms):

☐ The court reserves jurisdiction to determine the amount of the fees and costs for the evaluation.

b. The court finds that the parties are able to pay the cost of the child custody evaluation. The parties are ordered to pay as follows:
(1) ☐ Petitioner/plaintiff must pay % of the cost. ☐ Respondent/defendant must pay % of the cost.
(2) ☐ The court reserves jurisdiction to reallocate the cost of the evaluation between the parties.
(3) ☐ Other:

c. Payment will be made as follows:
(1) ☐ Petitioner/plaintiff must make installment payments of $ per month until the cost of the evaluation is paid or modified by court order.
(2) ☐ Respondent/defendant must make installment payments of $ per month until the cost of the evaluation is paid or modified by court order.
(3) ☐ Other:

5. **NOTICE TO EVALUATOR**

Within 10 court days of receipt of this order and before the evaluation, the child custody evaluator must file a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) with the court unless the person is a court-connected employee who must annually file the *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (FL-325).

6. **NOTICE REGARDING EVALUATIONS UNDER FAMILY CODE SECTION 3118**

Additional orders apply to evaluations conducted under Family Code section 3118. See attached *Additional Orders for Child Custody Evaluations Under Family Code section 3118* (form FL-327(A)). You must complete your report using *Confidential Child Custody Evaluation Report* (form FL-329).

7. **NOTICE REGARDING CONFIDENTIALITY OF EVALUATION REPORT**

The child custody evaluation report is confidential. You must not make an unwarranted disclosure of the contents of the child custody evaluation report. By law, a court can order a penalty for the unwarranted disclosure of the child custody evaluation report, which can include an order that the disclosing party pay a fine and attorney fees and costs.

For more information, read Family Code section 3111 and *Child Custody Evaluation Information Sheet* (form FL-329-INFO). The form is available from the office of the court clerk or online at *www.courts.ca.gov/forms.htm.*

8. **INSTRUCTIONS FOR INITIAL CONTACT**

a. ☐ The evaluator will contact each party.
b. ☐ Each party must contact the evaluator.
c. ☐ Additional instructions *(specify):*

9. **OTHER**

10. ☐ Additional orders attached.

Number of pages attached: _____

Date:

JUDICIAL OFFICER

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	
OTHER PARENT/PARTY:	

ADDITIONAL ORDERS REGARDING CHILD CUSTODY EVALUATIONS UNDER FAMILY CODE SECTION 3118

(Attachment to *Order Appointing Child Custody Evaluator* (form FL-327))

1. **MANDATORY CONSIDERATIONS** (Family Code section 3118(f))
   The court has considered the best interests of the child and finds that:
   a. ☐ No temporary orders are needed to limit, suspend, or deny visitation (parenting time) with the parent against whom the allegations have been made.
   b. ☐ Temporary orders are needed and will issue or have issued in accordance with Family Code section 3011 that:
      (1) ☐ limit visitation (parenting time) with the parent against whom allegations have been made to situations in which a third party specified by the court is present.
      (2) ☐ suspend visitation (parenting time) with the parent against whom the allegations have been made.
      (3) ☐ deny visitation (parenting time) with the parent against whom the allegations have been made.
2. **MINIMUM REQUIREMENTS OF THE EVALUATION** (Family Code section 3118(b))
   The child custody evaluator, at a minimum, must do all of the following:
   a. **Consult with the agency providing child welfare services.**
      Consult about the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.
   b. **Review and summarize the child welfare services agency file.**
      (1) You must not photocopy any document contained in the child welfare services agency file.
      (2) A summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded.
      (3) You must not record the identity of the party who reported the information in (2).
      (4) Keep in a separate file any notes summarizing the child welfare services agency information and release them to either party only by court order.
   c. **Consult with law enforcement.**
      Consult with law enforcement about the allegations of child sexual abuse and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.
   d. **Obtain information from a law enforcement investigator.**
      Obtain from this professional all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.
   e. **Review the results of any multidisciplinary child interview team (MDIT) interview.**
   f. **Interview the child or request an MDIT interview of the child if:**
      (1) The MDIT is not available or was not completed;
      (2) The evaluator believes the MDIT is inadequate for purposes of the evaluation; or
      (3) A repeated interview of the child cannot be avoided. The evaluator must, wherever possible, avoid repeated interviews of the child.
   g. **Request a forensic medical examination of the child.**
      Request the examination from the appropriate agency or include in the required report a written statement about why the examination is not needed.
   h. **Do not disclose the identity of any person making a report of suspected child abuse.**
      Do not disclose any information about the identity of any person making a report of suspected child abuse in accordance with Penal Code section 11167(d).
3. **CONFIDENTIAL WRITTEN REPORT** (Family Code section 3118(b)(6) and (d))
   The child custody evaluator must:
   a. Complete *Confidential Child Custody Evaluation Report* (form FL-329), addressing the safety of the child;
   b. File the completed report with the clerk of the court in which the child custody hearing will be conducted; and
   c. Serve the completed report on the parties or their attorneys and any attorney for the child at least 10 days before the hearing.

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

4. **JUVENILE COURT RECORDS** (Family Code section 3118(a) and (g))
   The child custody evaluator must:
   a. Have access to all juvenile court records pertaining to the child who is the subject of the evaluation.
   b. Keep confidential any juvenile court records or information gained from those records.
   c. Only release the records described above in b as specified in Family Code section 3111(b).
   d. Suspend the evaluation if a petition is filed to declare the child a dependent child of the juvenile court under Welfare and Institutions Code section 300.
   e. Make available to the juvenile court all information the evaluator gathered if a petition is filed as described above in d.

5. ☐ **ORDER FOR FURTHER EVALUATION (**Family Code section 3118(e))
   The court orders further evaluation beyond the minimum requirements to determine the safety needs of the child as follows:

EVALUATOR: LICENSE NO. *(if applicable):* NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS:	*FOR COURT USE ONLY* **CONFIDENTIAL** *DRAFT* NOT APPROVED BY JUDICIAL COUNCIL 8/12/20GS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
CONFIDENTIAL CHILD CUSTODY EVALUATION REPORT	CASE NUMBER:

NOTE: (1) This form must be used for a child custody evaluation, investigation, or assessment based on a serious allegation of child sexual abuse or an allegation of child abuse under Family Code section 3118.

(2) *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) must be attached as the cover page of this report.

1. The *Order Appointing Child Custody Evaluator* (form FL-327) filed on (*date)* _____ is attached (see Attachment 1).
2. The names and dates of birth of each child are *(specify):* ☐ Additional children are listed on Attachment 2.

Child's name	Date of birth

3. **Dependency court orders**
   a. ☐ There are no dependency court orders that might affect child custody.
   b. ☐ There are dependency court orders that might affect child custody, as follows: ☐ See Attachment 3b(1).

(1) Court (county, state)	Case number	Date order filed

   (2) Any dependency court orders or findings that might have a bearing on the child custody dispute in family court are summarized *(specify):* ☐ Below: ☐ See Attachment 3b(2).

4. **Summary of child welfare agency investigations and recommendations**
   a. The children listed in 2 and the children's parents are or have been the subject of a child abuse investigation *(specify):*
      ☐ Yes ☐ No *(Skip b through f; go to item 5.)*
   b. I consulted with the agencies providing child welfare services about the serious allegation of child sexual abuse or the allegation of child abuse, reviewed the child welfare agencies' files, and obtained recommendations from social workers about each child's safety and need for protection. *(You must not photocopy any document contained in the child welfare services agency file.)*
   c. The status or disposition of the investigation about the safety of each child is *(specify):* ☐ Below: ☐ See Attachment 4c.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

d. The contact information for each social worker is *(specify):* ☐ See Attachment 4d.

Name:	Name:
Telephone No.:	Telephone No.:
Mailing Address:	Mailing Address:
City and Zip Code:	City and Zip Code:
Email address:	Email address:

e. A summary of all child welfare agency investigations about the safety of each child (including statements made by each child and the parents, information about child abuse, domestic violence, or substance abuse, and recommendations made or anticipated to be made regarding safety of each child) are *(specify):* ☐ Below: ☐ See Attachment 4e.

f. Recommendations made or anticipated to be made by each social worker to the juvenile court about the safety and need for protection of each child are *(specify):* ☐ Not applicable to this case. ☐ Below: ☐ See Attachment 4f.

5. **Summary of law enforcement investigation and recommendations**

a. I consulted with law enforcement about the serious allegation of child sexual abuse or the allegation of child abuse and obtained recommendations from these professionals about each child's safety and need for protection.

b. Recommendations from each law enforcement professional about each child's safety and need for protection are summarized *(specify):* ☐ Below: ☐ See Attachment 5b.

c. I obtained from a law enforcement investigator all available information obtained from criminal background checks of *(specify):* ☐ the parents ☐ any suspected perpetrator that is not a parent including information about child abuse, domestic violence, or substance abuse.

d. A summary of the information obtained from each law enforcement investigator is *(specify):* ☐ Below: ☐ See Attachment 5d.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

6. **Multidisciplinary and forensic examinations; interview of the child**

a. **Multidisciplinary interview team (MDIT) interviews**

(1) ☐ I reviewed the results of the MDIT interview.

(2) ☐ I requested an MDIT interview because *(select one):*

(a) ☐ There was no MDIT interview of the child.

(b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.

(3) ☐ I interviewed each child because *(select one):*

(a) ☐ There was no MDIT interview of the child.

(b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.

(4) Whenever possible, I avoided repeated interviews of the child.

(5) A summary of ☐ the MDIT ☐ my interview of each child is: ☐ Below: ☐ See Attachment 6a(5).

(6) Written documentation of ☐ the MDIT ☐ my interview of each child is attached (see Attachment 6a(6)).

(7) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from *(specify):*
☐ the MDIT interview ☐ my interview with each child. A summary of the information is *(specify):*
☐ Below: ☐ See Attachment 6a(7).

b. **Forensic examination of the child**

(1) ☐ I reviewed the forensic medical examinations of each child.

(2) ☐ No forensic medical examination of the child or children was conducted, and *(select (a) or (b)):*

(a) ☐ I requested a forensic medical examination of each child.

(b) ☐ I did not request a forensic medication examination. The examination is not needed because *(explain):*
☐ Below: ☐ See Attachment 6b(2)(B).

(3) A summary of the forensic medical examination of each child is *(specify):* ☐ Below: ☐ See Attachment 6b(3).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 6b(4).

(5) A copy of all written forensic medical reports is included with this report. ☐ See Attachment 6b(5).

7. **Documentation of other material interviews; relevant background material**

a. ☐ I interviewed the parents.
(1) ☐ Below: ☐ See Attachment 7a(1).

(2) Written documentation of each interview is attached (see Attachment 7a(2)).

(3) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
A summary of the information is *(specify):* ☐ Below: ☐ see Attachment 7a(3).

b. **Prior or currently treating therapists**

(1) ☐ I interviewed each child's ☐ current therapist ☐ prior therapist treating for suspected child abuse.
A summary of each interview (excluding any privileged communication) is ☐ Below: ☐ See Attachment 7b(1).

(2) ☐ I reviewed ☐ I obtained written reports from therapists treating each child for suspected child abuse.
A summary of each report (excluding any privileged communication) is: ☐ Below: ☐ See Attachment 7b(2).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

(3) ☐ All written reports from the therapists (excluding privileged communication) are attached (see Attachment 7b(3).)

(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source. A summary (excluding privileged communication) is *(specify):* ☐ Below: ☐ See Attachment 7b(4).

c. **Medical personnel; other medical examinations**

(1) ☐ I interviewed other medical personnel who provided relevant information *(specify in summary).*

(2) ☐ I reviewed ☐ I obtained all written results from other medical examinations or treatments that could help establish or disprove whether each child has been the victim of sexual abuse or other child abuse under Family Code section 3118.

(3) A summary of each ☐ interview ☐ examination result is: ☐ Below: ☐ See Attachment 7c(3).

(4) ☐ All written reports from the above medical examinations are attached (see Attachment 7c(4)).

(5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source. A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 7c(5).

d. **Other professionals**

(1) ☐ I interviewed other professionals who provided relevant information *(specify in summary).*

(2) ☐ I reviewed ☐ I obtained all written results from other professionals that could help establish or disprove whether the child has been the victim of sexual abuse or other child abuse under Family Code section 3118.

(3) A summary of each ☐ interview ☐ examination result is: ☐ Below: ☐ See Attachment 7d(3).

(4) ☐ All written reports from other professionals are attached (see Attachment 7d(4)).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

(5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources. A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 7d(5).

e. **Other witnesses**

(1) ☐ I interviewed other witnesses who provided relevant information *(specify in summary).*

(2) A summary of each interview is *(specify):* ☐ Below: ☐ See Attachment 7e(2).

(3) Written documentation of each witness interviewed is attached (see Attachment 7e(3)).

(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources. A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 7e(4).

8. **Victims of Crime Program**

List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence *(specify):* ☐ Below: ☐ See Attachment 8.

9. **Limitations in the evaluation**

Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews. ☐ Below: ☐ See Attachment 9.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

10. **Other**
Additional information that I believe would be helpful to the court in determining the best interests of the child under Family Code section 3011 *(specify):* ☐ Below: ☐ See Attachment 10.

11. **My recommendations** regarding the therapeutic needs of each child and how to ensure the safety of each child are *(specify)*:
☐ Below: ☐ See Attachment 11.

12. **Summary of procedures**
I have summarized the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached. ☐ Below: ☐ See Attachment 12.

13. Number of pages attached: _____

Date:

_____
(NAME OF EVALUATOR)

▶ _____
SIGNATURE OF EVALUATOR

SPR20-20

Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	AM	ACFLS agrees with the proposed changes if modified to ensure that the proposal adequately addresses the stated purpose to adopt a new mandatory form to comply with recent statutory changes to Family Code Family Code §3118 and addresses the concerns specified in provisions below.	See responses to specific provisions below.
2.	California Partnership to End Domestic Violence by Christine Smith, Public Policy Coordinator Sacramento	AM	See specific comments on provisions below.	See responses to specific provisions below.
3.	California Protective Parents Association by Catherine Campbell Executive Director Los Altos	NI	Comments submitted are duplicative of comments received from Mothers of Lost Children.	See responses to Mothers of Lost Children below.
4.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Saul Berkovitch Director of Governmental Affairs	A	No specific comment.	No response required.
5.	Seth L. Goldstein Attorney at Law Monterey	NI	See specific comments about form FL-329 below.	See responses to specific provisions below.
6.	Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	N	The invitation to comment queries whether the proposal appropriately addresses the stated purpose. Because of a concerning flaw in item 12 of the Proposed Form FL-329, it does not.	See responses to specific provisions below.

SPR20-20

Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			See specific comments about form FL-329 below	
7.	Legislative Coalition to Prevent Child Abuse by Melissa Knight-Fine Cameron Park	AM	I offer the additions or amendments below to make the proposed rule 5.220 and form FL-329 consistent with Family Code section 3118, the statute they are implementing. Some of my recommendations are to increase clarity for those utilizing the form. With these changes, the proposal would appropriately address the stated purpose of assisting the court to determine the safety needs of children at-risk in family court cases.	See responses to specific provisions below.
8.	Mothers of Lost Children by Connie Valentine, M.S.	AM	See comments on specific provisions below. See also Attachment A for a draft form produced by the commenter.	See responses to specific provisions below.
9.	Orange County Bar Association By Scott B. Garner, President Newport Beach	A	No specific comment.	No response required.
10.	Superior Court of Orange County Family Law Division Orange	NI	See comments on specific provisions below.	No response required.
11.	Superior Court of San Diego County by Michael Roddy, Executive Director	NI	* The proposal appropriately addresses the stated purpose. * The proposal does not provide cost savings. * The implementation requirements for courts would be updating case management system, internal procedures, and notifying staff.	No response required. No response required. No response required.

SPR20-20

Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			* Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation, provided the final version of the form is provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff. It appears that the proposal will work for courts of various sizes.	It is the Judicial Council's goal to post the revised forms to the Judicial Resources Network within three months of their approval. The actual date of posting depends on many factors, including the number of forms in the cycle and the time required to program each form to meet accessibility requirements. No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR20-20

Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

All comments are verbatim unless indicated by an asterisk (*).

Rule 5.220		
Commenter	**Comment**	**Committee Response**
Legislative Coalition to Prevent Child Abuse by Melissa Knight-Fine Cameron Park	Add underlined text and remove text with strikeout. Rule 5.220 subdivision (g)(2) (A) Provide documentation of material interviews, results of forensic medical exams, reports of other professionals and a full and complete analysis of the allegations raised in the proceeding and address the health, safety, welfare and best interests of the child. (Authority cited: Family Code 3118 (b)(6)(A) and (C).) (B) Comply with (A) by filing and serving Confidential ~~Child Custody Evaluation Report~~ Custody Investigation and Report (form FL-328) on the parties or their attorneys as required by section 3118. (Authority cited: Family Code Section 3118 Chapter 6. Custody Investigation and Report [3110-3118].)	Based on many of the comments received, including this one, the committee recommends substantial changes to the proposal and believes its recommended changes to form FL-329 will address the suggestions about rule 5.220 and will avoid redundancy. Under rule 5.7, all forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL…series, are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution, and other applicable law. For reasons stated in the response to Mothers of Lost Children, the committee does not recommend changing the title of the form as suggested by the commenter.
Mothers of Lost Children by Connie Valentine, M.S.	1. Although the terms "evaluator" and "investigator" are used interchangeably, it would be useful to include "investigations" in the title, since that term is used as the title in Chapter 6, FC 3110-3118 "Child Custody Investigation and Report". 2. It would be clarifying to further define "court connected" as pertaining also to court employees, in addition to private contractors. Courts often use private contractors for evaluations	1. The proposed change is not required to implement the amendments to Family Code section 3118 under Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127). Further, such a change would require extensive technical changes to other rules of court and forms, and potentially local court rules as well that reference the current title of the rule. For these reasons, the committee does not agree to recommend that the Judicial Council change the title of rule 5.220, as the commenter proposes. 2. The committee does not recommend further defining the term "court-connected" in subdivision (b). The change is not within the scope of the proposal and is not

Rule 5.220		
Commenter	**Comment**	**Committee Response**
	or investigations, which places a financial burden on litigants who may be required to repay the court or incorrectly ordered to directly pay professionals. This would remind courts that trained and qualified public employees can readily perform the same function of gathering and summarizing information without the burden of potential extra costs to litigants. (b) Purpose. 1. The purpose and compensation under each code section need further clarification to reduce confusion over roles and methods of payment for services. • The procedure and reporting requirements for Family Code sections 3110.5-3118 were jointly developed by Judicial Council, County Welfare Directors, District Attorney Association, the Legislative Coalition to Prevent Child Abuse and Senator Deborah Ortiz, author of SB 1716 to establish these sections in the year 2000. • The first focus of Family Code section 3110.5 is on domestic violence and child abuse training. The training on child sexual abuse is particularly important since not only is it a crime, but there are usually no witnesses, so children's statements may be the only evidence. The reason for the legislation was that these issues are often minimized in custody disputes, despite their overwhelming negative effects on children. This problem continues to date. • The intent of SB 1716 was for all child custody	required to implement the amendments to Family Code section 3118. The committee does not recommend that the Judicial Council amend the rule as the commenter proposes. The issues of purpose and compensation are already addressed in the *Order Appointing Child Custody Evaluator* (form FL-327). No response required. No response required.

Rule 5.220		
Commenter	**Comment**	**Committee Response**
	evaluations to be conducted under Family Code section 3111, and all child sexual abuse and other child abuse investigations to be conducted under Family Code section 3118, as clarified by Senator Ortiz in 2010 (see letter below)	No response required.
	• Family Code section 3112 was written to ensure a fair, neutral billing process and cost containment for evaluators and investigators under Family Code sections 3111 and 3118, in which litigants with resources may be required to repay the court, but do not pay professionals directly. Senator Deborah Ortiz has stated and written that it was never the intent of her bill for custody evaluations or investigations to be conducted under Evidence Code section 730 or to be paid for directly by litigants.	Family Code sections 3111, 3112, and 3118 do not require the Judicial Council to amend rule 5.220 to include specific language about fees payable to the evaluator or investigator or arrangements for the parties to repay the court. The issue of fees payable to the evaluator are addressed in Order Appointing Child Custody Evaluator (form FL-327) Rule 5.220(b) refers to Evidence Code section 730 child custody evaluations to incorporate the language in Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.
	• Evidence Code section 730 refers to expert witnesses who are recognized by their profession for their depth of knowledge in a subject that is not common knowledge.	See above response.

Rule 5.220		
Commenter	**Comment**	**Committee Response**
	• Evidence Code 731(2) provides that the expert shall be compensated by the court if the court needs the information, or by the party calling the expert if the individual needs an expert witness. However, a sometimes predatory practice has become embedded in California family courts.	The issue of an evaluator's compensation is outside the scope of the proposal and is not within the purview of the Judicial Council.
	• The first issue is that litigants in custody disputes who have resources are essentially coerced into stipulating to a private child custody evaluator by being told that the court would not be happy with or favorable toward them if they did not hire a professional. Litigants do not want child custody evaluations, but they, out of fear of upsetting the court, select and stipulate to a professional from a court-approved list. They sign a contract and pay a portion of the cost in advance directly to the professional.	The issue of an evaluator's compensation is outside the scope of the current proposal and is not within the purview of the Judicial Council to address in the rule of court.
	• The second issue is that the child custody evaluator, who is hired as an independent private contractor by the litigants, is then appointed under Evidence Code 730 by the court that wants the child custody evaluator "to assist them in determining the health, safety, welfare, and best interests of children with regard to disputed custody and visitation issue" (ROC 5.220). In fact, the child custody evaluator should be appointed under Family Code section 3111 or 3118, as intended by SB 1716.	Rule 5.220 specifies when the court should appoint a child custody evaluator or investigator to conduct an evaluation based on Family Code section 3111 or 3118. The reference in the rule to Evidence Code section 730 child custody evaluations is required under Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.
	• The court appointment gives the "730 evaluator" quasi-	The issue of quasi-judicial immunity is not within the

Rule 5.220		
Commenter	**Comment**	**Committee Response**
	judicial immunity, which essentially precludes litigants from suing if they receive a shoddy product. When litigants agree to pay a professional, they assume the professional is like any other expensive contractor who can be fired or held accountable for poor performance. They are shocked to discover that is not the case after court appointment.	scope of the current proposal and is not required to implement the mandate of Assembly Bill 1179.
	• The third issue is that a "730 evaluator" charges litigants whatever the market will bear, often many tens of thousands of dollars. There is no fee cap. Sometimes the "730 evaluator" exceeds the original budget and litigants must pay the now appointed professional even more, or their case cannot move forward. If litigants wanted or needed an expert to assist in a case, they would appropriately hire and pay for one, which is often done. In this case, it is the court that wants or needs the child custody evaluation. Litigants only agree to hire and pay the evaluator to keep from displeasing the court. This practice may have come about because courts do not have the resources, or do not wish to pay for child custody evaluations under Family Code section 3112, but it does not serve litigants well. In addition, the assumption that "730 evaluators" are to be paid by litigants when the court wants the professional is not necessarily correct. Evidence Code 731(2) states that if the court needs the expert, the court shall pay the expert.	The issue of an evaluator's compensation is outside the scope of the proposal and is not within the purview of the Judicial Council. Further, rule 5.220(b) refers to Evidence Code section 730 child custody evaluations to incorporate the language in Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.
	• The fourth issue is that "730 evaluators" often do poor quality work, sometimes even mixing up cases and names of litigants and children, or misquoting them or others they interview. Attorneys and litigants say the reports	No response required as to the opinions expressed by the commenter.

Rule 5.220		
Commenter	**Comment**	**Committee Response**
	demonstrate a marked lack of knowledge about topics covered by required training. Recommendations may be contrary to law and common sense, yet they are almost always relied upon and followed by courts. • The fifth issue is that the high fees may financially bankrupt less-resourced parents, leaving them without funds for attorneys. This places the litigant at a disadvantage in court. Furthermore, if one litigant pays because the other does not have sufficient funds, there is likely a natural bias inserted into what should be a neutral process. • Finally, "730 evaluator" does not release the report to the court or litigants until litigants pay the full amount, with no review of the product. If substandard work is released to the court, litigants must then attempt to "unring the bell" by countering any inaccuracies in a hearing or a trial, which results in high attorney fees. Litigants have even questioned whether they should send a 1099 MISC IRS independent contractor form to the "730 evaluator" under these unusual circumstances, because the contractor they hired seems to work for the court, not them, after court appointment. This problematic practice has become entrenched in the court system and has not been challenged legally, to our knowledge, due to immunity issues. One lawsuit, People v Sanchez, indicates that experts should provide general, not specific case-related opinions on their area of expertise, but does not address these particular issues. • When Senator Ortiz learned that expert witnesses were	The issue of an evaluator's compensation and the parties' ability to pay is outside the scope of the proposal and is not within the purview of the Judicial Council. Further, rule 5.220(b) refers to Evidence Code section 730 child custody evaluations to incorporate the language in Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure. No response required as to the opinions expressed by the commenter. No response required.

Rule 5.220		
Commenter	**Comment**	**Committee Response**
	being appointed under Evidence Code section 730 to conduct child custody evaluations and were charging litigants directly, she wrote letters of concern to the Senate and Assembly Judiciary Committees in 2010. She was also concerned that reports were not fact-checked for accuracy, nor stipulated to by litigants pursuant to Family Code section 3111(c), before being submitted to the court which meant that non-stipulated reports and recommendations were being reviewed by the court prior to hearing testimony. This practice would be unthinkable in a civil jury trial. • Senator Ortiz gave permission to forward her letter. We can provide her current contact information, if needed. Her recommendation to have a form to implement Family Code section 3118 is in process and we believe that many of her recommendations could be addressed through Rule of Court 5.220 amendments, since they are already codified.	No response required. The committee recommends amendments to rule 5.220 that are required to implement the mandate of AB 1179.
Superior Court of Orange County Family Law Division Orange	Amendments to the rule are supported by recent changes to FC3118 resulting from AB1179.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Director	CRC 5.220 (g)(1)(A): Change to "File and serve a report on the parties or their attorneys and any counsel appointed for the child pursuant to Family Code section 3150."	The committee agrees with the comment and recommends amending the rule as suggested.

SPR20-20

Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

All comments are verbatim unless indicated by an asterisk (*).

Form FL-329		
Commenter	**Comment**	**Committee Response**
Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	There needs to be a box for everything Family Code §3118 requires. This form does not pass the test. For example, Family Code §3118(b) states the evaluator or investigator shall, at a minimum, do certain things. Item 6 of the proposed FL-329 form is perfect. It specifically and affirmatively requires the evaluator or investigator to answer whether or not they requested a forensic medical examination of the child. This is precisely what the code requires. See Family Code §3118(b)(5). The remaining prompts on the proposed form should also require the evaluator or investigator to affirmatively state whether each requirement in Family Code §3118(b) has been met, meaning the evaluator or investigator (this is not an exhaustive list): i. Has or has not consulted with the agency providing child welfare services and law enforcement regarding the allegations of child sexual abuse, and has or has not obtained recommendations from these professionals regarding the child's safety and the child's need for protection. ii. Has or has not reviewed and summarized the child welfare services agency file. iii. Has or has not obtained from a law enforcement investigator all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.	The committee agrees with the comment and recommends revising the form to include a check box for every entry in Family Code section 3118.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	iv. Has or has not reviewed the results of a multidisciplinary child interview team… v. …	
California Partnership to End Domestic Violence by Christine Smith, Public Policy Coordinator Sacramento	The invitation to comment queries whether the proposal appropriately addresses the stated purpose. Because of a concerning flaw in item 12 of the Proposed Form FL-329, it does not. We generally appreciate the form as is but have concerns about item 12. Currently it reads, "Recommendations for known family members who may be eligible for assistance from the Victims of Crime program due to child abuse or domestic violence." (Emphasis added.) This language is not found in the statute, however. Rather, Family Code section 3118, subdivision (b)(6)(G) requires the evaluator to report "which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence." (Emphasis added.) It is important for courts to know when a separate investigation has yielded victim of crime assistance eligibility, especially where such conclusion may conflict with the evaluator's. Likewise, notifying the court when there has been domestic violence is exceedingly important when child sexual abuse has been alleged, because "[s]tudies show that children of batterers are 6.5 to 19 times more likely to be victims of incest than children of non-battering parents." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6, [citing to https://gcc02.safelinks.protection.outlook.com/?url=http%3A%	The committee agrees with the commenter and recommends revising the form as suggested. See above response.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	2F%2Fwww.caprotectiveparents.org%2FResearch&data=02%7C01%7CGabrielle.Selden%40jud.ca.gov%7C110ec66f90f4468e9c8408d80d03c11c%7C10cfa08a5b174e8fa245139062e839dc%7C0%7C0%7C637273657070012508&sdata=yYbuX2apLF723EoIB7Y4yKGIaNc5%2BkeZZjXlu7eMO6U%3D&reserved=0].) For that reason, we recommend item 12 be amended to read: "List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence." This ensures the proposed form is in fact "a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings," as the statute now mandates. (Fam. Code §3118 (i).) Assembly Bill 1179 was passed to address concerns about Family Code section 3118 custody evaluations where serious allegations of child sexual abuse are alleged. (Rubio; Stats. 2019, ch, 127.) As the bill's sponsor wrote: Family Code section 3118 was implemented in the year 2000 to help ensure children who reported sexual abuse in the context of divorce or separation were kept safe. Research at that time showed that those children were protected only 10% of the time in family courts, even though 99% of the children were not considered to be fabricating. The number of child sex abuse cases overall is very low (less than 2%), but child abuse cases use a disproportionate amount of court time. . . Advocates were hopeful Family Code section	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. No response required. No response required.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	3118 protocol would prevent children from being placed in unsupervised contact with their accused abusers, as had been occurring previously. However, the situation seems to be getting worse. New research showed that these children were being protected only 9% of the time. It appears the protocol is being underutilized. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6-7) (emphasis added.) Amending the form as we have suggested will help address these important concerns, by meeting the legislative mandate to create "a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings." (Fam. Code §3118(i).)	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
Seth L. Goldstein Attorney at Law Monterey	Perhaps I am wrong, but, I believe it was my original suggestion that there be in inclusion in the investigation/evaluation report of the fact that there was identified someone who was receiving Victim/Witness services/funding. The reason I suggested that such identification be made is that whereas law enforcement or social services may not find that abuse occurred (penal code definitions of abuse being the operative measuring scale), the Victim's Compensation Board, providing services and funds to victims of crime, can and often does find that a crime has occurred such that the child and or the child's family are eligible for compensation. The standard they use is exactly the same as that which a Family Court must use: the preponderance of evidence standard (more likely than not). This is a critical factor for the Court to consider. If the State of	The committee agrees with the commenter and recommends revising the form as suggested.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	California is paying out money because the Victims' Compensation Board found it is more likely than not that abuse occurred, certainly that should be considered by the court in making its determination of whether a child has been abused in a Family Court case. I believe that the code section as currently written concerning this issue must remain the same.	
Family Violence Appellate Project by Jennafer Dorfman Wagner, Esq. Director or Programs Oakland	We generally appreciate the form as is but have concerns about item 12. Currently it reads, "Recommendations for known family members who may be eligible for assistance from the Victims of Crime program due to child abuse or domestic violence." (Emphasis added.) This language is not found in the statute, however. Rather, Family Code section 3118, subdivision (b)(6)(G) requires the evaluator to report "which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence." (Emphasis added.) It is important for courts to know when a separate investigation has yielded victim of crime assistance eligibility, especially where such conclusion may conflict with the evaluator's. Likewise, notifying the court when there has been domestic violence is exceedingly important when child sexual abuse has been alleged, because "[s]tudies show that children of batterers are 6.5 to 19 times more likely to be victims of incest than children of non-battering parents." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6, [citing to	The committee agrees with the commenter and recommends revising the form as suggested. No response required.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	www.caprotectiveparents.org/Research].) For that reason, we recommend item 12 be amended to read: "List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence." This ensures the proposed form is in fact "a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings," as the statute now mandates. (Fam. Code §3118 (i).) Assembly Bill 1179 was passed to address concerns about Family Code section 3118 custody evaluations where serious allegations of child sexual abuse are alleged. (Rubio; Stats. 2019, ch, 127.) As the bill's sponsor wrote: Family Code section 3118 was implemented in the year 2000 to help ensure children who reported sexual abuse in the context of divorce or separation were kept safe. Research at that time showed that those children were protected only 10% of the time in family courts, even though 99% of the children were not considered to be fabricating. The number of child sex abuse cases overall is very low (less than 2%), but child abuse cases use a disproportionate amount of court time. . . Advocates were hopeful Family Code section 3118 protocol would prevent children from being placed in unsupervised contact with their accused abusers, as had been occurring previously. However, the situation seems to be getting worse. New research showed	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. No response required. No response required. No response required.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	that these children were being protected only 9% of the time. It appears the protocol is being underutilized. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6-7) (emphasis added.) Amending the form as we have suggested will help address these important concerns, by meeting the legislative mandate to create "a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings." (Fam. Code §3118(i).)	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
Legislative Coalition to Prevent Child Abuse by Melissa Knight-Fine Cameron Park	**Title** Form FL-329 is to be used for a child custody evaluation, investigation, or assessment based on serious allegations of child sexual abuse or allegations of child abuse under Family Code section 3118 and therefore should be titled Confidential Custody Investigation and Report in order to conform to the statute. (Authority cited: Family Code Section 3118 Chapter 6. Custody Investigation and Report [3110-3118].) **Items 1-3**. No changes are recommended to form items 1-3. **Item 4** **Summary of child welfare agency investigation(s) and recommendations** c. Did you consult with the agency providing child welfare services and obtain recommendations from these professionals regarding the child's safety and the child's need for protection? (Authority cited: Family Code section 3118(b)(1).)	The proposed change is not required to implement the amendments to Family Code section 3118 under Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127). Further, such a change would require extensive technical changes to other rules of court and forms, and potentially local court rules as well that reference the current title of the rule. For these reasons, the committee does not agree to recommend that the Judicial Council change the title of rule 5.220, as the commenter proposes. The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	The status or disposition of the investigation(s) and recommendations made regarding the child's safety, including information regarding child abuse, domestic violence, or substance abuse is as follows: Attach dates and documentation of investigations and reports of child abuse, domestic violence, and substance abuse. **Item 5** **Summary of law enforcement investigation(s) and recommendations** Did you consult with law enforcement regarding the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection? Report all recommendations in your written report. (Authority cited: Family Code section 3118(b)(1).) (Summarize information obtained related to any recommendations made, criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.) Attach documentation and dates for each law enforcement report including background checks.	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	Item 6 **Forensic medical examination of the child. <u>Relevant medical examinations and treatments.</u>** Did you request a forensic medical examination of the child? Yes No (If you answered "no", explain why the examination is not needed)	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	<u>Attach results and dates of all forensic medical examinations.</u>	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	<u>Attach results of and show dates of other relevant medical examinations or treatments.</u>	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	It would be most expedient for all forensic and medical examination and treatment information to be listed here under you titles of Forensic medical examination of the child and Relevant medical examinations and treatment. If the information is listed elsewhere and not under the descriptive title, it may be overlooked.	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	Item 7 **Relevant background material <u>including reports from therapists.</u>** (Provide a summary, including any written report from ~~a~~ <u>any</u>-therapist <u>who has treated or</u> is treating the child for suspected child sexual abuse (excluding any privileged communication) ~~a multidisciplinary child interview team~~, ~~or~~ <u>and summaries and written reports</u> from other professionals <u>that could help establish or disprove whether the child has been the victim of sexual abuse.</u> ~~and results of any forensic medical examination and any other medical examination or treatment.)~~	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	<u>Attach documentation and dates from all therapists who have</u>	The committee agrees with the commenter and

Form FL-329		
Commenter	**Comment**	**Committee Response**
	treated or are treating the child for suspected child sexual abuse and from other professionals whose reports are relevant. *By concentrating documentation of medical examinations in 6., therapist reports in 7., and material interviews in 8., it is easier for the court to quickly find information and it is less likely that evidence will be overlooked.*	recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	Item 8 **Documentation of material interviews**. If no multidisciplinary child interview team (hereafter MDIT) interview is available, or if the investigator or evaluator conducting this investigation believes the MDIT interview is inadequate for purposes of this investigation, the investigator must interview the child or request an MDIT interview, avoiding repeated interviews of the child when possible.	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	Specify in writing if you determined that a previous MDIT interview was adequate and attach the date and documentation of that interview:	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	Specify in writing if you determined that a MDIT interview was not available or adequate. Attach the date and documentation of the current investigator's interview of the child or the MDIT interview of the child that this investigator requested. (Authority cited: Family Code Section 3118 (b)(4).) *The legislature determined that an MDIT interview with the child or an interview with the child conducted by a professional trained in child interviews, was a key piece of evidence needed*	Same as above response.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	to determine child safety, and thus it is required by Family Code section 3118 (b)(4). (~~Summarize~~ Attach written documentation of any interviews of the parents, children, and other witnesses who provided relevant information.) (Authority cited: Family Code section 3118(6)(A).) **Item 9** **Limitations in the ~~evaluation~~ investigation and report**. (Describe any limitations in the ~~evaluation~~ investigation and report that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews.) **Item 10** **Other:** Additional information the evaluator or investigator believes would be helpful to the court in determining the safety needs and the best interests of the child (specify): *The reason for the investigation and report is to determine the safety needs of the child. Additional information the evaluator or investigator believes would be helpful to the court in determining specifically the safety needs of the child should be included and attached here.* (Authority cited: Family Code section 3118(b)(6); FC section 3118 (b)(6)(D).) **Item 11** **Evaluator or investigator recommendations** regarding how to ensure the safety of the child (specify): Recommendations regarding the therapeutic needs of the child:	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. As previously written, the committee does not recommend using "investigation" in place of "evaluation." Same as above response. The committee does not recommend revising the form as suggested. Under rule 5.220(c)(3), a child custody evaluation is an expert investigation and analysis of the health, safety, welfare, and best interest of the children.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	The primary reason for this investigation and report is to determine the safety needs of the child. Therefore, safety needs should be described first and separately. **Item 12** **Victims of Crime Program.** List family members who have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence. (Authority cited: Family Code Section 3118 (6) (G)) Recommendations for known family members who may be eligible for assistance from the Victims of Crime program due to child abuse or domestic violence (specify, if any). **Item 13** No changes are recommended for Item 13.	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. No response required.
Mothers of Lost Children by Connie Valentine, M.S.	1. For clarity, the title used in Chapter 6, FC 3110-3118 "Child Custody Investigation and Report" would be a more appropriate title for FL-329. 2. Investigators in some jurisdictions report they are unable to access child welfare agency records. Ensuring court orders include access to juvenile court records pursuant to Family Code section 3118 and child welfare agency records pursuant to Welfare and Institutions Code section 827 could make it easier for investigators to gather and review required documentation. 3.The use of expanding boxes and check boxes on FL-329 for	For the reasons previously provided, the committee does not recommend revising the form as suggested. The committee recommends revising the *Order Appointing Child Custody Evaluator* (form FL-327) as required by Family Code section 3118 to include that the child custody evaluator must have access to juvenile court records of the child who is the subject of the evaluation. Judicial Council form are static forms that do not

Form FL-329		
Commenter	**Comment**	**Committee Response**
	each separate procedure and reporting requirement in individual categories would ensure information is easily and accurately entered and located. Since there are often multiple events and documents from multiple counties and states to be summarized on and attached to FL-329, expanding boxes will need to have a large capacity, similar to that on the court website.	expand. The committee recommends that form be revised to provide additional blank space for the evaluator to write responses on the form; however, the committee recognizes that the evaluator will likely need to use an attachment to draft a complete response to the inquiry.
	4. A declaration that the investigator has met all the training requirements is important to attach.	The declaration that the evaluator has met the qualifications is a prerequisite for appointment. The statute does not require that the evaluator file an updated declaration of qualifications when the report is filed.
	5. Form FL-329 needs to reflect all procedural requirements, in addition to reporting requirements, set forth in FC 3118(b)(1)-(5). These are different from the data gathering and limitations process in FC 3111.	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	6. Certain FC 3118 reporting requirements were inadvertently omitted from the current FL-329 draft. (see amended form FL-329 below).	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	7. Having the recommendations of child welfare and law enforcement listed separately would make court review easier.	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
	8. Forensic examinations (MDIT and medical) can be combined into a separate category. If an adequate MDIT interview was conducted, FC 3118 requires that the investigator must prevent repeated interviews of the child. (FC 3118(b)(4))	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	9. Best interests of the child considerations, pursuant to FC 3011(a) should be included on the form for clarity. 10. It is important for litigants and their attorneys to fact check the report for accuracy. Commenter included a pdf mock up of the form as she proposes it be adopted by the Judicial Council	The committee recommends including a reference to Family Code section 3011, not listing each factor under 3011(a). The commenter's sample form is included as Attachment A. The committee agrees with many of the commenter's suggestions and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.
Superior Court of Orange County Family Law Division Orange	Header/parties names area; ALL Petitioner/Respondent and Other Parent/Party items can be indented to the left to be consistent with all other JCC forms. Number 1: There should be a space in between the words filed on. Number 4(c): Rephrase to include child sexual abuse; The status or disposition of the investigation and recommendation made regarding the child's safety, including information regarding child abuse, child sexual abuse, domestic violence, or substance abuse, is as follows: Number 5: Rephrase to include child sexual abuse and remove parenthesis; Summarize information obtained related to any recommendations made, criminal background checks of the parents and any suspect perpetrator that is not a parent, including information regarding child abuse, child sexual	The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council. The committee's new recommendations no longer include the language in 4(c). The committee's new recommendations no longer include the language in 5.

Form FL-329		
Commenter	**Comment**	**Committee Response**
	abuse, domestic violence, or substance abuse. Number 6: Remove the period from the title of this portion to keep consistency with other number areas in the form. Number 7: Remove the period from the title of this section to keep consistency with other numbered areas in the form. Remove the parenthesis and italics font, other sections' instructions are not in italics. Move instructions to the line below the title. Number 8: Remove the period from the title of this section to keep consistency with other numbered areas in the form. Remove the parenthesis and italics font, other sections' instructions are not in italics. Move instructions to the line below the title. Number 9: Remove the period from the title of this section to keep consistency with other numbered areas in the form. Remove the parenthesis and italics font, other sections' instructions are not in italics. Move instructions to the line below the title. Number 10: Remove the period from the title of this section to keep consistency with other numbered areas in the form.	The committee agrees to remove periods from the titles to each section of the form. The committee agrees to move instructions below the titles in each section. The committee agrees to remove periods from the titles to each section of the form. The committee agrees to remove parentheticals and italic fonts. The committee agrees to move instructions below the titles in each section. The committee agrees to remove periods from the titles to each section of the form. The committee agrees to remove parentheticals and italic fonts. The committee agrees to move instructions below the titles in each section. The committee agrees to remove periods from the titles to each section of the form.

SPR20-20

Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

All comments are verbatim unless indicated by an asterisk (*).

Form FL-329		
Commenter	**Comment**	**Committee Response**
	Move instructions to the line below the title. A section called Other works best listed at the end of all other sections. Other to be moved to the next page as number 13, and as a result, sections 11 and 12 would be renumbered to 10 and 11 respectively. Notice these instructions are not in a parenthesis and in italics, this validates the recommendations above. <u>Number 11</u>: Have the whole sentence be bold and renumber to 10. <u>Number 12:</u> Remove the period from the title of this section to keep consistency with other numbered areas in the form.	The committee agrees to move instructions below the titles in each section. The committee's new recommendations no longer include the language in 5. Same as previous responses. Same as previous responses.

Confidential Child Custody Investigation and Report (FL-329)

1) Appointment and Confidentiality

a) The *Order Appointing Child Custody Evaluator (form FL-327)* filed on _____ is Attachment #1 and provides confidential access to all juvenile court records and child welfare services agency records pursuant to Welfare and Institutions Code 827 pertaining to the child who is the subject of the evaluation, investigation, or assessment.

b) The *Confidentiality of Child Custody Evaluation Report (form FL-327)* is Attachment #2.

c) A declaration that the investigator has met every training topic in Rules of Court 5.225 and 5.230 is Attachment #3.

2) The names and dates of birth of the child(ren) are (specify):

Child's full name	Date of birth
Child's full name	Date of birth

Please list each event or document separately.

3) Dependency court orders that might affect custody (if any)

☐ There are no dependency court orders, OR

☐ See Attachment(s) #_____ for all dependency court orders.

Court (county, state):	Case number:	Date order filed:
Summary/ies:		

4) Summary of child welfare agency investigation(s) and recommendations

a) The children in section 2) and the children's parents are or have been the subject of child abuse investigation(s).

☐ No (skip b–d), OR

☐ Yes. I consulted with the agency/ies providing child welfare services regarding the allegations of child sexual abuse, reviewed the child welfare services agency/ies file, and obtained recommendations from the social worker(s) regarding the child's safety and the child's need for protection. My notes are filed in a separate section.

b) Each social worker's contact information and summary of each child welfare agency investigation, including statements made by the children and the parents, and information regarding child abuse, domestic violence or substance abuse, is as follows:

Social worker Name:	Telephone No.:	Address:	Email address:
County/state:	Case number:	Date opened:	Status/disposition:
Summary/ies:			

c) Recommendations made by each social worker for the child's safety and need for protection:

5) Summary of law enforcement investigation(s) and recommendations

☐ a) I consulted with the agency/ies providing law enforcement regarding the

allegations of child sexual abuse, and obtained recommendations from the law enforcement investigator/s regarding the child's safety and the child's need for protection, and information regarding child abuse, domestic violence, or substance abuse. See Attachment(s) #_____ for all police and sheriff reports.

Summary of each law enforcement investigator's investigation and information from regarding child abuse, domestic violence, substance abuse:

Investigator Name/Title	Telephone No.:	Address:	Email Address:
County/state:	Case number:	Date opened:	Status/disposition:
Summary/ies:			

☐ b) I obtained from the law enforcement investigator(s) all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse. See Attachment(s) #_____ for all criminal background records

Summary/ies:

c) Recommendations from each law enforcement investigator for the safety of the child and the child's need for protection:

6) Forensic examinations

a) Multi-disciplinary Interview team (MDIT) interview(s)

☐ I requested an MDIT interview because ☐ there was no MDIT interview, or ☐ the MDIT interview was inadequate for purposes of this investigation.

☐ I reviewed the videotape and any transcripts of the MDIT interview(s). See Attachment(s) #_____ for copies of all MDIT interview videotape(s) and transcripts.

Summary/ies:

b) Forensic medical examination(s)

☐ I reviewed the forensic medical examination(s) of the child. See Attachment(s) #_____ for all forensic medical examination reports.

Summary/ies:

☐ Reason no forensic medical examination was conducted and I did not request one.

Reason:

7) Documentation of material interviews. .

☐ a) See Attachments #_____for my written documentation of interviews with both parents.

☐ b) If no MDIT forensic interview could be conducted, I interviewed the child(ren). Whenever possible, repeated interviews were avoided.

See Attachments(s) #___ for written documentation of my interview(s) with each child.

Reason for no MDIT forensic interview:

☐ c) See Attachment(s) #___ for written documentation of each of my interviews with other witnesses who provided relevant information.

Summary/ies

8) Relevant background material.

☐ a) See Attachment(s) #____ for all written reports from therapist(s) treating the child(ren) for suspected child sexual abuse (excluding any privileged communication).

Summary/ies:

☐ b) See Attachment(s) #_____ for all written reports from other professionals.

Summary/ies:

☐ c) See Attachment(s) #_____ for all written reports from medical examination(s).

Summary/ies:

☐ d) See Attachment(s) #_____ for all written background material(s).

Summary/ies:

9) Additional information regarding the presence of domestic violence or substance abuse in the family.

☐ a) See Attachment(s) #____ for all written reports and records from medical personnel regarding the presence of domestic violence or substance abuse.

Summary/ies:

☐ b) See Attachment(s) #_____ for all written reports from prior or current treating therapist(s) regarding the presence of domestic violence or substance abuse.

Summary/ies:

☐ c) See Attachment(s) #____ for all interviews I conducted or reviewed regarding the presence of domestic violence or substance abuse.

Summary/ies:

10) Victims of Crime Program.

a) Recommendations for known family members who may be eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence (specify, if any):

b) Family members known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence, if any:

11) Other information.

Any other information I believe would be helpful to the court in determining the best interests of the child:*

*Best interests of the child, pursuant to Family Code section 3011, consists of a consideration of
(1) The health, safety, and welfare of the child.
(2) A history of abuse by one parent or any other person seeking custody against any of the following:
(i) A child to whom the parent or person seeking custody is related by blood or affinity or with whom the parent or person seeking custody has had a caretaking relationship, no matter how temporary.
(ii) The other parent.
(iii) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.
(3) The nature and amount of contact with both parents, except as provided in Section 3046.
(4) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent.

12) My recommendations regarding the therapeutic needs of the child and how to ensure the safety of the child:

Reviewed for accuracy by parties and attorneys prior to submission to the clerk of the court.
Parties' signature/date _____ _____
Attorney's signature /date_____ _____

Investigator signature/date _____

Item number: 22

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Technical Changes to Miscellaneous Forms

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle Selden 415-865-8085, Gregory Tanaka 415-865-7671

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Item 26 of the annual agenda. Project Summary: Project Summary: Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2); "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy….".

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 24–25, 2020

Title
Family Law: Technical Changes to Miscellaneous Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-115, FL-117, FL-130, FL-240, FL-356

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 10, 2020

Contact
Gabrielle Selden, 415-865-8085
gabrielle.selden@jud.ca.gov
Gregory Tanaka, 415-865-7671
gregory.tanaka@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends making revisions, which are technical or minor and noncontroversial in nature, to forms FL-115, FL-117, FL-130, FL-240, and FL-356. The revisions are necessary to correct forms that were inadvertently omitted from a series of parentage forms that the Judicial Council revised, effective January 1, 2020.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Revise forms FL-115, FL-117, FL-130, and FL-240, to reflect the current titles of forms FL-200 and FL-235;

2. Revise forms FL-115, FL-240, and FL-356 by deleting gender-specific references, such as "mother" and "father," and instead using gender-neutral language;

3. Revise form FL-240 by:

   (a) Deleting all instances of the phrase "shall be" (as in, the following terms of custody and support "shall be ordered" or "shall be paid"), and inserting the plain language statement that "the parties stipulate that the court order" the following terms "as proposed in" the attached forms;

   (b) Replacing the word "establishment" with the word "determination" in the title of the form;

   (c) Correcting the titles of Judicial Council forms identified on that form by identifying the category "—Custody and Support" after the form titles, and in the footer of the form; and

   (d) Replacing "visitation" with "visitation (parenting time)."

4. Revise forms FL-115 and FL-117 to include the acronym "(UCCJEA), which was inadvertently omitted from the title of form FL-105.

The proposed revised forms are attached at pages 4–10.

Relevant Previous Council Action

At its meeting on October 27, 2000, the Judicial Council approved the policy of rewriting rules to discontinue the use of the word *shall*. The policy of using *must* instead of *shall* was an attempt to use clear, simple language in rules. Since then, forms and rules have been rewritten to remove references to the word *shall*.

Effective January 1, 2020, the Judicial Council revised multiple family law forms to reflect changes in the law and make the forms consistent with other parentage forms. [1]

Analysis/Rationale

In the *Family Law: Changes to Parentage Rules and Forms* report (link in footnote 1, below), the Judicial Council's revisions to the forms in that proposal included:

- Revising the titles of forms FL-200 and FL-235 to replace the terms "establish" and "establishment" with the terms "determine" and "determination," to reflect the use of the term *determine* in the Family Code, thereby covering actions in which a party is seeking to establish or disestablish a parental relationship;
- Replacing the term *visitation* with *visitation (parenting time)*; and
- Using gender-neutral references to the parties and children.

[1] The report to the Judicial Council may be found at *https://jcc.legistar.com/View.ashx?M=F&ID=7693361&GUID=0723E145-B444-4B7F-8762-0F753FD3E01F*.

Forms FL-115, FL-117, FL-130, FL-240, FL-356 have been revised as necessary to incorporate the above-listed minor technical changes.

In addition, form FL-240 has been revised to reflect the Judicial Council's policy of rewriting rules to discontinue the use of the word shall in favor of clearer, plain language.

Policy implications

The above changes are consistent with the policy of ensuring consistency in rules and forms, discontinuing the use of the word "shall," using gender neutral terms, and writing rules and forms using plain language.

Comments

This proposal did not circulate for comment. Under rule 10.22(d)(2) of the California Rules of Court, because the recommended changes to forms FL-115, FL-117, FL-130, FL-240, and FL-356 are technical or minor substantive changes, which are unlikely to create controversy, council adoption without circulation is an option.

Alternatives considered

The committee considered making no revisions to the forms at this time but concluded that the revisions are necessary to (1) correct forms that were inadvertently omitted from a series of parentage forms that the Judicial Council previously revised, (2) include the correct titles of other Judicial Council forms (3) revise language in forms to use gender neutral terms, and (4) delete and replace the term "shall" wherever it appear in the forms.

Fiscal and Operational Impacts

Implementation of the revisions will require courts to incur standard reproduction costs for the forms. In addition, because the forms are available in other languages, there will be costs to translate the revised forms.

Attachments and Links

1. Forms FL-115, FL-117, FL-130, FL-240, and FL-356, at pages 4–10

PARTY WITHOUT ATTORNEY *or* ATTORNEY STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***Draft*** Not approved by the Judicial Council V 8/10/2020gs
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
PROOF OF SERVICE OF SUMMONS	CASE NUMBER:

1. At the time of service I was at least 18 years of age and not a party to this action. **I served the respondent with copies of:**
   a. ☐ Family Law: *Petition—Marriage/Domestic Partnership* (form FL-100), *Summons* (form FL-110), and blank *Response—Marriage/Domestic Partnership* (form FL-120)

   –or–

   b. ☐ Uniform Parentage: *Petition to Determine Parental Relationship* (form FL-200), *Summons* (form FL-210), and blank *Response to Petition to Determine Parental Relationship* (form FL-220)

   –or–

   c. ☐ Custody and Support: *Petition for Custody and Support of Minor Children* (form FL-260), *Summons* (form FL-210), and blank *Response to Petition for Custody and Support of Minor Children* (form FL-270)

   and

   d. ☐
   (1) ☐ Completed and blank *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105)
   (2) ☐ Completed and blank *Declaration of Disclosure* (form FL-140)
   (3) ☐ Completed and blank *Schedule of Assets and Debts* (form FL-142)
   (4) ☐ Completed and blank *Income and Expense Declaration* (form FL-150)
   (5) ☐ Completed and blank *Financial Statement (Simplified)* (form FL-155)
   (6) ☐ Completed and blank *Property Declaration* (form FL-160)
   (7) ☐ *Request for Order* (form *FL-300*), and blank *Responsive Declaration to Request for Order* (form *FL-320*)
   (8) ☐ Other *(specify):*

2. Address where respondent was served:

3. I served the respondent by the following means *(check proper boxes):*
   a. ☐ **Personal service.** I personally delivered the copies to the respondent (Code Civ. Proc., § 415.10) on *(date):* at *(time):*
   b. ☐ **Substituted service.** I left the copies with or in the presence of *(name):* who is *(specify title or relationship to respondent):*
      (1) ☐ **(Business)** a person at least 18 years of age who was apparently in charge at the office or usual place of business of the respondent. I informed the person of the general nature of the papers.
      (2) ☐ **(Home)** a competent member of the household (at least 18 years of age) at the home of the respondent. I informed the person of the general nature of the papers.

      on *(date):* at *(time):*

      I thereafter mailed additional copies (by first class, postage prepaid) to the respondent at the place where the copies were left (Code Civ. Proc., § 415.20b) on *(date):*

      A **declaration of diligence** is attached, stating the actions taken to first attempt personal service.

PETITIONER: RESPONDENT:	CASE NUMBER:

3. c. ☐ **Mail and acknowledgment service.** I mailed the copies to the respondent, addressed as shown in item 2, by first-class mail, postage prepaid, on *(date):* from *(city):*

(1) ☐ with two copies of the *Notice and Acknowledgment of Receipt* (form FL-117) and a postage-paid return envelope addressed to me. **(Attach completed *Notice and Acknowledgment of Receipt* (form FL-117).)** (Code Civ. Proc., § 415.30.)

(2) ☐ to an address outside California (by registered or certified mail with return receipt requested). **(Attach signed return receipt or other evidence of actual delivery to the respondent.)** (Code Civ. Proc., §§ 415.40, 417.20.)

d. ☐ **Other** *(specify code section):*

☐ Continued on Attachment 3d.

4. **Person who served papers**

Name:

Address:

Telephone number:

This person is

a. ☐ exempt from registration under Business and Professions Code section 22350(b).

b. ☐ not a registered California process server.

c. ☐ a registered California process server: ☐ an employee or ☐ an independent contractor

(1) Registration no.:

(2) County:

d. **The fee** for service was *(specify):* $

5. ☐ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

–or–

6. ☐ **I am a California sheriff, marshal, or constable**, and I certify that the foregoing is true and correct.

Date:

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE OF PERSON WHO SERVED PAPERS)

PARTY WITHOUT ATTORNEY *or* ATTORNEY STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***Draft*** Not approved by the Judicial Council v3. 8/10/2020gs
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT	CASE NUMBER:

(Sender completes items 1 through 4 and signs before mailing. Recipient completes items 5 and 6, signs, then returns)

1. To (*name of individual being served):* _____

NOTICE

The documents identified below are being served on you by mail with this acknowledgment form. You must personally sign, or a person authorized by you must sign, this form to acknowledge receipt of the documents.

If the documents described below include a summons and you fail to complete and return this acknowledgment form to the sender within 20 days of the date of mailing, you will be liable for the reasonable expenses incurred after that date in serving you or attempting to serve you with these documents by any other methods permitted by law. If you return this form to the sender, service of a summons is deemed complete on the date you sign the acknowledgment of receipt below. This is **not** an answer to the action. If you do not agree with what is being requested, you must submit a completed *Response* form to the court within 30 calendar days.

2. Date of mailing *(specify):* _____

3. _____ ▶ _____
(TYPE OR PRINT SENDER'S NAME) (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE AND MUST BE 18 YEARS OR OLDER)

ACKNOWLEDGMENT OF RECEIPT

4. I agree I received the following:
   - a. ☐ Family Law: *Petition—Marriage/Domestic Partnership* (form FL-100), *Summons* (form FL-110), and blank *Response—Marriage/Domestic Partnership* (form FL-120)
   - b. ☐ Uniform Parentage: *Petition to Determine Parental Relationship* (form FL-200), *Summons* (form FL-210), and blank *Response to Petition to Determine Parental Relationship* (form FL-220)
   - c. ☐ Custody and Support: *Petition for Custody and Support of Minor Children* (form FL-260), *Summons* (form FL-210), and blank *Response to Petition for Custody and Support of Minor Children* (form FL-270)
   - d. ☐ (1) ☐ Completed and blank *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105)
     - (2) ☐ Completed and blank *Declaration of Disclosure* (form FL-140)
     - (3) ☐ Completed and blank *Schedule of Assets and Debts* (form FL-142)
     - (4) ☐ Completed and blank *Income and Expense Declaration* (form FL-150)
     - (5) ☐ Completed and blank *Financial Statement (Simplified)* (form FL-155)
     - (6) ☐ Completed and blank *Property Declaration* (form FL-160)
     - (7) ☐ *Request for Order* (form FL-300), and blank *Responsive Declaration to Request for Order* (form *FL-320*)
     - (8) ☐ Other *(specify):*

5. Recipient signed this acknowledgment on *(specify date):* _____

6. _____ ▶ _____
(TYPE OR PRINT NAME OF PERSON ACKNOWLEDGING RECEIPT) (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT)

PARTY WITHOUT ATTORNEY *or* ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** ***Draft*** Not approved by the Judicial Council v 8/10/2020gs
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
APPEARANCE, STIPULATIONS, AND WAIVERS	CASE NUMBER:

1. **Appearance by respondent** *(you must choose one):*
   a. ☐ By filing this form, I make a general appearance.
   b. ☐ I have previously made a general appearance.
   c. ☐ I am a member of the military services of the United States of America. I have completed and attached to this form *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003* (form FL-130(A)).
2. **Agreements, stipulations, and waivers** *(choose all that apply):*
   a. ☐ The parties agree that this cause may be decided as an uncontested matter.
   b. ☐ The parties waive their rights to notice of trial, a statement of decision, a motion for new trial, and the right to appeal.
   c. ☐ This matter may be decided by a commissioner sitting as a temporary judge.
   d. ☐ The parties have a written agreement that will be submitted to the court, or a stipulation for judgment will be submitted to the court and attached to *Judgment (Family Law)* (form FL-180).
   e. ☐ None of these agreements or waivers will apply unless the court approves the stipulation for judgment or incorporates the written settlement agreement into the judgment.
   f. ☐ This is a parentage case, and both parties have signed an *Advisement and Waiver of Rights Re: Determination of Parental Relationship* (form FL-235) or its equivalent.
3. **Other** *(specify):*

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF RESPONDENT)

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PETITIONER)

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR RESPONDENT)

Form Approved for Optional Use
Judicial Council of California
FL-130 [Rev. January 1, 2021]

APPEARANCE, STIPULATIONS, AND WAIVERS
(Family Law—Uniform Parentage—Custody and Support)

Government Code, § 70673
www.courts.ca.gov

PARTY WITHOUT ATTORNEY *or* ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** ***Draft*** Not approved by the Judicial Council v 8/10/2020gs
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
STIPULATION FOR ENTRY OF JUDGMENT RE: DETERMINATION OF PARENTAL RELATIONSHIP	CASE NUMBER:

THE PARTIES STIPULATE THAT

1. ☐ The parties read and understand the *Advisement and Waiver of Rights Re: Determination of Parental Relationship* (form FL-235), which is submitted with this *Stipulation for Entry of Judgment.* The parties give up those rights and freely agree that a judgment may be entered in accordance with this stipulation.
2. Name:
   Name:
   are the parents of the following children:

Name	Date of Birth

THE PARTIES STIPULATE THAT THE COURT ORDER:

3. ☐ Child custody and visitation (parenting time) as proposed in *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).
4. ☐ Child support as proposed in *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).
5. ☐ Attorney fees as proposed in *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).
6. ☐ Changes to the names of children as proposed in *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).
7. ☐ Reasonable costs of pregnancy and birth as proposed in *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).
8. ☐ Other orders as proposed in *Judgment (Uniform Parentage—Custody and Support)* (form FL-250).
9. ☐ The parties further agree that the court make the following orders: ☐ See attachment 9.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR RESPONDENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF OTHER PARTY OR ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
FL-240 [Rev. January 1, 2021]

STIPULATION FOR ENTRY OF JUDGMENT RE: DETERMINATION OF PARENTAL RELATIONSHIP
(Uniform Parentage—Custody and Support)

Family Code, § 7600 et seq.
www.courts.ca.gov

PARTY WITHOUT ATTORNEY *or* ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **CONFIDENTIAL** ***Draft*** Not approved by the Judicial Council v 8/10/20
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
CONFIDENTIAL REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW	CASE NUMBER:

To the person filing this request: You must file this request in the case identified in 6, below, at the same time as or any time after the petition and a request for an order of sole physical custody of the child named in 4.*

To the court clerk: You must file this request in a confidential part of the case file.

1. **A COURT HEARING WILL BE HELD AS FOLLOWS:**

   a. Date: Time: ☐ Dept.: ☐ Room:

   b. Address of court ☐ same as noted above ☐ other *(specify):*

2. I am the ☐ petitioner ☐ respondent ☐ other parent or party. I allege the following facts and request that the court make the specified findings and conclusions.

3. This court has jurisdiction to make a custody determination about the child in item 4 under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam. Code, §§ 3400–3465.) If not currently on file with the court, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached.

4. The child *(name):** *(date of birth):*
   is a national of *(country):* .

5. The child's parents are *(name each):*

6. The following petition has been filed ☐ earlier in this case ☐ at the same time as this request.
   a. ☐ *Petition—Marriage/Domestic Partnership* (form FL-100), asking for sole physical custody of the child named in 4.
   b. ☐ *Petition to Determine Parental Relationship* (form FL-200), asking for sole physical custody of the child named in 4.
   c. ☐ *Petition for Custody and Support of Minor Children* (form FL-260), asking for sole physical custody of the child named in 4.
   d. ☐ *Request for Domestic Violence Restraining Order* (form DV-100), asking for sole physical custody of the child named in 4.
   e. ☐ *Adoption Request* (form ADOPT-200) asking to adopt the child named in 4.
   f. ☐ Another petition and request for sole physical custody of the child named in 4 *(specify):*

7. ☐ This court made final orders about physical custody of the child on *(date):* . The orders remain in effect.
   ☐ The case in item 6 is pending in this court.

*** (*Prepare and file a separate form FL-356 for each child for whom you are requesting Special Immigrant Juvenile findings.)***

Form Adopted for Mandatory Use
Judicial Council of California
FL-356 [Rev. January 1, 2021]

Code of Civil Procedure, § 155;
Family Code, §§ 3020–3031;
8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

8. After the court has made final orders in this case, identified in item 6, the child will be legally placed under the custody of an individual appointed by the court. The court will have jurisdiction to determine requests to modify or terminate these orders, unless another court acquires valid jurisdiction, until the child reaches 18 years of age.

9. I understand that section 3026 of the Family Code prohibits the court from ordering reunification services as part of a child custody proceeding. After the court has issued final orders giving sole physical custody to one parent, return of the child to the physical custody of another parent (i.e., reunification) will not be legally possible while those orders are in effect.

I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

10. The child has been placed in the custody of *(name):*
who is an individual appointed by the court as described in the orders referred to in 7, 8, and 9.

11. Reunification with *(specify name or names):*
is not viable under California law because of *(check all that apply).*
- ☐ abuse
- ☐ neglect
- ☐ abandonment
- ☐ another legal basis *(specify):*

Facts supporting this finding *(specify):*

☐ Continued on Attachment 11.

12. It is not in the best interest of the child to be returned to the child's or the parent's country of nationality or country of last habitual residence *(specify country or countries):*

Facts supporting this finding *(specify):*

☐ Continued on Attachment 12.

13. ☐ Additional documents in support of the request are attached and incorporated into this form. Number of pages attached: ____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Date:

▶ _____
(SIGNATURE)

Item number: 23

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Information, Documents, and Services for Youth 16 Years of Age and Older
Amend Cal. Rules of Court, rules 5.502, 5.740, and 5.810; adopt forms JV-361, JV-362, and JV-363; revise form JV-365

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Family and Juvenile Law Advisory Committee Annual Agenda: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
Item 1k. AB 718 (Eggman) Dependent children: documents (Ch. 438, Statutes of 2019) Requires child welfare agencies to begin process of providing key documents to foster youth beginning at age 16, rather than at the end of juvenile court jurisdiction.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 25, 2020

Title
Juvenile Law: Information, Documents, and Services for Youth 16 and Older

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.502, 5.740, and 5.810; adopt forms JV-361, JV-362, and JV-363; revise form JV-365

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Kerry Doyle, Attorney
Center for Families, Children & the Courts

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 11, 2020

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three California Rules of Court, adopting three forms, and revising one form to conform to the mandate of Assembly Bill 718 (Eggman; Stats. 2019, ch. 438) that child welfare agencies begin the process of providing key information, documents, and services to youth in foster care beginning at age 16, rather than at the end of juvenile court jurisdiction.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.502 of the California Rules of Court to define the term "youth" as a person who is at least 14 years of age and not yet 21 years of age.

2. Amend rule 5.740 to add a requirement that the social worker provide the youth with the documents required by Welfare and Institutions Code section 391 and to identify the form (discussed below) that must be used to specify the information, documents, and services that were provided to the youth.
3. Amend rule 5.810 to add a requirement that the probation officer provide the youth with the documents required by section 391 and to identify the form (discussed below) that must be used to record the information, documents, and services that were provided to the youth.
4. Adopt *First Review Hearing After Youth Turns 16 Years of Age—Information, Documents, and Services* (form JV-361) as a mandatory form for the social worker or probation officer to complete to specify which information, documents, and services have been provided to the youth at the first review hearing after the youth turns 16.
5. Adopt *Review Hearing for Youth Approaching 18 Years of Age—Information, Documents, and Services* (form JV-362) as a mandatory form for the social worker or probation officer to complete to specify which information, documents, and services have been provided to the youth at the last review hearing before the youth turns 18.
6. Adopt *Review Hearing for Youth 18 Years of Age or Older—Information, Documents, and Services* (form JV-363) as a mandatory form for the social worker or probation officer to complete to specify which information, documents, and services have been provided to the youth at each review hearing after the youth turns 18.
7. Revise *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) to add the new requirement in AB 718 that the nonminor be provided with written information notifying the nonminor of financial literacy programs or other available resources to help the nonminor obtain financial literacy skills, to clarify the new requirement that information be in writing notifying a nonminor who was formerly in foster care and is granted a preference for student assistant or internship programs with state agencies, and to remove the phrase "his or her" so that the form is gender neutral.

The text of the amended rules and the new and revised forms are attached at pages 7–15.[1]

Relevant Previous Council Action

Rule 5.502 contains the definitions for the juvenile rules in Division 3 of the California Rules of Court. The Judicial Council adopted what is now rule 5.502 as rule 1401 effective January 1, 1990. It was amended seven times before it was renumbered and amended effective January 1, 2007. It was further amended seven times to add various definitions to the juvenile rules.

[1] This report outlines the Family and Juvenile Law Advisory Committee's recommendation of adding a new subdivision (c) to rule 5.740. In a separate report, the committee also recommends amendments to subdivision (a) of rule 5.740. See Judicial Council of Cal., Advisory Com. Rep., *Juvenile Law: Guardianship Rules and Forms* (August 10, 2020). The committee has submitted both reports for the Judicial Council's consideration at its September 25, 2020, meeting. To prevent the inadvertent omission of either set of amendments if both are published, the text of rule 5.740 attached to this report includes the amendments recommended in both reports.

Rule 5.740 addresses hearings after the establishment of a dependent child or youth's permanent plan. The Judicial Council adopted what is now rule 5.740 as rule 1465 effective January 1, 1990. It was amended four times before it was renumbered and amended effective January 1, 2007. It was further amended six times.

Rule 5.810 addresses review hearing requirements for youth placed in foster care under the delinquency jurisdiction of the court. The Judicial Council adopted what is now rule 5.810 as rule 1496 effective January 1, 1991. It was amended five times before it was renumbered and amended effective January 1, 2007. It was further amended three times.

Form JV-365 is a mandatory form and was most recently revised effective January 1, 2017.

Analysis/Rationale

Before the passage of AB 718, the law only required the provision of certain information, documents, and services to a youth in foster care who was 18 years of age or older prior to termination of juvenile court jurisdiction over that youth.[2] A county welfare department was—and still is—also required, at the hearing before a dependent turns 18 and at every review hearing thereafter until the court terminates jurisdiction, to submit a report describing efforts toward providing certain documents and information to the youth.[3] Assembly Bill 718 seeks to increase the access that youth in foster care have to various information, documents, and services—and to broaden those items to include financial literacy resources—as they transition to adulthood and greater levels of independence, acknowledging the need that some youth may have for such materials and supports before they turn 18, and between turning 18 and exiting foster care.

According to the bill's author:

> While many positives have come from the extension of benefits for youth involved in the foster care system, one result of the implementation of AB 12 (2010) has been that many youth do not receive important documents, such as their social security card, driver's license, and birth certificate, until well past the period when they need these documents to navigate employment, housing, higher education or financial aid applications. [This bill] would provide youth with important documentation and support when it is needed, which will give them a better opportunity to achieve their goals and be independent.[4]

Policy implications

The committee considered how to best implement AB 718's statutory mandate that child welfare agencies begin the process of providing key information, documents, and services to youth in foster care beginning at age 16, rather than at the end of juvenile court jurisdiction. The

[2] Welf. & Inst. Code, § 391.

[3] *Id.*, § 366.31(a)(3).

[4] Assem. Com. on Judiciary, Analysis of Assem. Bill No. 718 (2019–2020 Reg. Sess.) Apr. 2, 2019, pp. 4–5.

proposed rules and forms attempt to provide youth with important documents, information, and services when they are most needed and not merely at the end of the court's jurisdiction.

Comments

This proposal circulated for comment as part of the spring 2020 invitation-to-comment cycle from April 10 through June 9, 2020, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, trial court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, CASA (Court Appointed Special Advocates) programs, and other juvenile and family law professionals. Nine organizations, including four superior courts, provided comment: six agreed with the proposal, and three did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 16–25.

The committee sought specific comment on whether the rules of court should define "youth" and, if so, whether the proposed definition of "a person who is at least 14 years of age and not yet 21 years of age" was appropriate. All five commenters who answered this question agreed that the rules of court should define "youth." Four of the commenters stated that the proposed definition was appropriate. One commenter stated that the definition should be more specific, as the definitions overlap; as it reads, they commented, a person who is a "youth" can also be a child, a nonminor, or a nonminor dependent. The committee has retained the proposed language in rule 5.502 defining "youth" as a person who is at least 14 years of age and not yet 21 years of age.[5] While the definitions may overlap, this will allow the youth to be identified by the term they find the most respectful. In addition to creating a respectful term for older children, the term "youth" is important in juvenile justice court because many 18- to 21-year-olds appear before that court and do not meet the definition of child.

One commenter, a large superior court, commented: "Each of the forms indicate that the agency report is attached. Currently in Orange County, the agency reports are filed separately, not attached. The existing form JV-365 also has the language indicating that a report is attached. However, in practice, the report itself is filed separately, often on a different date, and not attached to the JV-365." In response, the committee has modified the proposal to include language on the forms allowing for an attached report or report submitted to the court. This will allow courts to continue to follow their current process of informing the courts whether the youth received the required information, documents, and services.

[5] The committee has modified the proposal to replace the terms "child" or "minor" with "youth" in most items on the Judicial Council forms. The one exception is that the committee has retained the proposed language of "the date the child entered foster care" because that is a legal term defined by statute. Welf. & Inst. Code § 361.49.

Alternatives considered

The committee considered not defining "youth" in rule 5.502. However, the committee has had repeated and lengthy discussions over whether to use the term "child" or "minor." The current rules all use "child," but the statutes use "minor." The committee notes that throughout the juvenile court rules and forms there is a consistent practice of using "child," and this term is clearly defined in rule 5.502.[6] Use of the term "child" is a reminder to all in the system that juvenile offenders are developmentally distinct from adults; "minor" is not defined in rule 5.502. In a proposal circulated for public comment in spring 2019 that addressed the needs of older children as this proposal does, the committee sought specific comment on whether the rules should use the term "child" or "minor." While many commenters suggested that the term "youth" is preferred by older children who do not like to be referred to as children, the committee concluded that since "youth" is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal, public comment should be sought before the council defines the term. The committee circulated a definition of "youth" for public comment in this proposal, which commenters agreed with.

The committee considered using age 15 as the beginning of the "youth" age group, since that is the age the United Nations, for statistical purposes, uses as the beginning age in its definition.[7] However, under the California statutory scheme, the case plan must include a written description of the programs and services that will help the child to prepare for the transition from care to successful adulthood beginning at age 14.[8] For that reason, and because the dependency court needs to make a finding regarding the services needed to assist the child or nonminor dependent to make the transition from foster care to successful adulthood beginning at age 14,[9] the committee concluded that the term should be defined as "a person who is at least 14 years of age and not yet 21 years of age." Fourteen is also the minimum age when a minor can obtain a permit to work.[10] If a definition of youth is ultimately adopted by the Judicial Council, this change should be incorporated into other rules and forms when those rules and forms require other more substantive revisions, such as those necessitated by statutory amendments.

The committee considered adding Regional Center documents as documents that must be provided to the youth listed on the Judicial Council forms. These documents are not required by statute, however, so the committee concluded that they should not be added to the forms. The committee has noted that if legislation is proposed again in this area, Regional Center documents would be appropriate to include in statute.

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[6] Rule 5.502 defines "child" as "a person under the age of 18 years."

[7] United Nations, "Global Issues—Youth," *www.un.org/en/sections/issues-depth/youth-0/index.html* (as of August 5, 2020).

[8] Welf. & Inst. Code, § 16501.1(g)(16)(A).

[9] *Id.*, § 366.3(e)(10).

[10] Ed. Code, § 49112.

Assembly Bill 718 governs review hearings in the dependency court, but not in the delinquency court. The committee considered limiting this proposal to youth in foster care under the dependency jurisdiction of the court, and not those under the delinquency jurisdiction of the court. This, however, would result in youth in foster care in the delinquency system receiving different treatment than those in the dependency system. Rule 5.555(c)(1)(J) requires that, for a hearing in which the court is considering terminating jurisdiction, the probation officer's report include verification that the nonminor was provided with the information, documents, and services as required under Welfare and Institutions Code section 391(e). Probation officers throughout the state are providing the required information, documents, and services to nonminors when the court terminates jurisdiction, and are using and filing *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365). While AB 718 governs review hearings in the dependency court and not in the delinquency court, the legislative history is very clear that the bill is intended to help youth who exit foster care to successfully prepare for their transition to independence.[11] It is both fair and reasonable that this proposal help all youth in foster care successfully prepare for their transition to independence.

Fiscal and Operational Impacts

The proposal includes an added requirement that social workers and probation officers provide certain information, documents, and services to youth in foster care earlier in the case than is the current practice. This will increase workload but is required for social workers by recent statutory amendments. As discussed above, the committee concluded that this benefit should also be provided to youth in foster care under the delinquency jurisdiction of the court and thus the proposal includes a slight increase in workload for probation officers. In implementing the new and revised forms, courts will incur standard reproduction costs.

Attachments and Links

1. Cal. Rules of Court, rules 5.502, 5.740, and 5.810, at pages 7–9
2. Forms JV-361, JV-362, JV-363, and JV-365, at pages 10–15
3. Chart of comments, at pages 16–25
4. Link A: Assem. Bill 718, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB718

[11] Assem. Com. on Human Services, Analysis of Assem. Bill No. 718 (2019–2020 Reg. Sess.) Mar. 26, 2019, pp. 5–7.

Rules 5.502, 5.740, and 5.810 of the California Rules of Court are amended, effective January 1, 2021, to read:

Rule 5.502. Definitions and use of terms

Definitions * * *

As used in these rules, unless the context or subject matter otherwise requires:

(1)–(4) * * *

(5) "Child" means a person under the age of 18 years.

(6)–(24) * * *

(25) "Nonminor" means a youth at least 18 years of age and not yet 21 years of age who remains subject to the court's dependency, delinquency, or general jurisdiction under section 303 but is not a "nonminor dependent."

(26) "Nonminor dependent" means a youth who is a dependent or ward of the court, or a nonminor under the transition jurisdiction of the court, is at least 18 years of age and not yet 21 years of age, and:

(A) Was under an order of foster care placement on ~~his or her~~ the youth's 18th birthday;

(B) Is currently in foster care under the placement and care authority of the county welfare department, the county probation department, or an Indian tribe that entered into an agreement under section 10553.1; and

(C) Is participating in a current Transitional Independent Living Case Plan as defined in this rule.

(27)–(45) * * *

(46) "Youth" means a person who is at least 14 years of age and not yet 21 years of age.

Rule 5.740. Hearings ~~subsequent to~~ after selection of a permanent plan (§§ 366.26, 366.3, 16501.1)

(a) Review hearings—adoption and guardianship

Following an order for termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, or a plan for the establishment

of a legal guardianship under section 366.26, the court must retain jurisdiction and conduct review hearings at least every 6 months to ensure the expeditious completion of the adoption or guardianship.

(1)–(3) * * *

(4) ~~When~~ After a legal guardianship is ~~granted~~ established, the court may continue dependency jurisdiction ~~if it is in the best interest of the child,~~ or ~~the court~~ may terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship under section 366.4. If the court appoints a relative or nonrelative extended family member as the child's guardian and the other requirements in section 366.3(a)(3) apply, the court must terminate dependency jurisdiction and retain jurisdiction over the child under section 366.4 unless the guardian objects or the court finds that exceptional circumstances require it to retain dependency jurisdiction.

(5)–(6) * * *

(b) * * *

(c) Review hearings—youth 16 years of age and older

If the youth is 16 years of age or older, the procedures in section 391 must be followed.

(1) If it is the first review hearing after the youth turns 16 years of age, the social worker must provide the information, documents, and services required by section 391(a) and must use *First Review Hearing After Youth Turns 16 years of Age—Information, Documents, and Services* (form JV-361).

(2) If it is the last review hearing before the youth turns 18 years of age, the social worker must provide the information, documents, and services required by section 391(b)–(c) and must use *Review Hearing for Youth Approaching 18 Years of Age—Information, Documents, and Services* (form JV-362).

(3) If it is a review hearing after the youth turns 18 years of age, the social worker must provide the information, documents, and services required by section 391(c) and must use *Review Hearing for Youth 18 Years of Age or Older—Information, Documents, and Services* (form JV-363). If the court is terminating jurisdiction at this review hearing, the social worker must also provide the information, documents, and services required by section 391(h), must follow the procedures in rule 5.555, and must use *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365).

~~(e)~~**(d)** * * *

Rule 5.810. Reviews, hearings, and permanency planning

(a)–(b) * * *

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement no less frequently than once every six months.

(1)–(2) * * *

(3) *Information, Documents, and Services (§ 391)*

If the youth is 16 years of age or older, the procedures in section 391 must be followed.

(A) If it is the first review hearing after the youth turns 16 years of age, the probation officer must provide the information, documents, and services required by section 391(a) and must use *First Review Hearing After Youth Turns 16 Years of Age—Information, Documents, and Services* (form JV-361).

(B) If it is the last review hearing before the youth turns 18 years of age, the probation officer must provide the information, documents, and services required by section 391(b)–(c) and must use *Review Hearing for Youth Approaching 18 Years of Age—Information, Documents, and Services* (form JV-362).

(C) If it is a review hearing after the youth turns 18 years of age, the probation officer must provide the information, documents, and services required by section 391(c) and must use *Review Hearing for Youth 18 Years of Age or Older—Information, Documents, and Services* (form JV-363). If the court is terminating jurisdiction at this review hearing, the probation officer must also provide the information, documents, and services required by section 391(h), must follow the procedures in rule 5.555, and must use *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365).

(d)–(e) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council** **JV-361.v7.080520.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
YOUTH'S NAME: DATE OF BIRTH:	
FIRST REVIEW HEARING AFTER YOUTH TURNS 16 YEARS OF AGE—INFORMATION, DOCUMENTS, AND SERVICES	CASE NUMBER:

Directions for the social worker or probation officer: Check the appropriate boxes in items 1 through 8, complete item 9, attach or submit to the court documents as required, and sign and date the form.

Directions for the youth *(if the youth is available)*: Review the boxes checked by the social worker or probation officer in items 1 through 8. Sign your initials on the lines after items 1 through 8 ***only if*** you received the information, document, or service described in that item. Then sign and date the form. You should give the form to the judge on the day of the hearing if you didn't give it to your social worker, probation officer, or attorney before the hearing.

An attached report or report submited to the court verifies that the youth has received the following information, documents, and services (*check all that apply*):

1. ☐ Social security card (if required) _____
2. ☐ A copy of the youth's birth certificate _____
3. ☐ A certified copy of the youth's birth certificate, if requested by the youth _____
4. ☐ California identification card or driver's license _____
5. ☐ Assistance in obtaining employment _____
6. ☐ Assistance in applying for, or preparing to apply for, admission to college or to a vocational training program or other educational institution, and in obtaining financial aid _____
7. ☐ Written information notifying the youth that state agencies, when hiring for internships and student assistant positions, must give preference to qualified applicants up to 26 years of age who are or have been dependent children in foster care, homeless youth, or formerly incarcerated youth _____
8. ☐ Written information notifying the youth of any financial literacy programs or other available resources provided through the county or other community organizations to help the youth obtain financial literacy skills, including but not limited to banking, credit card debt, student loan debt, credit scores, credit history, and personal savings _____
9. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF SOCIAL WORKER OR PROBATION OFFICER)

I certify that I have received the information and services that I initialed above.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF YOUTH)

Form Adopted for Mandatory Use
Judicial Council of California
JV-361 [New January 1, 2021]

FIRST REVIEW HEARING AFTER YOUTH TURNS 16 YEARS OF AGE—INFORMATION, DOCUMENTS, AND SERVICES

Welfare & Institutions Code, §§ 391, 607.2, 607.3
Gov. Code § 18220
Cal. Rules of Court, rules 5.740, 5.810
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council** **JV-362.v6.080520.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
YOUTH'S NAME: DATE OF BIRTH:	
REVIEW HEARING FOR YOUTH APPROACHING 18 YEARS OF AGE—INFORMATION, DOCUMENTS, AND SERVICES	CASE NUMBER:

Directions for the social worker or probation officer: Check the appropriate boxes in items 1 through 17, complete item 18, attach or submit to the court documents as required, and sign and date the form.

Directions for the youth *(if the youth is available)*: Review the boxes checked by the social worker or probation officer in items 1 through 17. Sign your initials on the lines after items 1 through 17 ***only if*** you received the information, document, or service described in that item. Then sign and date the form. You should give the form to the judge on the day of the hearing if you didn't give it to your social worker, probation officer, or attorney before the hearing.

An attached report or report submitted to the court verifies that the youth has received the following information, documents, and services (*check all that apply*):

1. ☐ Social security card _____
2. ☐ Certified copy of the youth's birth certificate _____
3. ☐ California identification card or driver's license _____
4. ☐ Medi-Cal Benefits Identification Card _____
5. ☐ A letter prepared by the county welfare department that includes the youth's name and date of birth, the dates within which the youth was within the jurisdiction of the juvenile court, and a statement that the youth was a foster youth in compliance with state and federal financial aid documentation requirements _____
6. ☐ The death certificate of the youth's parent or parents, if applicable _____
7. ☐ Proof of citizenship or legal residence, if applicable _____
8. ☐ An advance health care directive form _____
9. ☐ A copy of each of the following: *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO), a blank *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466), and a blank *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) _____
10. ☐ Assistance in obtaining employment _____
11. ☐ Assistance in applying for, or preparing to apply for, admission to college or to a vocational training program or other educational institution, and in obtaining financial aid _____
12. ☐ Written information notifying the youth that state agencies, when hiring for internships and student assistant positions, must give preference to qualified applicants up to 26 years of age who are or have been dependent children in foster care, homeless youth, or formerly incarcerated youth _____
13. ☐ Written notice informing the youth that youth exiting foster care at 18 years of age or older are eligible for Medi-Cal until they reach 26 years of age, regardless of income, and are not required to apply _____

YOUTH'S NAME:	CASE NUMBER:

14. ☐ Written notice informing the youth of any financial literacy programs or other available resources provided through the county or other community organizations to help the youth obtain financial literacy skills, including but not limited to banking, credit card debt, student loan debt, credit scores, credit history, and personal savings _____

15. ☐ Referrals to transitional housing, if available, or assistance in securing other housing _____

16. ☐ Assistance in maintaining relationships with individuals who are important to a youth who has been in out-of-home placement for six months or longer from the date the child entered foster care, based on the youth's best interests _____

17. ☐ The whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of either sibling _____

18. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF SOCIAL WORKER OR PROBATION OFFICER)

I certify that I have received the information, documents, and services that I initialed above.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF YOUTH)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by** **the Judicial Council** **JV-363.v7.080520.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
YOUTH'S NAME: DATE OF BIRTH:	
REVIEW HEARING FOR YOUTH 18 YEARS OF AGE OR OLDER—INFORMATION, DOCUMENTS, AND SERVICES	CASE NUMBER:

Directions for the social worker or probation officer: Check the appropriate boxes in items 1 through 8, complete item 9, attach or submit to the court documents as required, and sign and date the form.

Directions for the youth *(if the youth is available)*: Review the boxes checked by the social worker or probation officer in items 1 through 8. Sign your initials on the lines after items 1 through 8 ***only if*** you received the information, document, or service described in that item. Then sign and date the form. You should give the form to the judge on the day of the hearing if you didn't give it to your social worker, probation officer, or attorney before the hearing.

An attached report or report submitted to the court verifies that the youth has received the following information, documents, and services (*check all that apply*):

1. ☐ Assistance in obtaining employment _____
2. ☐ Assistance in applying for, or preparing to apply for, admission to college or to a vocational training program or other educational institution, and in obtaining financial aid _____
3. ☐ Written information notifying the youth that state agencies, when hiring for internships and student assistant positions, must give preference to qualified applicants up to 26 years of age who are or have been dependent children in foster care, homeless youth, or formerly incarcerated youth _____
4. ☐ Written information notifying the youth that youth exiting foster care at 18 years of age or older are eligible for Medi-Cal until they reach 26 years of age, regardless of income, and are not required to apply _____
5. ☐ Written notice informing the youth of any financial literacy programs or other available resources provided through the county or other community organizations to help the youth obtain financial literacy skills, including but not limited to banking, credit card debt, student loan debt, credit scores, credit history, and personal savings _____
6. ☐ Referrals to transitional housing, if available, or assistance in securing other housing _____
7. ☐ Assistance in maintaining relationships with individuals who are important to a youth who has been in out-of-home placement for six months or longer from the date the child entered foster care, based on the youth's best interests _____
8. ☐ The whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of either sibling _____
9. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF SOCIAL WORKER OR PROBATION OFFICER)

I certify that I have received the information, documents, and services that I initialed above.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF YOUTH)

Form Adopted for Mandatory Use
Judicial Council of California
JV-363 [New January 1, 2021]

Welfare & Institutions Code, §§ 391, 607.2, 607.3;
Gov. Code § 18220,
Cal. Rules of Court, rule 5.555
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME:	
	CASE NUMBER:

Directions for the social worker or probation officer: Check the appropriate boxes in items 1 through 6, complete item 7, attach or submit to the court documents as required, and sign and date item 7.

Directions for the nonminor *(if nonminor is available)*: Review the boxes checked by the social worker or probation officer in items 1 through 6. If the box checked in item 1 is wrong, check the correct box and sign your initials next to the box. Sign your initials on the lines after items 2a–i, 3a–*l*, 4, 5a–b, and 6a–h ***only if*** you received the information, document, or service described in that item. Then sign and date item 7. You should give the form to the judge on the day of the hearing if you didn't give it to your social worker, probation officer, or attorney before the hearing.

☐ The nonminor wants to attend the termination hearing ☐ in person ☐ by telephone.

b. ☐ The nonminor does not want to attend the termination hearing. The petitioner has attached verification that the nonminor has been informed of the potential consequences of failure to attend the termination hearing.

☐ The nonminor is unavailable or has refused to sign this form. Documentation of reasonable efforts to locate the nonminor and to obtain the nonminor's signature is attached.

2. An attached report or report submitted to the court verifies that the nonminor has received written information about the nonminor's juvenile court case, including *(check all that apply):*

☐ The nonminor's Indian heritage or tribal connections _____

b. ☐ The nonminor's family history _____

☐ The nonminor's placement history _____

☐ The nonminor's educational history and medical history _____

☐ Any photographs of the nonminor or the nonminor's family in the possession of the county welfare department or probation department, other than forensic photographs _____

☐ Contact information for all siblings under juvenile court jurisdiction, unless the court determines that sibling contact would jeopardize the safety or welfare of either sibling _____

☐ Instructions on how the nonminor may exercise the right to inspect and receive a copy their juvenile case file, including how to access sealed records (see Welf. & Inst. Code, §§ 389(a), 781(a)(4), 786(g)(1)(F), 826.6, 827; Cal. Rules of Court, rule 5.552) _____

h. ☐ If the nonminor requests, assistance in completing a voluntary reentry agreement for care and placement pursuant to Welf. & Inst. Code § 1140 and in filling a petition pursuant to Welf. & Inst. Code § 338(e) to resume dependency jurisdiction _____

i. ☐ The date on which the jurisdiction of the court would be terminated _____

3.

☐ A certified copy of the nonminor's birth certificate _____

☐ Social security card _____

☐ California identification card or driver's license _____

d. ☐ Proof of citizenship or lawful permanent resident status _____

e. ☐ A copy of the death certificate of the nonminor's parent or parents _____

f. ☐ Health and Education Passport _____

NONMINOR'S NAME:	CASE NUMBER:

3. g. ☐ A blank advance health care directive form _____
   h. ☐ A letter prepared by the county welfare department that includes the nonminor's name and date of birth, the dates during which the nonminor was within the jurisdiction of the juvenile court, and a statement that the nonminor was a foster child in compliance with state and federal financial aid documentation requirements _____
   i. ☐ Written information notifying the nonminor of any financial literacy programs or other available resources provided through the county or other community organizations to help the nonminor obtain financial literacy skills, including but not limited to banking, credit card debt, student loan debt, credit scores, credit history, and personal savings _____
   j. ☐ Written information notifying the nonminor that state agencies, when hiring for internships and student assistant positions, must give preference to qualified applicants up to 26 years of age who are or have been dependent children in foster care, homeless youth, or formerly incarcerated youth _____
   k. ☐ The nonminor's 90-day Transition Plan _____
   l. ☐ A copy of each of the following: *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO), a blank *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466), and a blank *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) _____
4. ☐ The nonminor continues to be eligible for services or accommodations under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, or section 504 of the Rehabilitation Act of 1973, and the nonminor has been provided with the most recent service or accommodation plan. _____
5. ☐ The nonminor has been receiving services as provided in the Individuals with Disabilities Education Act (see 34 C.F.R. §§ 300.320(b)–(c) & 300.321(b)), and
   a. ☐ has received a copy of their transition service plan. _____
      ☐ has been informed of the rights that will transfer to them under this Act. _____
6. The nonminor received the following assistance or services *(check all that apply):*
   a. ☐ Written verification of continued enrollment in Medi-Cal with no interruption in coverage _____ and provision of
      1. ☐ Medi-Cal Benefits Identification Card _____
      2. ☐ Information about eligibility for extended Medi-Cal benefits until age 26 _____
   b. ☐ Help applying to college, a vocational training program, or another educational or employment program _____
      ☐ Help obtaining financial aid for college, a vocational training program, or another educational or employment program _____
   d. ☐ Referrals to transitional housing, if available, or assistance in securing other housing _____
   e. ☐ Assistance obtaining employment or other financial support _____
      ☐ including completing enrollment in CalFresh _____
   f. ☐ Help maintaining relationships with individuals important to the nonminor, consistent with their best interests *(required only if the nonminor has been in an out-of-home placement for six months or longer)* _____
   g. ☐ Help accessing the Independent Living Aftercare Program in the nonminor's county of residence _____
   h. ☐ Other services ordered by the court *(specify):*

7. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF SOCIAL WORKER OR PROBATION OFFICER)

I certify that I have received the information, documents, and services that I initialed above.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF NONMINOR)

Spring 20-21

Juvenile Law: Information, Documents, and Services for Youth 16 years of Age and Older

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committees Response
1.	California Lawyers Association, The Executive Committee of the Family Law Section	A	FLEXCOM agrees with this proposal.	No response required.
2.	Los Angeles County Department of Children and Family Services and Office of County Counsel	NI	DCFS Youth Development Services (YDS) Division had the following comments to Proposed CRC Revision SPR 20-21: The YDS Division is in agreement that the Proposal does appropriately address the stated purpose. We are in agreement that youth should be provided documents prior to the case closing starting at age 16 as this will enhance significant activities towards the successful transition to adulthood. We also agree that the term "youth" should be defined as a person who is at least 14 years of age and not yet 21 years of age. This would support our ongoing efforts while we develop key objectives to include youth at this earlier age with the provision of our Independent Living Programs services normally reserved for youth starting at age 16.	No response required. The committee agrees with this comment and has retained the proposed language in rule 5.502 defining "youth" as a person who is at least 14 years of age and not yet 21 years of age.
3.	Orange County Bar Association	A	The Orange County Bar Association agrees with the above-referenced instructions	No response required.
4.	Superior Court of Los Angeles County By: Bryan Borys	A	Does the proposal appropriately address the stated purpose? Answer: Yes • Should the rules of court define "youth" and, if so, is the proposed definition of "a person who is at least 14 years of age and not yet 21 years of age" an appropriate definition?	No response required. The committee agrees with this comment and has retained the proposed language in rule 5.502 defining "youth" as a person who is at least 14 years of age and not yet 21 years of age.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			Answer: Yes, the rules should define "youth" in that manner. • Would the proposal provide cost savings? If so, please quantify. Answer: No • 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. Answer: Training for judicial officers and staff regarding use of the forms. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Answer: Yes	No response required. The committee agrees with the comment and anticipates minimal implementation requirements for this proposal. No response required.
5.	Superior Court of Orange County	NI	Each of the forms indicate that the agency report is attached. Currently in Orange County, the agency reports are filed separately, not attached. The existing form JV-365 also has the language indicating that a report is attached. However, in practice, the report itself is filed separately, often on a different date, and not attached to the JV-365. ▪ *Recommendation*: add language on forms that refer to an "attached report." For example, modify the language on the forms (#2 on JV-365) to change "An attached report…" to "An attached report or report submitted to the court…"	The committee has modified the proposal to include language on the forms allowing for an attached report or report submitted to the court.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			▪ JV-362 item #12 (…child turns 26 years) and JV-363 item #3 (...child turns 26 years) should read the same as JV-361 item #7 (…youth turns 26 years). ▪ JV-362 item #16 is confusing in its reference in the same sentence to youth, child, and minor('s) as these are the same person	The committee has modified the proposal to replace the term "child" with "youth" in these items.
			16. □ Assistance in maintaining relationships with individuals who are important to a youth who has been in out-of-home placement for six months or longer from the date the child entered foster care, based on the minor's best interest____	The committee has modified the proposal to replace the term "minor" with "youth" in these items. The committee has retained the proposed language of "the date the child entered foster care" because that is a legal term defined by statute. Welf. & Inst. Code § 361.49.
			Same as to JV-363 item #7 7. □ Assistance in maintaining relationships with individuals who are important to a youth who has been in out-of-home placement for six months or longer from the date the minor child entered foster care, based on the minor's or nonminor's best interest____	See response above.
			Recommendation: change "minor's" and "nonminor's" to "youth's"	
			Request for Specific Comments ***Does the proposal appropriately address the stated purpose?*** Yes.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			Should the rules of court define "youth" and, if so, is the proposed definition of "a person who is at least 14 years of age and not yet 21 years of age" an appropriate definition? Yes, the rules should define youth. However, the definition provided should be more specific, as the definitions overlap. As it reads, a person who is a "youth" can also be a child, a nonminor, or a nonminor dependent. This may be a source of confusion, especially in the courtroom. ***Would the proposal provide cost savings? If so, please quantify.*** None identified. ***What would be 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 CMS's or modifying CMS's.***	The committee has retained the proposed language in rule 5.502 defining "youth" as a person who is at least 14 years of age and not yet 21 years of age. While the definitions may overlap, this will allow the youth to be identified by the term they find respectful. In addition to creating a respectful term for older children, this term is important in juvenile justice court since many 18–21-year-olds are before that court and do not meet the definition of child. No response required. No response required.
6.	Superior Court of Riverside County By: Susan Ryan	A	Does the proposal appropriately address the stated purpose? Yes, the proposal seems to address the mandate created by AB718 that child welfare agencies	No response required.

			begin the process of providing key information, documents, and services to youth in foster care beginning at age 16. Should the rules of court define "youth" and, if so, is the proposed definition of "a person who is at least 14 year of age and not yet 21 years of age" an appropriate definition? Yes. Would the proposal provide cost savings? If so, please quantify. The proposal would not provide cost savings to the court. There may be slight increases in costs (staffing) to process and file more documents, however this seems to be the most efficient way to address the mandates required by AB718. 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), change docket codes in case management systems, or modify case management systems. New codes would need to be created in the case management system to file the three new forms (code already exist for the JV-365 in our court). Minimal training would be required to train courtroom assistants to file this new document- perhaps one hour to review the 3 new filing codes.	 The committee agrees with this comment and has retained the proposed language in rule 5.502 defining "youth" as a person who is at least 14 years of age and not yet 21 years of age. The committee appreciates the view that this proposal seems to be the most efficient way to address the mandates of AB 718. The committee agrees with the comment and anticipates minimal implementation requirements for this proposal.

			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? The same creation of new filing codes would likely need to occur in any size court. The proposals should work well for courts of any size.	No response required. No response required.
7.	Superior Court of San Diego County By: Michael Roddy	NI	**GENERAL COMMENTS:** **CRC 5.740(c)(1) and 5.810(c)(3)(A)** – Change per California Style Manual "… must use First Review Hearing ~~a~~After ~~y~~Youth Turns 16 Years of Age-- …" **JV-361** - Line above item 1: Change "That" to "An" for consistency with forms JV-362 and JV-363. - Item 1: Add "(if required)" because the social security card must be provided to the youth *only if* one of the circumstances described in WIC 391(a)(2) exists: - "Social security card (if required)" - - Item 7: Add "or wards" after "dependent children" because the committee wants this form to be used for juvenile justice youth as	The committee appreciates the level of detail in the comments provided and has made all the suggested comments to improve grammar and readability. The committee has modified the proposal to add "if required" to item 1. The committee has modified the proposal to add the additional youth included in Government Code section 18220 to this item. It is important to

			well. CAVEAT: It is not entirely clear from Gov. Code §. 18220 whether this preference is actually granted to wards in foster care; the statute specifically refers to "a dependent child in foster care, a homeless youth, or a formerly incarcerated youth."	the committee to treat youth in foster care under the delinquency jurisdiction of the court similar to those in foster care under dependency jurisdiction.
			- Item 7: Change "child" to "youth" – "until the ~~child~~ youth turns 26 years of age." - Item 9: Change: "I certify that I have received the information, documents, and services that I initialed above."	The committee appreciates the level of detail in the comments provided and has made all the suggested comments to improve grammar and readability.

			JV-362
			- Item 5: If "youth" is defined in CRC 5.502, change "child's" to "youth's" – "the ~~child's~~ youth's name and date of birth"; change "minor" to "youth" – "the dates
			-
			- within which the ~~minor~~ youth was within the jurisdiction." Change "minor or nonminor" to "youth" --"a statement that the ~~minor or nonminor~~ youth was a foster youth
			  - Item 12: See comment above for JV-361, item 7.
			  - Item 12: Change "child" to "youth" – "until the ~~child~~ youth turns 26 years of age."
			- Item 16: Change "child" to "youth" and change "minor's" to "youth's" – "from the date the ~~child~~ youth entered foster care, based on the ~~minor's~~ youth's best interests,"
				The committee has modified the proposal to replace "child" and "minor or nonminor" with "youth" on this form. The exception to this is that the committee has retained the proposed language of "the date the child entered foster care" because that is a legal term defined by statute. Welf. & Inst. Code § 361.49.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			- Item 17: Change: "I certify that I have received the information, documents, and services that I initialed above." **JV-363** - Item 3: See comment above for JV-361, item 7. - Item 3: If "youth" is defined in CRC 5.502, change "child" to "youth" – "until the ~~child~~ youth turns 26 years of age." - Item 7: If "youth" is defined in CRC 5.502, change "minor child" to "youth" and change "minor's or nonminor's" to "youth's" – "from the date the ~~minor child~~ youth entered foster care, based on the ~~minor's or nonminor's~~ youth's best interests," - Item 9: Change: "I certify that I have received the information, documents, and services that I initialed above." **JV-365** - Item 2: Change "minor's" to "nonminor's" – "the nonminor has received written information about the nonminor's juvenile court case…" - Item 2.e: Insert "nonminor's" before "family" – "photographs of the nonminor or the nonminor's family…" - Item 2d: Query – Is this required by statute? Is it something different from item 3f (Health and Education Passport)? - sealed records (see Welf. & Inst. Code, §§ 389(a), 781(a)(4), 786~~(f)~~(g)(1)(F), 826.6, ~~&~~ 827; Cal. Rules of Court, rule 5.552)"	See response above. The committee appreciates the level of detail in the comments provided and has made all the suggested comments to improve grammar and readability.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			- Item 2f: Suggested edit for consistency with WIC § 391(c)(8): - "Contact information for all siblings under juvenile court jurisdiction, ~~except for any siblings whose safety or welfare would be jeopardized by contact with the nonminor, as determined by the court~~ unless the court determines that sibling contact would jeopardize the safety or welfare of either sibling." Note -- WIC § 391(c)(8) states:" The whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of either sibling." - Item 2g: Change: "Instructions on how the nonminor may exercise the right to inspect~~,~~ and receive~~, and~~ a copy their juvenile case file, including how to access - Item 7: Change: "I certify that I have received the information, documents, and services that I initialed above." - Are items 6b, 6c, and 6e meant to describe this requirement? None of these items specify that the nonminor received help in completing a voluntary reentry agreement or for filing a petition under WIC § 388(e). - Note -- WIC § 391(h)(1) states: "Assistance in accessing the Independent Living Aftercare Program in the nonminor's county of residence, and, upon the nonminor's request, assistance in completing a voluntary reentry agreement for care and placement pursuant to	The committee agreed with the comment that the language should be more consistent with statute, and has modified the proposal to mirror the statutory language. The committee appreciates the level of detail in the comments provided and has made all the suggested comments to improve grammar and readability.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			[§ 11400(z)] and in filing a petition pursuant to [§ 388(e)] to resume dependency jurisdiction." -	
8.	San Diego County Health and Human Services-Child Welfare Services By: Karla Morales	A	Agree with the term "youth" to describe a minor age 14 and older. Agree with having the important information, services and documents provided to youth by the age of 16, at 18 and at termination of jurisdiction.	The committee agrees with this comment has retained the proposed language in rule 5.502 defining "youth" as a person who is at least 14 years of age and not yet 21 years of age.
9.	Trial Court Presiding Judges Advisory Committee/Executive Officers Advisory Committee Joint Rules Subcommittee	A	The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.). • Results in additional training, which requires the commitment of staff time and court resources.	No response required. The committee agrees with this comment and anticipates minimal implementation requirements for this proposal.

Item number: 24

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Technical Changes to Juvenile Rule and Forms
Amend Cal. Rules of Court, rule 5.555; revise forms JV-367, JV-460, JV-462, and JV-680

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Family and Juvenile Law Advisory Committee Annual Agenda: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
Item 1k. AB 718 (Eggman) Dependent children: documents (Ch. 438, Statutes of 2019) Requires child welfare agencies to begin process of providing key documents to foster youth beginning at age 16, rather than at the end of juvenile court jurisdiction.
Item 26 Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2); Miscellaneous Technical Changes: "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy….".

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 24–25, 2020

Title
Juvenile Law: Technical Changes to Juvenile Rule and Forms

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.555; revise forms JV-367, JV-460, JV-462, and JV-680

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 4, 2020

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule and revising four forms to correct technical errors to conform to recent statutory changes regarding the information, documents, and services that must be provided to children age 16 and older enacted by Assembly Bill 718 (Eggman; Stats. 2019, ch. 438).

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend California Rules of Court, rule 5.555 to correct the statutory reference;

2. Revise *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to correct the statutory reference;

3. Revise *Attachment: Additional Findings and Orders for Child Approaching Majority—Dependency* (form JV-460) to correct the statutory reference;

4. Revise *Findings and Orders After Nonminor Dependent Status Review Hearing* (form JV-462) to correct the statutory reference; and

5. Revise *Findings and Orders for Child Approaching Majority—Delinquency* (form JV-680) to correct the statutory reference.

The text of the amended rule and the revised forms are attached at pages 4–21.

Relevant Previous Council Action

The Judicial Council has acted on this rule and these forms previously, but this proposal only involves minor corrections that are unrelated to prior council action.

Analysis/Rationale

Due to the passage of Assembly Bill 718, which repealed and added Welfare and Institutions Code section 391 effective January 1, 2020, cross-references to subdivisions of this statute in the rule and forms are incorrect. The errors in the rule and forms as discussed below would cause confusion with courts and justice partners. The proposed corrections will address this confusion and make the rule and forms consistent with statute.

Rule 5.555 requires that the report prepared by the social worker or probation officer for the hearing where the juvenile court considers termination of jurisdiction include verification that the nonminor was provided with the information, documents, and services as required under section 391(e), and that the court make a finding and order regarding their provision. Cross-references in the rule should now be to section 391(d).

Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor (form JV-367) contains a finding at item 19a that the nonminor was provided with the information, documents, and services as required under section 391(e). The cross-reference should now be to section 391(d).

Attachment: Additional Findings and Orders for Child Approaching Majority—Dependency (form JV-460) contains a finding at item 6a and b indicating whether the child was provided with the information, documents, and services as required under section 391(e). The cross-reference should now be to section 391(b) and (c).

Findings and Orders After Nonminor Dependent Status Review Hearing (form JV-462) contains a finding at item 12 that the nonminor was provided with the information, documents, and services as required under section 391(e). The cross-reference should now be to section 391(c).

Findings and Orders for Child Approaching Majority—Delinquency (form JV-680) contains a finding at item 14a and b indicating whether the child was provided with the information,

documents, and services as required under section 391(e). The cross-reference should now be to section 391(b) and (c).

Policy implications

The recommended revisions promote two Judicial Council policy objectives—modernization of the rules of court and promotion of access to the courts—by ensuring that the Judicial Council rules and forms reflect accurate legal information that will make it easier for litigants to gain access to the courts.

Comments

The recommended revisions contained in this proposal have not circulated for public comment because the proposal satisfies the requirement of rule 10.22(d)(2) (nonsubstantive technical change). The committee recommends that the council adopt the recommended revisions without circulation for comment because the proposal presents technical changes that are unlikely to create controversy.

Alternatives considered

The committee did not consider any alternatives to the recommended action because the revisions are required to make the rule and form consistent with statute.

Fiscal and Operational Impacts

This proposal should not have any fiscal or operational impact on courts or litigants other than the costs of replacing outdated forms. In implementing the revised form, courts will incur standard reproduction costs.

Attachments and Links

1. Cal. Rules of Court, rule 5.555, at pages 4–5
2. Forms JV-367, JV-460, JV-462, and JV-680, at pages 6–21
3. Assembly Bill 718, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB718*

Rule 5.555 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1(g)(16))

(a)–(b) * * *

(c) Reports

(1) The report prepared by the social worker or probation officer for a hearing under this rule must, in addition to any other elements required by law, include:

(A)–(I) * * *

(J) Verification that the nonminor was provided with the information, documents, and services as required under section 391~~(e)~~(d); and

(K) * * *

(2)–(4) * * *

(d) Findings and orders

The court must, in addition to any other determinations required by law, make the following findings and orders and include them in the written documentation of the hearing:

(1) *Findings*

(A)–(I) * * *

(J) Whether the nonminor was provided with the information, documents, and services as required under section 391~~(e)~~(d) and, if not, whether juvenile court jurisdiction should be continued to ensure that all information, documents, and services are provided;

(K)–(N) * * *

(2) *Orders*

Rule 5.555 of the California Rules of Court is amended, effective January 1, 2021, to read:

(A)–(D) * * *

(E) For a nonminor who does not meet one or more of the eligibility criteria of section 11403(b) and is not otherwise eligible to remain under juvenile court jurisdiction or, alternatively, who meets one or more of the eligibility criteria of section 11403(b) but either does not wish to remain under the jurisdiction of the juvenile court as a nonminor dependent or is not participating in a reasonable and appropriate Transitional Independent Living Case Plan, the court may order the termination of juvenile court jurisdiction only after entering the following findings:

(i) The nonminor was provided with the information, documents, and services as required under section 391~~(e)~~(d);

(ii)–(vi) * * *

(F) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name):*	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council** **JV-367.v1.070820.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME: DEPT:	

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR

CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

	Present	Attorney *(name)*	Present
1. Parties *(name)*			
a. Nonminor:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐
2. Parent			
a. ☐ Father ☐ Mother *(name):*	☐		☐
b. ☐ Father ☐ Mother *(name):*	☐		☐
3. Legal guardian *(name):*	☐		☐
4. Indian custodian *(name):*	☐		☐
5. Tribal representative *(name):*	☐		☐

6. Others present
   a. Other *(name):*
   b. Other *(name):*
   c. Other *(name):*

7. **The court has read and considered and admits into evidence**
   a. ☐ The report of the social worker dated:
   b. ☐ The report of the probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
JV-367 [Rev. January 1, 2021]

Welfare & Institutions Code, §§ 391, 607.2, 607.3;
Cal. Rules of Court, rule 5.555
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

Findings

8. ☐ Notice of the date, time, and location of the hearing was given as required by law.

9. ☐ The nonminor is neither present in court nor participating by telephone and
   a. ☐ the nonminor expressed a wish not to appear for the hearing and did not appear.
   b. ☐ the nonminor's current location is unknown. Reasonable efforts ☐ were ☐ were not made to find him or her.

10. ☐ The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court.

11. Remaining under juvenile court jurisdiction ☐ is ☐ is not in the nonminor's best interests. The facts supporting this determination were stated on the record.

12. a. ☐ The nonminor does not now meet any of the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
    b. ☐ The nonminor meets the following criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
       (1) ☐ The nonminor attends high school or a high school equivalency certificate (GED) program.
       (2) ☐ The nonminor attends a college, a community college, or a vocational education program.
       (3) ☐ The nonminor attends a program or takes part in activities that will promote employment or overcome barriers to employment.
       (4) ☐ The nonminor is employed at least 80 hours per month.
       (5) ☐ The nonminor is incapable of doing any of the activities in (1)–(4) due to a medical condition.

13. ☐ The nonminor has an application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process ☐ is ☐ is not in the nonminor's best interests.

14. ☐ The nonminor has an application pending for Special Immigrant Juvenile status or other immigration relief for which an active juvenile court case is required.

15. ☐ The nonminor was informed of the options available to make the transition from foster care to independence and successful adulthood.

16. ☐ The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor, and the nonminor has stated that he or she understands those benefits.

17. ☐ The nonminor was informed that if juvenile court jurisdiction is continued, he or she may have the right to have that jurisdiction terminated and that if jurisdiction is then terminated, the court will maintain general jurisdiction for the purpose of reviewing a request to resume jurisdiction over him or her as a nonminor dependent.

18. ☐ The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a petition asking the court to resume dependency jurisdiction or transition jurisdiction over him or her as a nonminor dependent as long as he or she has not yet reached 21 years of age.

19. a. ☐ The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(d), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with this court.
    b. ☐ The nonminor cannot be located despite the department's reasonable efforts, and for that reason the nonminor was not provided with the information, documents, services, and form specified in item 19a.

20. ☐ The nonminor is subject to delinquency jurisdiction and either was previously a dependent of the court under section 300 or was placed in foster care under section 727. The requirements of Welfare and Institutions Code, § 607.5, ☐ were ☐ were not met.

NONMINOR'S NAME:	CASE NUMBER:

21. ☐ The nonminor is an Indian child under the Indian Child Welfare Act and ☐ was ☐ was not informed of his or her right to choose whether the Act will continue to apply to him or her as a nonminor dependent.

    ☐ The nonminor ☐ wants ☐ does not want the Indian Child Welfare Act to continue to apply.

22. a. ☐ The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects agreements made to obtain independent living skills, and sets out benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved.

    b. ☐ The Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare for successful adulthood upon leaving foster care.

    c. ☐ The 90-day Transition Plan is a concrete, individualized plan that specifically covers housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

Orders

23. ☐ The nonminor dependent's continued placement is necessary.

24. ☐ The nonminor dependent's continued placement is no longer necessary.

25. ☐ The nonminor dependent's current placement is appropriate.

26. ☐ The nonminor dependent's current placement is not appropriate. The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.

27. ☐ The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not include appropriate and meaningful independent living skill services that will help the youth transition from foster care to successful adulthood.

28. ☐ The county agency ☐ has ☐ has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the youth's permanent plan and prepare him or her for independence.

29. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been ☐ excellent ☐ satisfactory ☐ minimal.

    b. ☐ The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in his or her efforts to attain those goals were stated on the record.

30. The likely date by which it is anticipated the nonminor dependent will achieve successful adulthood is:

31. ☐ The nonminor meets at least one of the conditions listed in item 12(b)(1)–(5) and juvenile court jurisdiction over the youth as a nonminor dependent is continued.

    The nonminor's permanent plan is

    (1) ☐ Return home
    (2) ☐ Adoption
    (3) ☐ Tribal customary adoption
    (4) ☐ Placement with a fit and willing relative
    (5) ☐ Another planned permanent living arrangement
    (6) ☐ Other *(specify):*

    a. ☐ For a nonminor placed in another planned permanent living arrangement, the court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because:

    (1) ☐ The nonminor is 18 or older.
    (2) ☐ Other *(specify):*

NONMINOR'S NAME:	CASE NUMBER:

The compelling reasons why other permanent plan options are not in the nonminor's best interest are:

(1) ☐ The nonminor wants to live independently.

(2) ☐ Other *(specify):*

b. ☐ Family reunification services are continued.

c. The Indian Child Welfare Act ☐ does ☐ does not continue to apply.

d. The matter is set for further hearing.

32. ☐ The nonminor does not meet and does not intend to meet the eligibility criteria for status as a nonminor dependent but is otherwise eligible to and will remain under the juvenile court's jurisdiction in a foster care placement, and the matter is set for a status review hearing on the date indicated in item 37, which is within six months of the nonminor's most recent status review hearing.

33. ☐ Reasonable efforts were made to find the nonminor, and his or her location remains unknown. **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e) or 388.1, to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

34. ☐ The nonminor

a. ☐ does not meet the eligibility criteria for status as a nonminor dependent and is not otherwise eligible to remain under juvenile court jurisdiction;

b. ☐ meets the eligibility criteria for status as a nonminor dependent but does not wish to remain under juvenile court jurisdiction as a nonminor dependent; or

c. ☐ meets the eligibility criteria for status as a nonminor dependent but is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; and

the findings required in items 10, 16, 19a, and 22c of this form were made, and the nonminor was given an endorsed, filed copy of the *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365). **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e) or 388.1, to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

35. ☐ The nonminor is 21 years of age or older and no longer subject to the jurisdiction of the juvenile court under section 303. The findings required by items 19 and 22c were made. **Juvenile court jurisdiction over the nonminor is dismissed.** The attorney for the nonminor is relieved 60 days from today's date.

36. ☐ **Other findings and orders**

a. See attachment 36a.

NONMINOR'S NAME:	CASE NUMBER:

b. Other *(specify):*

37. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:

a. ☐ Nonminor dependent review hearing (Welf. & Inst. Code, § 366(f); Cal. Rules of Court, rule 5.903)

b. ☐ Other *(specify):*

38. Number of pages attached: _____

Date:

JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

ATTACHMENT: ADDITIONAL FINDINGS AND ORDERS FOR CHILD APPROACHING MAJORITY—DEPENDENCY

Use this form to document the juvenile court's findings and orders regarding the child's plans for independent living and his or her status as a nonminor dependent as stated in rule 5.707 of the California Rules of Court at the last status review hearing held under Welfare and Institutions Code section 366.21 or 366.3 before the child attains 18 years of age.

BASED ON THE REPORTS READ, CONSIDERED, AND ADMITTED INTO EVIDENCE AND ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

Findings

1. ☐ The child's Transitional Independent Living Case Plan includes a plan for the child to satisfy the following conditions of eligibility to remain under juvenile court jurisdiction as a nonminor dependent:
   - a. ☐ The child plans to attend high school or a high school equivalency certificate (GED) program.
   - b. ☐ The child plans to attend a college, a community college, or a vocational education program.
   - c. ☐ The child plans to take part in a program or activities to promote employment or overcome barriers to employment.
   - d. ☐ The child plans to be employed at least 80 hours per month.
   - e. ☐ The child may not be able to attend school, college, a vocational program, or a program or activities to promote employment or overcome barriers to employment or to work 80 hours per month due to a medical condition.
2. ☐ The child's Transitional Independent Living Case Plan includes an alternative plan for the child's transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.
3. For an Indian child, he or she ☐ does ☐ does not intend to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent.
4. ☐ The child has an in-progress application pending for title XVI Supplemental Security Income benefits and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure that continued assistance with the application process
   - a. ☐ is in the child's best interest.
   - b. ☐ is not in the child's best interest because it is not necessary.
5. ☐ The child has an in-progress application pending for Special Immigrant Juvenile Status or other application for legal residency for which an active juvenile court case is required.
6. a. ☐ All the information, documents, and services included in Welfare and Institutions Code section 391(b)-(c) were provided to the child.
   b. ☐ Not all the information, documents, and services included in Welfare and Institutions Code section 391(b)-(c) were provided to the child.
      (1) ☐ The barriers to providing any missing information, documents, or services can be overcome by the date the child attains 18 years of age.
      (2) ☐ The barriers to providing any missing information, documents, or services may not be overcome by the date the child attains 18 years of age.
7. ☐ The child was informed that upon reaching 18 years of age he or she has the right to have juvenile court jurisdiction terminated following a hearing under rule 5.555 of the California Rules of Court.
8. ☐ The potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained to the child, and the child has stated that he or she understands those benefits.
9. ☐ The child was informed that if juvenile court jurisdiction is terminated, he or she may have the right to file a request to return to foster care and have the court resume jurisdiction over him or her as a nonminor dependent.

CHILD'S NAME:	CASE NUMBER:

Orders

10. ☐ The child intends to remain under juvenile court jurisdiction as a nonminor dependent as defined in Welfare and Institutions Code section 11400(v) after attaining 18 years of age, and a hearing is ordered set under rule 5.903 of the California Rules of Court to occur within the next six months.

11. ☐ The child does not intend to remain under juvenile court jurisdiction after attaining 18 years of age as a dependent of the court or as a nonminor dependent as defined in Welfare and Institutions Code section 11400(v), and at the child's request, a hearing is ordered set under rule 5.555 of the California Rules of Court for a date within one month after the child's 18th birthday.

12. ☐ The child does not intend to remain under juvenile court jurisdiction as a nonminor dependent as defined in Welfare and Institutions Code section 11400(v) after attaining 18 years of age, but the child is otherwise eligible to and will remain under juvenile court jurisdiction in a foster care placement, and a hearing is ordered set under Welfare and Institutions Code section 366.21, 366.22, 366.25 or 366.3 to occur within the next six months.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council** **JV-462.v1.070820.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME:	

FINDINGS AND ORDERS AFTER NONMINOR DEPENDENT STATUS REVIEW HEARING		CASE NUMBER:
Judicial Officer:	Court Clerk:	Court Reporter:
Baliff:	Other Court Personnel:	Interpreter: Language:

1. Parties *(name):*

	Present	Attorney *(name):*	Present
a. Nonminor dependent:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐

2. Tribal representative *(name):*

3. Others present in courtroom
   a. Other *(specify):*
   b. Other *(specify):*
   c. Other *(specify):*
   d. Other *(specify):*

4. **The court has read, and considered, and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

5. Notice of the date, time, and location of the hearing was given as required by law.

6. ☐ **The nonminor dependent's continued placement is necessary.**

7. ☐ **The nonminor dependent's continued placement is no longer necessary.**

8. ☐ The nonminor dependent's current placement is appropriate.

9. ☐ The nonminor dependent's current placement is not appropriate. The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.

NONMINOR'S NAME:	CASE NUMBER:

10. ☐ The nonminor dependent's Transitional Independent Living Case Plan does include a plan for him or her to satisfy at least one of the criteria in Welfare and Institutions Code section 11403(b) to remain in foster care under juvenile court jurisdiction as indicated below:
    a. ☐ Attending high school or a high school equivalency certificate (GED) program.
    b. ☐ Attending a college, a community college, or a vocational education program.
    c. ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment.
    d. ☐ Employed at least 80 hours per month.
    e. ☐ The nonminor dependent is not able to attend a high school, a high school equivalency certificate (GED) program, a college, a community college, a vocational education program, or an employment program or activity or to work 80 hours per month due to a medical condition.

11. ☐ The county agency ☐ has ☐ has not made reasonable efforts and provided assistance to help the nonminor dependent establish and maintain compliance with one of the conditions in Welfare and Institutions Code section 11403(b).

12. ☐ The nonminor dependent ☐ was ☐ was not provided with the information, documents, and services as required under Welfare and Institutions Code section 391(c).

13. ☐ The Transitional Independent Living Case Plan ☐ was ☐ was not developed jointly by the nonminor dependent and the county agency.

14. ☐ For the nonminor dependent who has elected to have the Indian Child Welfare Act continue to apply, the representative from his or her tribe ☐ was ☐ was not consulted during the development of the nonminor dependent's Transitional Independent Living Case Plan.

15. ☐ The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not reflect the living situation and services consistent, in the nonminor dependent's opinion, with what he or she needs to achieve successful adulthood and set out benchmarks that indicate how both the county agency and nonminor dependent will know when successful adulthood can be achieved.

16. ☐ The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not include appropriate and meaningful independent living skill services that will help the youth transition from foster care to successful adulthood.

17. ☐ The county agency ☐ has ☐ has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the youth's permanent plan and prepare him or her for independence.

18. ☐ The county agency ☐ has ☐ has not made ongoing and intensive efforts to finalize the permanent plan.

19. ☐ The nonminor dependent ☐ did ☐ did not sign and receive a copy of his or her Transitional Independent Living Case Plan.

20. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been ☐ excellent ☐ satisfactory ☐ minimal.
    b. ☐ The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in his or her efforts to attain those goals were stated on the record.

21. ☐ The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the nonminor could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

22. ☐ The county agency ☐ has ☐ has not made reasonable efforts to maintain relations between the nonminor dependent and individuals who are important to him or her, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections.

23. ☐ The county agency ☐ has ☐ has not made reasonable efforts to establish or maintain the nonminor dependent's relationship with his or her siblings who are under juvenile court jurisdiction.

24. The likely date by which it is anticipated the nonminor dependent will achieve successful adulthood is:

25. ☐ It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under rule 5.555 of the California Rules of Court is ordered.

NONMINOR'S NAME:	CASE NUMBER:

26. ☐ At a hearing under rule 5.555 of the California Rules of Court held on the date below, the juvenile court entered the findings and orders as recorded on the *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367), and juvenile court jurisdiction is terminated under those findings and orders.

27. ☐ Juvenile court jurisdiction over the youth as a nonminor dependent is continued and

a. ☐ The youth's permanent plan is:
   (1) ☐ Return home
   (2) ☐ Adoption
   (3) ☐ Tribal customary adoption
   (4) ☐ Placement with a fit and willing relative
   (5) ☐ Another planned permanent living arrangement
   (6) ☐ Other *(specify):*

b. ☐ For nonminors placed in another planned permanent living arrangement, the court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because:
   (1) ☐ The nonminor is 18 or older.
   (2) ☐ Other *(specify):*

The compelling reasons why other permanent plan options are not in the nonminor's best interest are:
   (1) ☐ The nonminor wants to live independently.
   (2) ☐ Other *(specify):*

c. ☐ Family reunification services are continued.

d. The matter is continued for a hearing set under Welfare and Institutions Code section 366.31, and rule 5.903 of the California Rules of Court within the next six months.

28. **All prior orders not in conflict with this order remain in full force and effect.**

29. ☐ Other findings and orders
a. ☐ See attachment 29a.
b. ☐ *(Specify):*

30. ☐ Additional findings and orders for nonminor dependent with case plan of continued family reunification services
a. The agency ☐ has ☐ has not complied with the case plan by making reasonable efforts to create a safe home for the nonminor dependent to reside in and to complete whatever steps are necessary to finalize the permanent plan.
b. The extent of progress made toward alleviating or mitigating the causes necessitating the current out-of-home placement has been
   (1) ☐ by the father:
   (2) ☐ by the mother:
   (3) ☐ by the nonminor:
   (4) ☐ other *(specify):*
c. The likely date by which the nonminor dependent may safely reside in the family home or achieve successful adulthood is:

d. (1) ☐ The nonminor can safely reside in the family home and may return to the family home.
   (a) ☐ The court maintains jurisdiction under Welfare and Institutions Code section 303(a) and a review hearing under Welfare and Institutions Code section 366.31 is ordered.
   (b) ☐ It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of Court is ordered.

NONMINOR'S NAME:	CASE NUMBER:

30. d. (2) ☐ The nonminor cannot safely reside in the family home, and reunification services are continued.

(a) The nonminor dependent and parent(s) of guardian(s) are in agreement with the continuation of reunification services.

(b) Continued reunification services are in the best interest of the nonminor dependent.

(c) There is a substantial probability that the nonminor dependent will be able to safely reside in the family home by the next review hearing.

(d) The matter is continued for a review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court within the next six months.

(3) ☐ The nonminor cannot safely reside in the family home and reunification services are terminated *(check all that apply)*.

(a) ☐ The nonminor dependent and parent(s) or guardian(s) are not in agreement with the continuation of reunification services.

(b) ☐ Continued reunification services are not in the best interest of the nonminor dependent.

(c) ☐ There is not a substantial probability that the nonminor dependent will be able to safely reside in the family home by the next review hearing.

31. ☐ Additional findings and orders for nonminor residing in the home of a parent or former legal guardian

a. (1) ☐ It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of Court is ordered.

(2) ☐ Court supervision and juvenile court jurisdiction continues to be necessary. The court maintains jurisdiction under Welfare and Institutions Code section 303(a). The matter is continued for a review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court within the next six months.

b. ☐ The county agency ☐ has ☐ has not complied with the case plan by making reasonable efforts to maintain a safe family home for the nonminor.

c. ☐ The county agency ☐ has ☐ has not complied with the nonminor's Transitional Independent Living Case Plan, including efforts to prepare the nonminor for successful adulthood.

32. **The next hearings are scheduled as follows:**

a. ☐ Nonminor dependent status review hearing (Wel. & Inst. Code, § 366.31; Cal. Rules of Court, rule 5.903)

Hearing date:	Time:	Dept:	Room:

b. ☐ Hearing to consider termination of jurisdiction under rule 5.555 of the California Rules of Court.

Hearing date:	Time:	Dept:	Room:

c. ☐ Other *(specify):*

Hearing date:	Time:	Dept:	Room:

33. Number of pages attached: _____

Date: _____

_____
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council** **JV-680.v2.072320.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	

FINDINGS AND ORDERS FOR CHILD APPROACHING MAJORITY—DELINQUENCY		CASE NUMBER:
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

Use this form to document the juvenile court's findings and orders regarding the possible modification of jurisdiction over the child, from delinquency jurisdiction to transition jurisdiction or dependency jurisdiction, the child's plans for independent living, and his or her status as a nonminor dependent as stated in rule 5.812 of the California Rules of Court at the following hearings:

1. A review hearing under Welfare and Institutions Code section 727.2, held on behalf of a child approaching majority;
2. A review hearing under Welfare and Institutions Code section 727.2, during which a recommendation to terminate juvenile court jurisdiction is considered, held on behalf of a child more than 17 years, 5 months and less than 18 years of age; or
3. Any other hearing during which a recommendation to terminate juvenile court jurisdiction is considered, held on behalf of a child more than 17 years, 5 months and less than 18 years of age who is in a foster care placement or who was subject to an order for a foster care placement as a dependent when he or she was adjudged to be a ward. This form also applies to children whose underlying adjudication is subject to vacatur under Penal Code section 236.14.

If this hearing is also a review hearing under Welfare and Institutions Code section 727.2 or section 727.3, the findings and orders required in that section and in rule 5.810 of the California Rules of Court must be made in addition to the findings and orders on this form.

BASED ON THE REPORTS READ, CONSIDERED, AND ADMITTED INTO EVIDENCE AND ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

Findings

1. a. ☐ The child's rehabilitative goals have been met. Juvenile court jurisdiction over the child as a ward is no longer required. The facts supporting this finding were stated on the record.
   b. ☐ The child's rehabilitative goals have not been met. Continued juvenile court jurisdiction over the child as a ward is required. The facts supporting this finding were stated on the record.
   c. ☐ The child's underlying adjudication is subject to vacatur under Penal Code section 236.14.
2. ☐ For a dual-status child for whom dependency jurisdiction was suspended under Welfare and Institutions Code section 241.1(e)(5)(A):
   a. ☐ A return to the child's home would be detrimental to the child, and juvenile court jurisdiction over the child as a dependent should be resumed. The facts supporting this finding were stated on the record.
   b. ☐ A return to the child's home would not be detrimental to the child, and juvenile court jurisdiction over the child as a dependent does not need to be resumed. The facts supporting this finding were stated on the record.

CHILD'S NAME:	CASE NUMBER:

3. ☐ For a dual-status child for whom the probation department was designated the lead agency under Welfare and Institutions Code section 241.1(e)(5)(B):

   a. ☐ A return to the child's home would be detrimental to the child, and juvenile court jurisdiction over the child as a dual-status child is no longer required. The facts supporting this finding were stated on the record.

   b. ☐ A return to the child's home would not be detrimental to the child, and juvenile court jurisdiction over the child as a dependent is not required. The facts supporting this finding were stated on the record.

4. ☐ For other than a dual status child:

   a. ☐ The child was not a court dependent at the time he or she was declared a ward. The child ☐ does ☐ does not appear to come within the description of Welfare and Institutions Code section 300, and ☐ can ☐ cannot be returned home safely. The facts supporting this finding were stated on the record and ☐ the underlying petition is subject to vacatur under Penal Code section 236.14.

   b. ☐ The child was subject to an order for a foster care placement as a dependent of the court at the time he or she was adjudged a ward and ☐ does ☐ does not remain within the description of a dependent child under Welfare and Institutions Code section 300, and a return to the home of his or her parents or legal guardian ☐ would ☐ would not create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The facts supporting the findings were stated on the record.

   c. ☐ Reunification services ☐ have ☐ have not been terminated.

   d. ☐ The child's case ☐ has ☐ has not been set for a hearing to terminate parental rights or establish a guardianship.

   e. ☐ The child ☐ does ☐ does not intend to sign a mutual agreement for a placement in a supervised setting as a nonminor dependent.

5. ☐ The child's Transitional Independent Living Case Plan includes a plan for the child to satisfy at least one of the following conditions of eligibility to remain under juvenile court jurisdiction as a nonminor dependent:

   a. ☐ The child plans to continue attending high school or a high school equivalency certificate (GED) program.

   b. ☐ The child plans to attend a college, community college, or vocational education program.

   c. ☐ The child plans to take part in a program or activities to promote employment or overcome barriers to employment.

   d. ☐ The child plans to be employed at least 80 hours a month.

   e. ☐ The child may not be able to attend school, college, a vocational program, or a program or activities to promote employment or overcome barriers to employment or to work 80 hours per month due to a medical condition.

6. ☐ The child's Transitional Independent Living Case Plan includes an alternative plan for the child's transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.

7. For an Indian child, he or she ☐ does ☐ does not intend to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent.

8. ☐ The child has an in-progress application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process:

   a. ☐ is in the child's best interest.

   b. ☐ is not in the child's best interest because it is not necessary.

CHILD'S NAME:	CASE NUMBER:

9. ☐ The child has an in-progress application pending for Special Immigrant Juvenile Status or other application for legal residency for which an active juvenile court case is required.

10. ☐ The potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained to the child, and the child has stated that he or she understands those benefits.

11. ☐ The child was informed that he or she may decline to become a nonminor dependent.

12. ☐ The child was informed that on reaching 18 years of age, he or she may have the right to have juvenile court jurisdiction terminated following a hearing under rule 5.555 of the California Rules of Court.

13. ☐ The child was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the court assume or resume jurisdiction over him or her as a nonminor dependent.

14. a. ☐ All the information, documents, and services required by Welfare and Institutions Code section 391(b)-(c) were provided to the child.

b. ☐ Not all the information, documents, and services required by Welfare and Institutions Code section 391(b)-(c) were provided to the child.

(1) ☐ The barriers to providing any missing information, documents, or services can be overcome by the date the child attains 18 years of age.

(2) ☐ The barriers to providing any missing information, documents, or services may not be overcome by the date the child attains 18 years of age.

15. ☐ The child ☐ was ☐ was not provided with the notices and information required under Welfare and Institutions Code section 607.5.

Orders

16. ☐ The court, having previously determined that the child is a dual-status child under Welfare and Institutions Code section 241.1(e)(5)(A), and that juvenile court jurisdiction over the child as a dependent should be resumed, orders that:

a. Dependency jurisdiction over the child previously suspended is resumed and delinquency jurisdiction is dismissed.

b. The matter is continued for a status review hearing set under Welfare and Institutions Code section 366.21 or section 366.31, on the date stated on the record, which is within six months of the date of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

17. ☐ The court, having previously determined that the child is a dual-status child under Welfare and Institutions Code section 241.1 (e)(5)(B), that the child's rehabilitative goals were achieved, that a return to the child's home would be detrimental, and that juvenile court jurisdiction over the child as a dual-status child is no longer required, orders that:

a. The child's dual status is terminated, delinquency jurisdiction over the child is dismissed, and dependency jurisdiction is continued with the child welfare services department responsible for the child's placement and care.

b. The matter is continued for a status review hearing set under Welfare and Institutions Code section 366.21 or section 366.31, on the date stated on the record, which is within six months of the date of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

18. ☐ The child comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450.

a. The child was originally removed from the physical custody of his or her parents or legal guardians on *(specify date):* and continues to be removed from their custody.

b. The removal findings made at that hearing—"continuation in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—remain in effect.

CHILD'S NAME:	CASE NUMBER:

18. c. The ☐ child welfare services department ☐ probation department is responsible for the child's placement and care.

The child is adjudged a transition dependent pending his or her attaining the age of 18 years and assuming the status of a nonminor dependent under the transition jurisdiction of this court. The matter is continued for a status review hearing set under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

19. ☐ The child comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450, in that his or her underlying adjudication is subject to vacatur under Penal Code section 236.14.

a. Continuance in the home is contrary to the child's welfare;

b. Reasonable efforts have been made to prevent or eliminate the need for removal, and the child remains removed from the parent or guardian;

c. The adjudication in petition number is vacated, the petition is dismissed, and the underlying arrest is expunged under Penal Code section 236.14;

d. The Department of Justice and any law enforcement agency that has records of the arrest is ordered to seal those records and then destroy them three years from the date of the arrest or one year after the order to seal, whichever occurs later; and

e. The ☐ probation department ☐ child welfare services department is responsible for the child's placement and care.

20. ☐ The child (1) was not a court dependent at the time he or she was declared a ward; (2) is currently subject to an order for a foster care placement; (3) does not come within the juvenile court's transition jurisdiction; (4) has achieved his or her rehabilitative goals; (5) no longer requires delinquency jurisdiction; and (6) appears to come within the description of Welfare and Institutions Code section 300 and cannot be returned home safely.

a. The ☐ probation officer ☐ child's attorney must submit an application under Welfare and Institutions Code section 329 to the child welfare services department to commence a proceeding to declare the child a dependent of the court.

b. The matter is set for a hearing to review the child welfare services department's decision on the date stated on the record, which is within 20 court days of the date of this order.

21. ☐ The child (1) was a court dependent at the time he or she was declared a ward; (2) does not come within the juvenile court's transition jurisdiction; (3) has achieved his or her rehabilitative goals; (4) no longer requires delinquency jurisdiction; and (5) remains within the description of a dependent child under Welfare and Institutions Code section 300 and a return to the home of a parent or legal guardian would create a substantial risk of detriment to his or her safety, protection, or physical or emotional well-being.

a. The child was originally removed from the physical custody of his or her parents or legal guardians on *(specify date):* and continues to be removed from their custody.

b. The removal findings made at that hearing—"continuation in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—remain in effect.

c. The ☐ child welfare services department ☐ probation department is responsible for the child's placement and care.

The order terminating jurisdiction over the child as a dependent of the juvenile court is vacated and dependency jurisdiction over the child is resumed. Delinquency jurisdiction is terminated. The matter is continued for a status review hearing set under rule 5.903 of the California Rules of Court, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

CHILD'S NAME:	CASE NUMBER:

22. ☐ Jurisdiction over the child is not modified from delinquency jurisdiction to dependency jurisdiction or transition jurisdiction.

a. ☐ The child is returned to the home of the parent or legal guardian. A progress report hearing is set on the date stated on the record.

b. ☐ The child is returned to the home of the parent or legal guardian and juvenile court jurisdiction of the child is terminated as stated in *Petition to Terminate Wardship and Order* (form JV-794).

c. ☐ Delinquency jurisdiction is continued and the order for an out-of-home placement in a non–foster care placement remains in full force and effect. A progress report hearing is set on the date stated on the record.

d. ☐ Delinquency jurisdiction is continued and the order for a foster care placement remains in full force and effect.

(1) ☐ The child intends to meet the eligibility requirements for status as a nonminor dependent after attaining 18 years of age, and a status review hearing is set under rule 5.903 of the California Rules of Court, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

(2) ☐ The child does not intend to meet the eligibility requirements for status as a nonminor dependent after attaining 18 years of age.

(a) ☐ A hearing to terminate delinquency jurisdiction under Welfare and Institutions Code sections 607.2(b)(4) and 607.3 is set for the date stated on the record, which is within one month of the child's 18th birthday.

(b) ☐ A status review hearing is set under Welfare and Institutions Code section 727.2, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

23. **The next hearings are scheduled as follows:**

a. ☐ Nonminor dependent status review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court

Hearing date:	Time:	Dept:	Room:

b. ☐ Hearing to consider termination of jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the Callfornia Rules of Court

Hearing date:	Time:	Dept:	Room:

c. ☐ Other (*specify):*

Hearing date:	Time:	Dept:	Room:

Date:

JUDICIAL OFFICER

Item number: 25

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: 08/20/2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Nonminor Disposition Hearing–Dependency; Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A), and JV-463

Committee or other entity submitting the proposal:
Family & Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Daniel Richardson, 415-865-7619, daniel.richardson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration:
AB 748 (Gipson) Nonminor dependents (Ch. 682, Statutes of 2019) provides that youth who were subject to an order for foster care before they reached 18 years of age but were not yet adjudged dependents of the juvenile court before reaching their 18th birthday, are eligible for extended foster care benefits.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 24–25, 2020

Title
Juvenile Law: Nonminor Disposition Hearing–Dependency

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A), and JV-463

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 11, 2020

Contact
Daniel Richardson, 415-865-7619
daniel.richardson@jud.ca.gov

Executive Summary

To implement recent legislation creating a new disposition hearing for nonminors, the Family and Juvenile Law Advisory Committee recommends adopting a new rule and amending two rules of the California Rules of Court and adopting three new Judicial Council forms. The statutory amendments created a disposition hearing for a class of youth who were within the jurisdiction of the juvenile court because of abuse or neglect as a child but had reached the age of majority before a disposition hearing could be held and thus ensure their eligibility for extended foster care. This proposal would create a uniform procedure for these nonminor disposition hearings through a new rule of court, two forms for the court's findings and orders, and a form for the youth to provide the required informed consent to proceed with the nonminor disposition hearing.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt rule 5.697, Disposition Hearing for a Nonminor, to implement the requirements of section Welfare and Institutions Code section 358(d);

2. Amend rules 5.682 and 5.684 on uncontested and contested jurisdiction hearings, respectively, to clarify that the setting of a nonminor disposition hearing is required when the child will turn 18 before the holding of the disposition hearing; and

3. Adopt *Findings and Orders After Nonminor Disposition Hearing* (form JV-461), *Dispositional Attachment: Nonminor Dependent* (form JV-461(A)), and *Nonminor's Informed Consent to Hold Disposition Hearing* (form JV-463).

The proposed new and amended rules and new forms are attached at pages 9–24.

Relevant Previous Council Action

The council has never taken action relevant to this proposal, as the proposal implements new legislation. The council has however created rules and forms to implement the Fostering Connections to Success Act and rules and forms for dependency disposition hearings.

Analysis/Rationale

Assembly Bill 748 (Gipson; Stats. 2019, ch. 682)[1] addresses those situations in which a juvenile court takes jurisdiction of a child who is fast approaching the age of majority. It ensures that these youth will not be excluded from extended foster care because a disposition hearing could not be held before their 18th birthday. The legislation seeks to eliminate administrative barriers to ensure that a limited number of youth in certain narrow situations are able to enter or reenter extended foster care.[2] The legislation was partially in response to *In re David B.* (2017) 12 Cal.App.5th 633, in which an appellate court "reluctantly" agreed that the trial court's denial of dependency jurisdiction for a wheelchair-bound diabetic youth just before he turned 18 prevented the appellate court from reversing the decision.[3]

Assembly Bill 748 creates a procedure for a new version of a disposition proceeding, specifically tailored for young adults. Under section 358(d), for a disposition hearing for a nonminor to be held, the nonminor must have been found to be a minor described by section 300 at a hearing under section 355 before turning 18 and must have remained continuously detained under section

[1] The full text of this statute is available at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB748*.

[2] Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 748 (2012–2020 Reg. Sess.) as amended July 11, 2019, p. 4, *https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB748*.

[3] Assem. Com. on Judiciary, Analysis of Assem. Bill 748 (2019–2020 Reg. Sess.) as introduced Feb. 19, 2019, p. 5, *https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB748*.

319(c).[4] In addition, the nonminor must provide "informed consent" for the disposition proceeding. If these conditions are met, the court is required to hold a disposition hearing and determine by clear and convincing evidence if one of the conditions of section 361(c) existed *immediately before the youth turns 18*. If the court makes this finding, the youth meets the legal definition of a nonminor dependent (NMD) under section 11400(v) and is eligible for extended foster care. If the court does not make this finding, or the youth does not give informed consent, section 358(d)(5)(A) requires that dependency or general jurisdiction not be retained.

Assembly Bill 748 requires the Judicial Council to adopt implementing rules and forms as necessary on or before July 1, 2020.[5] This proposal seeks to provide a unified approach to these nonminor disposition hearings. It blends together many important concepts related to extended foster care and calls for a hybrid type of hearing, one that must respect the nonminor's status as an adult and their legal decisionmaking authority while also fulfilling the functions of a dependency disposition hearing, which typically involves a child.

New rule and rule amendments

Rule 5.697. Disposition Hearing for a Nonminor

The recommended new rule addresses several issues that the court would address at a disposition hearing for a child and combines these issues with the required reporting and findings and orders for a nonminor dependent status review hearing. It creates a procedure for providing informed consent to the nonminor disposition hearing, by requiring the completion and filing of the proposed mandatory form JV-463 before or at the scheduled hearing. The form sets out the information that a nonminor must be aware of before giving informed consent.[6] It also states the findings that a court is required to make before dismissing jurisdiction, if a nonminor does not consent. In addition, the rule lists required contents of a social worker report or social study to be considered if the disposition hearing is held.

The Family and Juvenile Law Advisory Committee considered three prominent issues in drafting the rule.

Title IV-E Case review. Disposition hearings in California are treated as case reviews for title IV-E[7] purposes to ensure that California law meets the title IV-E timeline requirements that a review hearing be held within six months of the date of a child's entry into foster care. A similar

[4] All unspecified statutory references are to the Welfare and Institutions Code, and all rule references are to the California Rules of Court.

[5] See § 358(d)(8).

[6] To ensure that the youth is informed of their options of extended foster care and provision of "informed consent," the rule requires that the social worker perform the functions in section 366.31(a)(2) and (3): that the youth has been informed of his or her right to seek termination of dependency jurisdiction under section 391 and to have dependency reinstated under section 388(e), and that the youth understands the potential benefits of continued dependency.

[7] See 42 U.S.C. § 675.

approach may be needed for the nonminor disposition hearing. If the nonminor disposition hearing did not address the title IV-E case review requirements, a case review six months after the date of the nonminor disposition hearing would not be timely for title IV-E because it may not be held six months from the date of the child's entry into foster care.[8]

To ensure that title IV-E timelines are maintained, the committee elected to develop rules that treat the nonminor disposition hearing as a title IV-E case review as well. The committee is mindful, however, that more time may be needed to meet the requirements of sections 358(d) and 366.31, which include the findings required by title IV-E. The committee, therefore, elected to give the court the option to make the findings and orders required for an NMD status review as part of the disposition order or to hold a separate NMD status review within 60 days of the disposition hearing.

Parent participation. The committee also considered whether the nonminor's parent or guardian should be allowed to participate in the hearing. Section 358(d) is silent as to what right a parent or guardian has to participate in the nonminor disposition hearing. For NMD status review hearings, section 295(b) and rule 5.903 require notice to parents only if the parent is receiving family reunification services under section 361.6; otherwise, parents may participate in the hearing only if they are invited by the NMD.[9]

When their child becomes an adult, parents no longer have a liberty interest in the custody of their adult offspring because no one has legal custody of an adult. Parents, therefore, do not have the same liberty interest at stake in a nonminor disposition hearing as in a disposition hearing for a child, where the court can consider removing a child from parental custody. However, the finding under section 361(c) at a nonminor disposition hearing may have implications for parents in collateral proceedings by, for example, being disclosed by a social worker in a future petition or disclosed in a future application for a foster care license. There is then some deprivation for the parent, triggering a possible due process right.

The committee recommends that the rule clarify that a parent or guardian may participate in the hearing for the limited purpose of the court's consideration of a finding of detriment under section 361(c). A request for specific comment asked commenters whether parents should be allowed to participate as a party in the disposition hearing. Commenters overwhelming agreed that parents should participate in the hearing, with five commenters agreeing. Several commenters noted that their standing should be limited to addressing the finding under section 361(c) and whether reunification services are ordered.

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[8] See 42 U.S.C. § 675(5)(B).

[9] Section 317(d) also specifies that "in the case of a nonminor dependent, as described in subdivision (v) of Section 11400, no representation by counsel shall be provided for a parent, unless the parent is receiving court-ordered family reunification services."

Informed consent. The committee also addressed how "informed consent" from the youth must be provided. To ensure that the youth is "informed," the proposed rule requires that the youth be informed by their social worker about extended foster care in the same way that a minor approaching the age of majority is informed about extended foster care under section 366.31(a).[10] In addition, the rule proposes that the court ensure that the nonminor has had an opportunity to confer with their attorney on providing consent for the disposition hearing. Proposed form JV-463 has a field for the nonminor to sign confirming that they have been informed of each of these points and provides additional information on the second page about the nonminor disposition hearing and extended foster care.

If the court finds that the nonminor is not competent to give informed consent, the rule requires that the court appoint a guardian ad litem to decide whether to consent on behalf of the youth. Under section 317(e), a guardian ad litem is required to be appointed for a nonminor dependent when the nonminor dependent is not competent to direct counsel. The committee believes a similar approach is needed for a determination on informed consent for a youth approaching a nonminor disposition hearing who does not have the capacity to give informed consent.

Rules 5.682 and 5.684, jurisdiction

Proposed updates to rules 5.682 and 5.684, related to uncontested and contested jurisdiction hearings, respectively, address the setting of the nonminor disposition hearing by adding the underlined language as follows: "the court must proceed to a disposition hearing under rule 5.690 or rule 5.697, if the youth will turn 18 years of age before the holding of the disposition hearing."

New and revised forms

The committee proposes that three new Judicial Council forms be adopted to provide for the court's findings and orders after the nonminor disposition hearing and for the youth's informed consent.

Findings and Orders After Nonminor Disposition Hearing *(form JV-461)*

A new mandatory form is proposed to provide for the court's findings and orders after a nonminor disposition hearing. The form includes the findings and orders discussed above. It also can be used by the court to dismiss jurisdiction if either the nonminor does not provide informed consent or the court does not find that one of the conditions of section 361(c) existed immediately before the nonminor turned 18.

Dispositional Attachment: Nonminor Dependent *(form JV-461(A))*

This form will be used to complete the findings and orders if the court does declare dependency. It includes the findings and orders required at the nonminor dependent status review hearing and required title IV-E findings and orders. This form would be used only if the nonminor provides

[10] That is, that the nonminor understands the potential benefits of continued dependency, has been informed of their right to seek termination of dependency jurisdiction under section 391 if the court establishes dependency, and has been informed of their right to have dependency reinstated under section 388€ if the court establishes dependency.

informed consent and the court finds that one of the conditions of section 361(c) existed immediately before the nonminor turned 18.

Nonminor's Informed Consent to Hold Disposition Hearing *(form JV-463)*
This mandatory form would be used to verify the youth's informed consent or lack thereof. The form requires that the youth verify that the requirements mentioned above to be informed about extended foster care have been met and gives the youth (or guardian ad litem) the option to consent to the hearing or not. The youth's attorney is also required to sign the form, declaring that the attorney has discussed the implications of setting a nonminor disposition hearing with the client. The form also provides information intended for the youth explaining the nonminor dependent hearing and extended foster care on the second page.

Policy implications

In addition to the items listed above, the committee also considered how the rule should handle the dismissal of jurisdiction when a nonminor is not locatable. Because the purpose of Assembly Bill 748 is ensuring that eligible nonminors can take advantage of extended foster care, the committee elected to ensure that reasonable and documented efforts to locate a nonminor are made before the court dismisses jurisdiction for a nonminor who is not locatable. This requirement is consistent with the requirement in section 391(f) that jurisdiction over a nonminor who cannot be located cannot be dismissed until the court finds that reasonable and documented efforts have been made to locate the nonminor.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the regular winter comment cycle. Nine commenters submitted comments on the Family and Juvenile Law Advisory Committee's proposal. Six commenters agreed with the proposal, and three did not indicate a position but expressed agreement with the proposal. A chart with the full text of all comments received and the committee's responses is attached at pages 25–57. Notable issues addressed by commenters fell under the following topics.

Title IV-E review
A specific request for comment asked whether the nonminor disposition hearing should meet the requirements for a title IV-E case review, or if rule 5.697 should instead require that a title IV-E case review be held within 60 days of the disposition hearing.

Five responses were received to this question, and all commenters agreed with the rule as proposed, which gives courts the flexibility to hold the title IV-E case review either at the disposition hearing or within 60 days, as originally proposed. One commenter expressed concern that title IV-E requirements could not be addressed within the timelines of section 358(d)(3), which requires that the disposition hearing be held within 30 days of the jurisdictional findings. One commenter noted that within this time frame, the social worker must also provide the informed consent document to the youth, complete the dispositional report, and provide proper notice to the parties. The commenter, however, agreed with giving the court the option of holding the hearing within 60 days.

Continuances
Section 358(d)(3) requires that the disposition hearing be held within 30 days of the jurisdictional finding under section 355. A commenter recommended that rule 5.697 should indicate in section (e)(2) that any continuance granted should not be longer than 30 days from the date that the Section 355 finding was made. The rule currently doesn't address how continuances should be handled except in subdivision (e)(2), which requires a continuance within statutory limits if a party has not been furnished with a timely report.

In response to this comment, the committee considered whether the rule should address a continuance of the disposition hearing beyond the statutory time frame. The committee consider whether the rule should clarify that a good-cause finding or a finding of exceptional circumstances should be required. Section 352(b) requires a finding of exceptional circumstances for any continuance beyond 60 days from date of removal as required for a continuance of a disposition hearing, and 352(a)(1) requires that any continuance *not* be granted if it is contrary to the interest of the minor.

The committee, however, determined that the existing statutes and rules addressing continuances are adequate to address continuances of the nonminor disposition hearing. The committee also noted that adding another rule on continuances could create a duplication of the continuance requirements, which could create confusion.

Notice
In the rule that circulated for comment, (b)(1) required that "[t]he social worker must serve written notice of the hearing in the manner provided in section 295 to all persons required to receive notice under section 295, including the nonminor's parent or guardian." Section 295 addresses notice for a nonminor dependent status review hearing.

A commenter raised a question about whether the manner of notice should be according to section 291 or 295, suggesting that section 291 might be a better fit because it includes a timeline that is suited to a disposition hearing. The timeline for notice in section 295, no earlier than 30 days and no later than 15 days, may not align itself very well to the setting of a nonminor disposition hearing. Section 291 requires that notice for a detained child must be "as soon as possible, and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours before the hearing."

The two statutes are substantially similar, but the committee agrees with the commenter that the manner of notice should be according to section 291. The committee, therefore, amended subdivision (b) to require that written notice be "in the manner provided in section 291," to the persons identified in section 295(a). The reason for using both statutes is because the persons identified for notice in section 291 do not address a nonminor, whereas section 295 requires notice to a "nonminor dependent."

Other revisions
In addition, the following changes were made in response to comments:

- Consistent with Judicial Council efforts to use gender-neutral language in forms and rules, gender neutral language has been used throughout the proposal;
- "Child" has been replaced with "youth" as a result of spring proposal SPR 20-21 that, if approved by the Judicial Council at its September meeting, will amend rule 5.502 to define *youth* as "a person who is at least 14 years of age and not yet 21 years of age." The use of the new definition of *youth* greatly enhanced the efficiency of the rule.
- Numerous nonsubstantive edits to the new rule and forms are noted in the rule, on the forms, and in the comments chart.

Alternatives considered

The committee never considered *not* proposing the rules and forms changes because the legislation requires the Judicial Council to adopt implementing rules and forms.

The committee did consider various options in the construction of rule 5.697, as described above, such as whether a parent or guardian had a due process right to participate in the nonminor disposition hearing when the parent or guardian no longer has a liberty interest in the right to custody of the child. Some committee members believed that there was no due process right, but the committee as a whole elected to proceed with a rule that gives a parent the right to participate in the hearing on the issue of whether a condition in section 361(c) existed immediately before the youth turned 18. The committee also considered whether the nonminor disposition hearing should include a title IV-E case review, or whether more time should be given to complete the requirements of the case review. The committee elected to give the court the option to proceed with the case review at the nonminor disposition hearing or hold a case review within 60 days.

The committee also considered whether the rule should require that the county agency show reasonable efforts to locate the youth before jurisdiction is dismissed if the reason for the youth's not giving informed consent is because they cannot be located. The committee determined that this requirement was an appropriate safeguard for a vulnerable class of youth and consistent with the legislation's intent to ensure that eligible youth are not excluded from extended foster care. In addition, this finding is a requirement for dismissal of jurisdiction for a nonminor under section 391(f).

Fiscal and Operational Impacts

The committee anticipates additional costs to courts when a hearing under the rule is held, but the costs would be the result of the implementation of Assembly Bill 748 rather than the proposal. A uniform procedure for these hearings as proposed can benefit judicial economy and provide cost saving for courts and litigants. Courts will be able to save time using the procedure created in this proposal as opposed to having to create their own procedures for these hearings.

Attachments and Links

1. Cal. Rules of Court, rules 5.682, 5.684, and 5.697, at pages 9–16
2. Forms JV-461, JV-461(A), and JV-463, at pages 17–24
3. Chart of comments, at pages 25–57

Rule 5.697 of the California Rules of Court is adopted, and rules 5.682 and 5.684 are amended, effective January 1, 2021, to read:

Rule 5.682. Commencement of jurisdiction hearing–advisement of trial rights; admission, no contest, submission

(a)–(e) * * *

(f) Disposition

After accepting an admission, plea of no contest, or submission, the court must proceed to a disposition hearing under rule 5.690 or rule 5.697, if the youth will turn 18 years of age before the holding of the disposition hearing.

Rule 5.684. Contested hearing on petition

(a)–(e) * * *

(f) Disposition and continuance pending disposition hearing (§§ 356, 358)

After making the findings in (e), the court must proceed to a disposition hearing under rule 5.690 or rule 5.697, if the youth will turn 18 years of age before the holding of the disposition hearing. The court may continue the disposition hearing as provided in section 358.

(g) * * *

Rule 5.697. Disposition Hearing for a Nonminor (Welf. & Inst. Code, §§ 224.1, 295, 303, 358, 358.1, 361, 366.31, 390, 391)

(a) Purpose

This rule provides the procedures that must be followed when a disposition hearing for a nonminor is set under Welfare and Institutions Code section 358(d).

(b) Notice of hearing (§§ 291, 295)

(1) The social worker must serve written notice of the hearing in the manner provided in section 291 to all persons required to receive notice under section 295, including the nonminor's parent or guardian.

(2) The social worker must serve a copy of the *Nonminor's Informed Consent to Hold Disposition Hearing* (form JV-463) with the notice to the youth.

(c) Informed consent (§§ 317, 358)

(1) Unless the court has appointed a guardian ad litem for the nonminor or the nonminor is not locatable after reasonable and documented efforts have been made to locate the nonminor, the court must find that the nonminor:

(A) Understands the potential benefits of continued dependency;

(B) Has been informed of their right to seek termination of dependency jurisdiction under section 391 if the court establishes dependency;

(C) Has been informed of their right to have dependency reinstated under section 388(e) if the court establishes dependency; and

(D) Has had the opportunity to confer with their attorney regarding providing informed consent.

(2) The youth must give informed consent to the disposition hearing by completing and signing *Nonminor's Informed Consent to Hold Disposition Hearing* (form JV-463). The youth or their attorney must file the form with the court at or before the scheduled disposition hearing.

(3) If the nonminor is not competent to direct counsel and give informed consent in accordance with Code of Civil Procedure section 372 and Probate Code sections 810 thru 813, the court must appoint a guardian ad litem to determine whether to provide informed consent on the nonminor's behalf by completing and signing *Nonminor's Informed Consent to Hold Disposition Hearing* (form JV-463) and filing it with the court at or before the scheduled disposition hearing.

(d) Conduct of the hearing (§§ 295, 303, 358, 361)

(1) The hearing may be attended, as appropriate, by participants invited by the nonminor in addition to those entitled to notice under (b).

(2) The nonminor may appear by telephone as provided in rule 5.900(e).

(3) If the nonminor or the nonminor's guardian ad litem does not provide informed consent, the court must vacate the temporary orders made under

section 319, and dependency or general jurisdiction must not be retained. Before dismissing jurisdiction, the court must make the following findings:

(A) Notice was given as required by law;

(B) The requirements of (c)(1) have been met unless a guardian ad litem has been appointed for the nonminor or the nonminor could not be located after reasonable and documented efforts have been made to locate the nonminor;

(C) If the reason the nonminor did not give informed consent is because the social worker could not locate the nonminor, the court must find that after reasonable and documented efforts the nonminor could not be located.

(4) If the nonminor or the nonminor's guardian ad litem does provide informed consent, the court must proceed to a disposition hearing consistent with this rule and section 358(d). The parent or guardian of the nonminor may participate as a party in the disposition hearing, receive the social study and other evidence submitted for the hearing, and present evidence. The parent's participation is limited to addressing the court's consideration of whether one of the conditions of section 361(c) existed immediately before the nonminor's attaining 18 years of age.

(e) Social study (§§ 358, 358.1)

The petitioner must prepare a social study of the nonminor if the court proceeds to a disposition hearing. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner's social study must include the following information:

(A) Whether one of the conditions of section 361(c) existed immediately before the youth's turned 18 years of age.

(B) The reasonable efforts that were made to prevent or eliminate the need for removal.

(C) A plan for achieving legal permanence or successful adulthood, if reunification is not being considered.

(D) If reunification services are being considered:

(i) A plan for reuniting the nonminor with the family, including a plan of visitation, developed in collaboration with the nonminor, parent or guardian, and child and family team;

(ii) Whether the nonminor and parent or guardian were actively involved in the development of the case plan;

(iii) The extent of progress the parent or guardian has made toward alleviating or mitigating the causes necessitating placement in foster care;

(iv) Whether the nonminor and parent, parents, or guardian agree with the continuation of reunification services;

(v) Whether continued reunification services are in the best interest of the nonminor; and

(vi) Whether there is a substantial probability that the nonminor will be able to safely reside in the home of the parent or guardian by the next review hearing date.

(E) The social worker's efforts to comply with rule 5.637, including but not limited to:

(i) The number of relatives identified and the relationship of each to the nonminor;

(ii) The number and relationship of those relatives described by (i) who were located and notified;

(iii) The number and relationship of those relatives described by (ii) who are interested in ongoing contact with the nonminor;

(iv) The number and relationship of those relatives described by (ii) who are interested in providing placement for the nonminor; and

(v) If it is known or there is reason to know that the nonminor is an Indian child, efforts to locate extended family members as defined in section 224.1, and evidence that all individuals contacted have been provided with information about the option of obtaining approval for placement through the tribe's license or approval procedure.

(F) If siblings are not placed together, an explanation of why they have not been placed together in the same home, what efforts are being made to place the siblings together, or why making those efforts would be contrary to the safety and well-being of any of the siblings.

(G) How and when the Transitional Independent Living Case Plan was developed, including the nature and the extent of the nonminor's participation in its development and, for the nonminor who has elected to have the Indian Child Welfare Act continue to apply, the extent of consultation with the tribal representative.

(H) The nonminor's plans to remain under juvenile court jurisdiction, including the criteria in section 11403(b) that the nonminor meets or plans to meet.

(I) The efforts made by the social worker to help the nonminor meet the criteria in section 11403(b).

(J) The efforts made by the social worker to comply with the nonminor's Transitional Independent Living Case Plan, including efforts to finalize the permanent plan and prepare the nonminor for successful adulthood.

(K) The continuing necessity for the nonminor's placement and the facts supporting the conclusion reached.

(L) The appropriateness of the nonminor's current foster care placement.

(M) Progress made by the nonminor toward meeting the Transitional Independent Living Case Plan goals and the need for any modifications to assist the nonminor in attaining the goals.

(N) Verification that the nonminor was provided with the information, documents, and services required under section 391.

(2) The petitioner must submit the social study and copies of it to the court clerk at least 48 hours before the disposition hearing is set to begin, and the clerk must make the copies available to the parties and attorneys. A continuance within statutory time limits must be granted on the request of a party who has not been furnished with a copy of the social study in accordance with this rule.

(f) Case plan and Transitional Independent Living Case Plan (§§ 11401, 16501.1)

(1) Whenever court-ordered services are provided, the social worker must prepare a case plan consistent with section 16501.1 and the requirements of rule 5.690(c).

(2) At least 48 hours before the hearing, the nonminor's Transitional Independent Living Case Plan must be submitted with the report that the social worker prepared for the hearing and must include:

(A) The individualized plan for the nonminor to satisfy one or more of the criteria in section 11403(b) and the nonminor's anticipated placement as specified in section 11402; and

(B) The nonminor's alternate plan for their transition to independence—including housing, education, employment, and a support system—in the event that the nonminor does not remain under juvenile court jurisdiction.

(g) Evidence considered (§§ 358, 360)

At a hearing held under this rule, the court must receive in evidence and consider the following:

(1) The social study described in (e), the report of any CASA volunteer, and any relevant evidence offered by the petitioner, nonminor, or parent or guardian. The court may require production of other relevant evidence on its own motion. In the order of disposition, the court must state that the social study and the study or evaluation by the CASA volunteer, if any, have been read and considered by the court.

(2) The case plan, if applicable, and the Transitional Independent Living Case Plan.

(h) Findings and orders (§§ 358, 358.1, 361, 390)

After the nonminor or the nonminor's guardian ad litem provides informed consent, the court must consider the safety of the nonminor, determine if notice was given as required by law, and determine if by clear and convincing evidence one of the conditions of section 361(c) existed immediately before the youth's attaining 18 years of age.

(1) If the court does not find by clear and convincing evidence that one of the conditions of section 361(c) existed immediately before the youth's attaining 18 years of age, the court must vacate the temporary orders made under section 319 and dismiss dependency jurisdiction.

(2) If the court finds by clear and convincing evidence that one of the conditions of section 361(c) existed immediately before the youth's attaining 18 years of age, the court must declare dependency and:

(A) Order the continuation of juvenile court jurisdiction and, consistent with (3), set a nonminor dependent review hearing under section 366.31 and rule 5.903 within 60 days or six months, or

(B) Set a hearing to consider termination of juvenile court jurisdiction over the nonminor dependent under rule 5.555 within 30 days, if the nonminor dependent chooses not to remain in foster care.

(3) If the court makes the finding in (2), the following findings and orders must be made and included in the written court documentation of the hearing, with the exception of those findings and orders stated in (C) that may be made instead at a nonminor dependent status review hearing under section 366.31 and rule 5.903 to be held within 60 days:

(A) Findings

(i) Whether reasonable efforts have been made to prevent or eliminate the need for removal;

(ii) Whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the nonminor dependent's relatives consistent with section 309(e); and

(iii) Whether a nonminor who is an Indian child chooses to have the Indian Child Welfare Act apply to them as a nonminor dependent.

(B) Orders

(i) Order that placement and care is vested with the placing agency.

(ii) Order the county agency to comply with rule 5.481, if there was no inquiry or determination of whether the nonminor dependent

was an Indian child before the nonminor dependent's 18th birthday and the nonminor dependent requests an Indian Child Welfare Act determination.

(iii) The court may order family reunification services under 361.6 for the nonminor and the parent or legal guardian. Court-ordered reunification services must not exceed the time frames as stated in section 361.5.

(C) The following findings and orders must be considered either at the nonminor disposition hearing held under this rule and section 358(d), or at a nonminor dependent status review hearing under rule 5.903 and section 366.31 held within 60 days of the nonminor disposition hearing:

(i) The findings contained in rule 5.903(e)(1)(A)–(P);

(ii) The orders contained in rule 5.903(e)(2)(A)(i) and (ii); and

(iii) For a nonminor dependent whose case plan is court-ordered family reunification services, a determination of the following:

a. The extent of the agency's compliance with the case plan in making reasonable efforts or, in the case of an Indian child, active efforts, as described in section 361.7, to create a safe home of the parent or guardian for the nonminor dependent to reside in or to complete whatever steps are necessary to finalize the permanent placement of the nonminor dependent; and

b. The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **Not approved by the Judicial Council** **JV-461.v10.081120.CZ.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS AFTER NONMINOR DISPOSITION HEARING	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. a. ☐ The nonminor was removed and remains detained under Welfare and Institutions Code section 319(c).
   b. ☐ Date of detention orders:

3. The nonminor was found to be a child described under Welfare and Institutions Code section 300 *(check all that apply):*
   a. ☐ 300(a) ☐ 300(b) ☐ 300(c) ☐ 300(d) ☐ 300(e)
      ☐ 300(f) ☐ 300(g) ☐ 300(h) ☐ 300(i) ☐ 300(j)
   b. ☐ On *(date):*

4. **Disposition hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

5. Parties present *(name)*:

	Present	Attorney *(name)*:	Present
a. Nonminor:	☐		☐
b. County Social Worker:	☐		☐
c. Parent:	☐		☐
d. Parent:	☐		☐
e. Legal Guardian:	☐		☐
f. Others:	☐		☐

6. Tribal representative *(name)*: ☐ ☐

7. Others present in courtroom:
   a. ☐ Other *(specify)*:
   b. ☐ Other *(specify)*:
   c. ☐ Other *(specify)*:
   d. ☐ Other *(specify)*:

8. The court has read, considered, and admits into evidence
   a. report of the social worker dated:
   b. CASA report dated:
   c. Other *(specify):*
   d. Other *(specify):*

NONMINOR'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

9. ☐ Notice of the date, time, and location of the hearing was given as required by law.

10. ☐ The nonminor was neither present in court nor participating by phone and
   a. ☐ the nonminor expressed a wish not to appear for the hearing and did not appear.
   b. ☐ the nonminor's current location is unknown. Reasonable efforts ☐ were ☐ were not made to find the nonminor.

11. ☐ Consistent with Code of Civil Procedure section 372 and Probate Code section 810 thru 813, the nonminor is not competent to provide informed consent; a guardian ad litem has been appointed to the nonminor. *(proceed to item 16)*

12 ☐ The nonminor has had the opportunity to confer with their attorney on providing consent for the disposition hearing.

13. ☐ The nonminor was informed that if dependency is established, the nonminor has the right to have juvenile jurisdiction terminated following a hearing under rule 5.555 of the California Rules of Court.

14. ☐ The potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained to the nonminor, and that nonminor has stated that they understand those benefits.

15. ☐ The nonminor was informed that if dependency is established, they may have the right to file a request to return to foster care and to have the court resume jurisdiction over them as a nonminor dependent.

16. a. ☐ The nonminor or the nonminor's guardian ad litem has provided informed consent for the holding of a disposition hearing under Welfare and Institutions Code section 358(d) by submitting *Nonminor's Informed Consent to Hold Disposition Hearing* (form JV-463), and

   b. ☐ there is clear and convincing evidence that one of the circumstances stated in Welfare and Institutions Code section 361 regarding the persons specified below existed immediately before the nonminor turned 18 years of age *(check all that apply):*

	361(c)(1)	361(c)(2)	361(c)(3)	361(c)(4)	361(c)(5)
(1) Mother	☐	☐	☐	☐	☐
(2) Presumed father	☐	☐	☐	☐	☐
(3) Biological father	☐	☐	☐	☐	☐
(4) Legal guardian	☐	☐	☐	☐	☐
(5) Indian custodian	☐	☐	☐	☐	☐
(6) Other *(specify):*	☐	☐	☐	☐	☐

   The nonminor is adjudged a dependent of the court.

   c. ☐ Further disposition orders as stated in *Dispositional Attachment: Nonminor Dependent* (form JV-461(A)), attached and incorporated by reference.

NONMINOR'S NAME:	CASE NUMBER:

17. ☐ The nonminor or the nonminor's guardian ad litem has not provided informed consent for the holding of the disposition hearing, or

☐ there is not clear and convincing evidence that the circumstances in Welfare and Institutions Code section 361 existed immediately before the nonminor turned 18 years of age.

a. ☐ The temporary orders made under Welfare and Institutions Code section 319 are vacated, and dependency jurisdiction or general jurisdiction is dismissed, or

b. ☐ the matter is set for a further hearing:

(1) ☐ The reason the nonminor has not provided informed consent is because items 12–15 have not been completed. The disposition hearing is continued to complete these requirements.

(2) ☐ The disposition hearing is continued to make reasonable efforts to locate the nonminor.

(3) ☐ Other *(specify):*

(4) ☐ Continued disposition hearing:

Hearing date:	Time:	Dept.:	Room:

18. Other orders:

Date:

JUDICIAL OFFICER

NONMINOR'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: NONMINOR DEPENDENT

1. Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for the nonminor's removal from the home.
2. Placement and care are vested with the county agency.
3. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the nonminor could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.
4. The nonminor dependent who is an Indian child ☐ has ☐ has not chosen to have the Indian Child Welfare Act apply to them as a nonminor dependent.
5. ☐ There was no inquiry or determination of whether the nonminor dependent was an Indian child before the nonminor dependent's 18th birthday:
   a. ☐ The nonminor dependent would like an Indian Child Welfare Act determination. The county agency is ordered to comply with rule 5.481.
   b. ☐ The nonminor dependent would not like an Indian Child Welfare Act determination.
6. ☐ Family reunification services are ordered under Welfare and Institutions Code section 361.6:
   a. ☐ The nonminor dependent and parents or guardians are in agreement with court-ordered family reunification services.
   b. ☐ The provision of family reunification services is in the best interests of the nonminor dependent.
   c. ☐ There is a substantial probability that the nonminor dependent will be able to safely reside in the home of the parent or guardian by the next review hearing.
7. Check one:
   a. ☐ A status review hearing will be held within 60 days on the date specified in item 28; the court makes no further findings and orders.
   b. ☐ The court proceeds to the remaining findings and orders.

THE COURT MUST MAKE THE FOLLOWING FINDINGS AND ORDERS AFTER THE NONMINOR DISPOSITION HEARING OR SET A NONMINOR DEPENDENT STATUS REVIEW HEARING WITHIN 60 DAYS

8. a. ☐ The nonminor dependent's continued placement is necessary.
   b. ☐ The nonminor dependent's continued placement is no longer necessary.
9. a. ☐ The nonminor dependent's current placement is appropriate.
   b. ☐ The nonminor dependent's current placement is not appropriate. The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.
10. ☐ The nonminor dependent's Transitional Independent Living Case Plan includes a plan to satisfy at least one of the criteria in Welfare and Institutions Code section 11403(b) to remain in foster care under juvenile court jurisdiction as indicated below:
    a. ☐ Attending high school or a high school equivalency certificate (GED) program.
    b. ☐ Attending a college, community college, or vocational education program.
    c. ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment.
    d. ☐ Employed at least 80 hours per month.
    e. ☐ The nonminor is incapable of attending a high school, high school equivalency certificate (GED) program, college, community college, vocational education program, or an employment program or activity, or working 80 hours per month because of a medical condition.
11. The county agency ☐ has ☐ has not made reasonable efforts and provided assistance to help the nonminor dependent establish and maintain compliance with one of the conditions in Welfare and Institutions Code section 11403(b).
12. The nonminor dependent ☐ was ☐ was not provided with the information, documents, and services required under Welfare and Institutions Code section 391.

Form Adopted for Mandatory Use
Judicial Council of California
JV-461(A) [New January 1, 2021]

Welfare & Institutions Code
§§ 224.1(b); 358; 361; 361.6; 366.31;
Cal. Rules of Court, rules 5.697; 5.903
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

13. The Transitional Independent Living Case Plan ☐ was ☐ was not developed jointly by the nonminor dependent and the county agency.

14. ☐ The nonminor dependent has elected to have the Indian Child Welfare Act apply; the representative from their tribe ☐ was ☐ was not consulted during the development of the nonminor dependent's Transitional Independent Living Case Plan.

15. The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not reflect the living situation and services consistent, in the nonminor dependent's opinion, with what they need to achieve successful adulthood and sets out benchmarks that indicate how both the county agency and the nonminor dependent will know when independence can be achieved.

16. The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not include appropriate and meaningful independent living skill services that will help the nonminor transition from foster care to successful adulthood.

17. The county agency ☐ has ☐ has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the nonminor's permanent plan and prepare them for independence.

18. For a permanent plan of another planned permanent living arrangement, the county agency ☐ has ☐ has not made ongoing and intensive efforts to finalize the permanent plan.

19. The nonminor dependent ☐ did ☐ did not sign and receive a copy of the Transitional Independent Living Case Plan.

20. The county agency ☐ has ☐ has not made reasonable efforts to maintain relations between the nonminor dependent and individuals who are important to the nonminor dependent, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections.

21. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been: ☐ excellent ☐ satisfactory ☐ minimal.

    b. ☐ The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in their efforts to attain those goals were stated on the record.

22. The county agency ☐ has ☐ has not made reasonable efforts to establish or maintain the nonminor dependent's relationship with siblings who are under juvenile court jurisdiction.

23. The likely date by which the nonminor dependent is anticipated to achieve successful adulthood is:

24. The nonminor dependent's permanent plan is:

    a. ☐ to return home.
    b. ☐ adoption.
    c. ☐ tribal customary adoption.
    d. ☐ placement with a fit and willing relative.
    e. ☐ another planned permanent living arrangement.
    f. ☐ Other *(specify):*

25. For a permanent plan of another planned permanent living arrangement,

    a. ☐ the court has asked the nonminor dependent about their desired permanency outcome.

    b. The court has considered the evidence before it and finds another planned permanent living arrangement is the best permanent plan because:

        (1) ☐ the nonminor is 18 or older.

        (2) ☐ Other *(specify):*

    c. The compelling reasons why other permanent plan options are not in the nonminor's best interest are that

        (1) ☐ the nonminor wants to live independently.

        (2) ☐ Other *(specify):*

NONMINOR'S NAME:	CASE NUMBER:

26. ☐ Family reunification services are ordered under Welfare and Institutions Code section 361.6:

a. The county agency ☐ has ☐ has not complied with the case plan by making reasonable efforts—or in the case of an Indian child, active efforts, as described in section 361.7—to create a safe home for the nonminor dependent to reside in or to complete whatever steps are necessary to finalize the permanent placement of the nonminor dependent.

b. The extent of progress that the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care has been ☐ excellent ☐ satisfactory ☐ minimal ☐ none.

c. The likely date by which the nonminor dependent may safely reside in the family home or achieve successful adulthood is:

27. ☐ It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under rule 5.555 is ordered.

28. ☐ The nonminor dependent has elected not to remain in foster care. A hearing to consider termination of juvenile court jurisdiction under rule 5.555 of the California Rules of Court within 30 days is ordered.

29. ☐ Other findings and orders

a. ☐ See attachment 27a.

b. ☐ *(specify):*

30. The next hearings are scheduled as follows:

a. Nonminor dependent status review hearing (Welfare and Institutions Code §366.31; California Rules of Court, rule 5.903)

Hearing date:	Time:	Dept.:	Room:

b. Hearing to consider termination of jurisdiction (Welfare and Institutions Code §391; California Rules of Court, rule 5.555)

Hearing date:	Time:	Dept.:	Room:

c. Other *(specify):*

Hearing date:	Time:	Dept.:	Room:

31. Number of pages attached: _____

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by** **the Judicial Council** **JV-463.v4.081120.cz.AEM**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
YOUTH'S NAME:	
Nonminor's Informed Consent to Hold Disposition Hearing	CASE NUMBER:

To the youth: This form is used to tell the court whether you agree to participate in a disposition hearing after you turn 18 years old. When you turn 18, you are an adult and therefore can decide if your case will remain open or not. Read this form carefully—with your attorney. This completed form must be submitted to the court at or before the scheduled disposition hearing. For more information, read page 2 of this form.

1. Youth's information
   a. Name:
   b. Date of Birth:
   c. ☐ The youth was found to be a minor described by Welfare Institutions Code section 300 before turning 18 years of age, and has been continuously and remains detained under Welfare and Institutions Code section 319(c).
2. I *(youth's name)* , understand I have the right to agree or not to agree to the holding of a disposition hearing as a nonminor and that the following are correct *(check and then initial each box unless you have a question):*

		Initial
a. ☐	The potential benefits of continued dependency have been explained to me, and I understand those benefits.	
b. ☐	I have been informed that if the court establishes dependency, I would have the right to seek termination of dependency and have dependency reinstated at a later date until I turn 21 years old.	
c. ☐	I have talked to my attorney about providing informed consent and the setting of the nonminor disposition hearing.	

3. Check whether you consent to a hearing or do not consent:
   a. ☐ I consent to proceed to a nonminor disposition hearing to consider whether I was at risk of harm in the home of my parent or guardian before I turned 18 years old, and to consider my status as a nonminor dependent.
   b. ☐ I do not consent to the setting of a nonminor disposition hearing. I understand that the court will dismiss jurisdiction, and I will not be eligible for extended foster care.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF YOUTH)

4. **If the court has appointed you as a guardian ad litem for the nonminor, indicate in item 3 whether you consent on behalf of the nonminor to proceeding with a nonminor disposition hearing.**

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF GUARDIAN AD LITEM)

Declaration of Attorney (required unless the nonminor is not competent to direct counsel)

5. I am the attorney for the youth named above. I declare under the penalty of perjury that I have discussed the implications of setting and not setting a nonminor disposition hearing with my client.

Date:

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

SEE PAGE TWO FOR INFORMATION ABOUT THE NONMINOR DISPOSITION HEARING

Form Adopted for Mandatory Use
Judicial Council of California
JV-463 [New January 1, 2021]

Welfare & Institutions Code § 358;
Cal. Rules of Court, rules 5.697
www.courts.ca.gov

What is a Nonminor Disposition Hearing?

To the youth: This page tells you about your right to agree or not agree to holding a disposition hearing after you turn 18 years old. When you turn 18, you are legally an adult and have the decision-making authority of an adult. This form explains what a disposition hearing is, your rights as an adult, and extended foster care, or "AB 12."

1. **What is a nonminor disposition hearing?** A nonminor disposition hearing is a special hearing for a youth who became involved in the dependency court right around the time they turned 18 years old. It happens when the court takes jurisdiction of a child, but doesn't have the disposition hearing until after that child turns 18 and becomes an adult.

2. **What is a disposition hearing?** The disposition hearing occurs after the court takes jurisdiction of a child at the jurisdiction hearing by deciding that the child is unsafe and that the court should be involved in the child's life. At the disposition hearing, the court decides what should happen to the child next. The court decides things such as: whether it is safe to live in the parent's or guardian's home, whom the youth should live with and how to make the parent's or guardian's home safe for the child.

3. **What rights do I have as an adult?** When you turn 18 years old, you have all the legal decision making rights of an adult. This means that you decide things like where you live, whether you consent to medical care, where you go to school, and if your dependency case will remain open. A parent or social worker no longer make these decisions for you.

4. **How is a nonminor disposition hearing different from a regular disposition hearing?** First, before the nonminor disposition hearing can be held, you have to agree to the hearing. Also, unlike a disposition hearing for a child, the court does not decide if you should live with your parent or guardian. The court cannot tell an adult where to live. However, although you can decide where you live, if you intend to participate in AB 12, you need to work with your social worker on where you will live, and you must be in a placement approved by your social worker.

5. **How do I agree to the nonminor disposition hearing?** You will need to provide "informed consent." To do so, work with your attorney and submit this *Nonminor's Informed Consent to Hold Disposition Hearing* (form JV-463). This form must be filed with the court by you or your attorney at or before the disposition hearing.

6. **What happens if I agree to the nonminor disposition hearing?** If you are 18 years old, and you agree to having the nonminor disposition hearing, the court will hold the hearing to determine if you were in danger in the home of your parent or guardian immediately before you turned 18 years old. This finding must be made for you to be eligible for AB 12. If the court does not make this finding, the case will be dismissed. The court will consider evidence including the social worker's report and may hear testimony.

7. **What happens if I don't agree to the disposition hearing?** When you are an adult, the law gives you the right to decide if you want to have a nonminor disposition hearing. If you do not agree, the court will dismiss your case. Your social worker, your attorney, and the court will no longer be formally involved in your life and you will not be eligible for AB 12.

   It is important to remember that the decision to proceed with your case after you turn 18 years old belongs to you. A major factor in your decision may be whether you want to participate in AB 12. You should discuss this decision with your attorney and your social worker.

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Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committees Response
1.	Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) By Justin M. O'Connell FLEXCOM Legislation Chair By Saul Bercovitch Director of Governmental Affairs	A		The committee notes the commenter's support for the proposal.
2.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	A	The JRS notes that the proposal applies to a very small class of non-minors. Presently, many counties and judicial officers notice this issue and conduct a combined jurisdiction and disposition hearing prior to the youth's 18th birthday. Where this cannot be done, slight additional costs are anticipated related to an extra hearing (not a new filing as case already exists) As a result of an additional hearing, there will be some additional judicial and clerical time. However, no new training is anticipated as assigned courtroom clerks are already familiar with disposition hearings. No additional automation (case management coding) is seen as necessary. There may be a minimal impact on justice partners (an additional hearing perhaps) but considering the number of cases where this event occurs which this statute seeks to remedy, the costs are very small in terms of an impact on the courts. Additionally, courts that do not use JC forms may have some additional costs related to order preparation. The benefit to the youth far outweighs any slight operational impact.	The committee appreciates this feedback on the proposal. The committee agrees that this proposal will affect a small class of nonminors but will provide clarity where it will be needed.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-22

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	Commenter	Position	Comment	DRAFT Committees Response
3.	Los Angeles Department of Children and Family Services Youth Development Services Division Department 414/NMD Trial Team	NI	DCFS Youth Development Services (YDS) Division had the following comments to CRC Proposed Revision SPR 20-22: The YDS Division is in agreement that the proposed changes appropriately address the stated purpose. We concur that rule 5.697 should permit a parent or guardian to participate in the nonminor disposition hearing as a party with standing limited to the court's determination. Additionally, the rule appropriately addresses nonminors who do not have capacity to give informed consent. Last, the rule should meet requirements for a title IV-E case review. Dependency Court Dept. 414/NMD Trial Team Provided the Following Comments on CRC Proposed Revision SPR 20-22: • Does the proposal adequately address the stated purpose? Yes, it does address its stated purpose. • Should rule 5.697 permit a parent or guardian to participate in the nonminor disposition hearing as a party with standing limited to the court's determination of whether clear and convincing evidence of the conditions described in section 361(c) existed immediately prior to the nonminor turning 18 years of age?	The committee appreciates this feedback on the proposal. The committee notes the commenter's response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			Yes, a parent should have standing to participate in the hearing for the limited purpose of presenting evidence for the court's determination about the conditions described in section 361(c) prior to the nonminor turning 18 years of age.	The committee notes the commenter's response.
			• Does the rule appropriately address nonminors who do not have capacity to give informed consent by requiring that the court appoint a guardian ad litem to make a decision on behalf of the nonminor whether or not to give informed consent?	
			Yes, the rule is appropriate to address nonminors who lack capacity to give informed consent.	The committee notes the commenter's response.
			• Should the rule provide that the nonminor disposition hearing must meet the requirements for a title Gr case review, or should the rule instead require that a nonminor dependent status review hearing be held within 60 days? Or should courts be giving the option to choose between conducting the title IV-E case review at the nonminor disposition hearing or holding a nonminor dependent status review	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committees Response
			hearing within 60 days, as set out in the proposed rule? The rule should not require that the nonminor disposition hearing meet the requirements for a title IV-E case review due to the short time frame between the adjudication and the disposition hearing conducted pursuant to Welfare and Institutions Code Section 358, but should provide the option of completing the nonminor case review within 60 days. Section 358((1)(B)(3) requires that the dispositional hearing for a youth, who has turned 18 years of age after the adjudication has been held, must be conducted within 30 days of the date that the adjudication Section 355 finding was made. During this time period, the social worker must also provide the informed consent document to the youth, complete the dispositional report and provide proper notice to the parties. If the title IV-E findings must also be addressed in the dispositional report, then the social study will require more items to be included than currently required by Section 358 et seq. Given the necessity of completing the dispositional hearing within 30 days of when the Section 355 finding was made in order for a youth to be eligible	 The committee appreciates this response and agrees that courts should have the flexibility to address the title IV-E case review requirements sixty days after the disposition hearing.

	Commenter	Position	Comment	DRAFT Committees Response
			to remain under the jurisdiction as a nonminor dependent, court should have sufficient flexibility to complete the nonminor dependent status review at a later date. Additionally, the rule should indicate in section (e)(2) that any continuance granted should not be longer than 30 days from the date that the Section 355 finding was made.	The committee does not believe that this requirement of section 358(d)(3) should be included in the rule because it is stated in the statute.
4.	Los Angeles Superior Court By Bryan Borys Los Angeles, CA	A	Does the proposal adequately address the stated purpose? Answer: Yes • Should rule 5.697 permit a parent or guardian to participate in the nonminor disposition hearing as a party with standing limited to the court's determination of whether clear and convincing evidence of the conditions described in section 361(c) existed immediately prior to the nonminor turning 18 years of age? Answer: Note also that parents participate in NMD cases when family reunification services are ordered. At the disposition hearing, the court can consider ordering family reunification services. If this is the case, then parents should be allowed to participate if the disposition hearing in case family reunification services are ordered.	The committee notes the commenter's responses and appreciates this feedback. The committee agrees with this statement.

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Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committees Response
			• Does the rule appropriately address nonminors who do not have capacity to give informed consent by requiring that the court appoint a guardian ad litem to make a decision on behalf of the nonminor whether or not to give informed consent?	
			Answer: The current process is sufficient: attorney notify the court under WIC 317(e).	The committee notes the commenter's response.
			• Should the rule provide that the nonminor disposition hearing must meet the requirements for a title IV-E case review, or should the rule instead require that a nonminor dependent status review hearing be held within 60 days? Or should courts be giving the option to choose between conducting the title IV-E case review at the nonminor disposition hearing or holding a nonminor dependent status review hearing within 60 days, as set out in the proposed rule?	
			Answer: Findings should be part of the disposition because continuing the case for a 60 day hearing can crowd already congested juvenile dependency calendars.	The committee notes the commenter's response.
			• Would the proposal provide cost savings? If so, please quantify.	
			Answer: No.	The committee notes the commenter's response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			• 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? Answer: Training for judicial officers and staff; modifications to manuals and case management systems. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Answer: Yes.	The committee notes the commenter's response. The committee notes the commenter's response.
5.	Orange County Bar Associate By Scott B. Garner Newport Beach, CA	A	• Does the proposal adequately address the stated purpose? *Yes.* • Should rule 5.697 permit a parent or guardian to participate in the nonminor disposition hearing as a party with standing limited to the court's determination of whether clear and convincing evidence of the conditions described in section 361(c) existed immediately prior to the nonminor turning 18 years of age? *Yes, as long as it is limited.*	The committee notes the commenter's responses and appreciates this feedback.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			• Does the rule appropriately address nonminors who do not have capacity to give informed consent by requiring that the court appoint a guardian ad litem to make a decision on behalf of the nonminor whether or not to give informed consent? *Yes.* • Should the rule provide that the nonminor disposition hearing must meet the requirements for a title IV-E case review, or should the rule instead require that a nonminor dependent status review hearing be held within 60 days? Or should courts be giving the option to choose between conducting the title IV-E case review at the nonminor disposition hearing or holding a nonminor dependent status review hearing within 60 days, as set out in the proposed rule? *Giving courts the option is the best plan to allow for flexibility.*	
6.	Orange County Superior Court Juvenile Division By Linda Contreras Administrative Analyst I	NI	Comments To implement recent legislation creating a new disposition hearing for nonminors who were found to be within juvenile jurisdiction but reached the age of majority before a disposition hearing could be held, thus ensuring their	

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			eligibility for extended foster care, the following are proposed to become effective January 1, 2021. • Adopt rule 5.697, entitled "Disposition Hearing for a Nonminor" • Amend rules 5.683 & 5.684 on uncontested and contested jurisdiction hearings to clarify that the setting of a nonminor disposition hearing is required when the child will turn 18 prior to the disposition hearing • Adopt three mandatory Judicial Council forms: o JV-461 Findings and Orders after Nonminor Disposition Hearing o JV461(A) Dispositional Attachment: Nonminor Dependent o JV-463 Nonminor's Informed Consent to Hold Disposition Hearing Comments on forms: ▪ JV-461: At bottom of form "mandatory" is misspelled (l at the end). ▪ JV-461(A): #4 has misspelled the word “whose.” “Each relative who name has been submitted to the department…”	The change has been made. The correction has been made, although it is found in item 3.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			Recommend correct to "whose name has been submitted…" ▪ JV-461(A) INFO: ▪ #2 on form needs correction for grammar: "It happens when the court take jurisdiction of someone…" Recommend correct to "…court takes jurisdiction…" ▪ #7 on form needs correction for grammar: "You will not eligible for AB 12." Recommend correct to "You will not be eligible for AB 12. ▪ #3 on form needs correction for grammar: "A parent or social worker no longer make these decisions…" Recommend correct to "…no longer makes these decisions…"	The suggested change has been made to JV-463. The suggested change has been made to JV-463. The suggested change has been made to JV-463.
7.	Riverside Superior Court By Susan Ryan Riverside, CA	A	Does the proposal appropriately address the stated purpose? Yes, the proposal would fulfill requirements of AB 748 and address situations such as the one in *In re David B.* (2017) 12 Cal.App.5th 633 and would allow the court to conduct disposition hearings for nonminor dependents in	The committee notes the commenter's responses and appreciates this feedback.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			limited circumstances which would still allow them to enter extended foster care. Should rule 5.697 permit a parent or guardian to participate in the nonminor disposition hearing as a party with standing limited to the court's determination of whether clear and convincing evidence of the conditions described in section 361(c) existed immediately prior to the nonminor turning 18 years of age? Yes, the parent should be allowed to participate for the limited purpose of the court's determination of 361(c) issues. Since this finding could impact future rights of a parent in collateral proceedings they should be provided due process to participate in those findings. Does the rule appropriately address nonminors who do not have capacity to give informed consent by requiring that the court appoint a guardian ad litem to make a decision on behalf of the nonminor whether or not to give informed consent? Yes, this would be adequately addressed by the appointment of a guardian ad litem similar to as is done under WIC 317(e) when a nonminor dependent is unable to give informed consent. Should the rule provide that the nonminor disposition hearing must meet the requirements for a title IV-E case review, or should the rule	The committee agrees with this comment. The committee notes the commenter's response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-22

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			instead require that a nonminor dependent status review hearing be held within 60 days? Or should courts be giving the option to choose between conducting the title IV-E case review at the nonminor disposition hearing or holding a nonminor dependent status review hearing within 60 days, as set out in the proposed rule?	
			Giving the court the option seems to make the most sense. If Title IV-E requirements can be met at the disposition hearing then the court can make those findings, however if they cannot be made, the court can still move forward with the disposition and set a follow up Title IV-E review hearing only on cases where one is needed.	The committee notes the commenter's response.
			Would the proposal provide cost savings? If so, please quantify.	
			There would be no cost savings to the court.	The committee notes the commenter's response.
			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), change docket codes in case management systems, or modify case management systems.	
			The court would need to create new filing codes for the forms and new minute codes in the case management system for the findings and orders.	The committee notes the commenter's response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committees Response
			Hearing codes for the contested and uncontested Nonminor Disposition hearings would also need to be created as well as JBSIS stats for these hearings. Staff would need to be trained on how to set these hearings and how to update the minutes. Perhaps one hour to review training materials for the new hearing dispositions and document filings. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	The committee notes the commenter's response.
8.	San Diego Child Welfare Services By Karla Morales Policy Analyst San Diego, CA	A		The committee notes the commenter's support for the proposal.
9.	Superior Court of San Diego County By Michael Roddy San Diego, CA	NI	**GENERAL COMMENTS** **CRC 5.682(f) and 5.684(f)** - If CRC 5.502 is revised to define "youth" as a person 14-21 years of age (see SPR 20-21), "child" should be replaced with "youth" – "if the ~~child~~ youth will turn 18 years old…" **CRC 5.697** - Subd. (b)(1): Query -- Why did the committee choose notice procedures under WIC § 295 (notice for post-permanency review hearings) instead of WIC § 291 (notice for juris/dispo hearings)? WIC §	The committee agrees with this change to reflect the new language added to rule 5.502. Section 295 was selected because it conforms to requirements for a nonminor dependent hearing. But section 291 may be better suited given that the timeframes address a disposition hearing. The rule has been amended to reflect that the manner

	Commenter	Position	Comment	DRAFT Committees Response
			295(c) provides for service of notice "no earlier than 30 days, nor later than 15 days, before the hearing." Under WIC § 291, notice must be served "(1) If the child is detained, … as soon as possible, and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours before the hearing. (2) If the child is not detained, … at least 10 days before the date of the hearing." Is it anticipated that the nonminor disposition hearing will be set 15 or more days out and thus the longer period for service is needed? If the youth is detained during the jurisdiction hearing, shouldn't disposition be set sooner? Or is the longer period needed to give social workers more time to prepare their reports?	of notice shall be pursuant to section 291 to those individuals identified in section 295.
			- Subd. (b)(2): If CRC 5.502 is revised, change "child or nonminor" to "youth."	The committee agrees that the rule should refer to youth and the rule has been changed accordingly.
			- Subd. (c) title: Lower case "c" – "Informed consent" – for consistency with other CRCs.	The committee agrees and the change has been made.
			- Subd. (c)(1): Changes for gender-neutral language and for brevity. "The court must ensure that the nonminor understands the potential benefits of	The committee agrees that the rule should include gender-neutral language and the rule has been updated accordingly.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committees Response
			continued dependency, has been informed of ~~his or her~~ their right to seek termination of dependency jurisdiction pursuant to section 391 if the court establishes dependency, and ~~that the nonminor~~ has been informed of ~~his or her~~ their right to have dependency reinstated pursuant to subdivision (e) of section 388 if the court establishes dependency." Subd. (c)(3): Change for clarity. "If the nonminor is not competent to direct counsel and give informed consent, the court must appoint a guardian ad litem to ~~make a determination on~~ decide whether to provide informed consent on the nonminor's behalf." Subd. (d)(3): Change for clarity and brevity. - "(3) If the nonminor or the nonminor's guardian ad litem does not provide informed consent, the court must vacate the temporary orders made under section 319 and must not retain dependency or general jurisdiction ~~must not be retained~~. Before dismissing jurisdiction, the court must make the following findings:" - Subd. (d)(3)(A)-(D): Suggest deleting "That" or "That," at the beginning of each paragraph because it is not necessary. Also, change	The committee has changed the language to say "…to determine whether to provide…" The committee appreciates this suggestion but recommends the language that more closely correlates to the language of the statute in this respect.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committees Response
			"his or her" to "their" to use gender-neutral language. - Subd. (d)(3)(C): Change to "understands" for consistency with subd. (c)(1). - "~~That, u~~Unless a guardian ad litem has been appointed for the nonminor, the nonminor ~~has been informed of~~ understands the potential benefits of continued dependency, has been informed of ~~his or her~~ their right to seek termination of dependency jurisdiction pursuant to section 391 if the court establishes dependency, and ~~that the nonminor~~ has been informed of ~~his or her~~ their right to have dependency reinstated pursuant to subdivision (e) of section 388 if the court establishes dependency; and" - Subd. (d)(4): Query Should this provision explicitly state that the parent or guardian retains the right to appointed counsel at the nonminor disposition hearing? - Subd. (e) title: Lower case "s" – "Social study" – for consistency with other CRCs. - Subd. (e)(1)(D)(iii): Plural "causes" per Title IV-E gray chart.	The committee agrees with these suggested changes and the changes have been made. The committee agrees with this suggestion and the changes have been made. The committee notes that section 366.31(a)(2) requires that the nonminor "understands the potential benefits of continued dependency." The committee believes that section 317(d) sufficiently addresses the right to appointed counsel for a parent at a nonminor disposition hearing. The suggested change has been made.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			- "The extent of progress the parent or guardian ~~have~~ has made toward alleviating or mitigating the causes necessitating placement in foster care;" - Subd. (e)(1)(D)(iv), (v), (vi): Given that the social study is written before the disposition hearing, should "nonminor dependent" in these subparagraphs be changed to "nonminor"? The court has not declared the nonminor a dependent yet at this point in the proceeding. - Subd. (e)(1)(E)(iii): Suggestion -- "The number and relationship of those relatives described by item (ii) who ~~are interested in~~ want to have ongoing contact with the nonminor; - Subd. (e)(1)(E)(iv): Suggestion – "The number and relationship of those relatives described by item (ii) who ~~are interested in providing~~ want to provide placement for the nonminor; - Subd. (e)(1)(H): Suggestion -- "The nonminor's plans to remain under juvenile court jurisdiction, including the criteria in section 11403(b) that ~~he or she meets~~ the nonminor plans to meet.	The suggestion changes have been made. The committee agrees and the suggested change has been made. The committee declines to make this change because the proposed language correlates to the language in another rule, rule 5.690(a)(1)(C). The committee declines to make this change for the reason stated above.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			- Subd. (e)(1)(J): Replace "his or her" with "the nonminor." Query: Insert "or probation officer" after "social worker"?	The committee agrees but the rule will also reflect that the report address the eligibility criteria that the nonminor meets. The committee has elected to take out the reference to "probation officer" in this subdivision (e)(1)(I). Rule 5.502(39) defines "social worker," which can include a probation officer performing child welfare duties. In addition, this rule only applies to youth under section 300 jurisdiction.
			- Subd. (e)(2): Suggestion – "… request of a party who has not ~~been furnished~~ received a copy of the social study in accordance with this rule."	The other suggestion has been adopted. The committee declines to make this change.
			- Subd. (f) title: Lower case "p" – "Case plan and … "	
			- Subd. (f)(2)(B): Replace "his or her" with "the."	The suggested change has been made.
			- Subd. (g)(1): Replace "(d)" with "(e)" – "subdivision ~~(d)~~(e)"	The committee has changed "his or her" to "their".
			- Subd. (g)(2): Delete comma after "applicable." Use upper case "p" – "Plan."	The suggested change has been made.
			- Subd. (h): Query: Insert "or the nonminor's guardian ad litem" after "After the nonminor"? – "After the nonminor or the nonminor's guardian ad litem provides informed consent…"	The suggested changes have been made. The suggested change has been made.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			- Subd. (h)(2): Suggestion – - "If the court ~~does~~ finds by clear and convincing evidence that one of the conditions of section 361(c) existed immediately prior to the youth attaining 18 years of age, ~~it~~ the court must declare dependency, and:"	The suggested changes have been made.
			- Subd. (h)(2)(A): Query - Insert "section 366.31 and" before "rule 5.903"? (See subd. (h)(3).)	
			- Delete "or six months"? (See Proposal, p. 6 ["The committee elected to give the court the option to proceed with the case review at the nonminor disposition hearing or hold a case review within 60 days"]; see also subds. (h)(3), (h)(3)(C) ["within 60 days"].)	The suggested change has been made.
			- Subd. (h)(3)(A)(iii): Suggestion for clarity and gender-neutral language – "Whether a nonminor who ~~is~~ was an Indian child chooses to have the Indian Child Welfare Act apply ~~to him or her as a~~ in nonminor dependen~~t~~cy."	The following language has been added to this subdivision to clarify: "…consistent with subdivision (3)…" The committee does not believe these revisions are necessary. Section 224.1 and Rule 5.502(19) defines an "Indian child" as a youth between 18-21 years old who is under juvenile court

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	Commenter	Position	Comment	DRAFT Committees Response
			- Subd. (h)(3)(B)(i), (ii): Delete "That" at the beginning of the subparagraph. - Subd. (h)(3)(B)(ii): Suggestion -- "T~~hat t~~he county agency must comply with rule 5.481 if …" - Subd. (h)(3)(C)(iii)(a): Suggestion per WIC 366(a)(1)(B) and Title IV-E Gray Chart, D2 "The extent of the agency's compliance with the case plan in making reasonable efforts or, in the case of an Indian child, active efforts, as described in section 361.7, to ~~create~~ return the nonminor dependent to a safe home ~~of the parent or guardian for the nonminor dependent to reside in~~ or to complete ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the nonminor dependent; and" **JV-461** - P. 1, right footer: Add citation, "Welf. & Inst. Code, §§ 224.1(b), 245, 358, 361, 361.6, 366.1, 366.3, 366.31; Cal. Rules of Court, rules 5.697, 5.903" - Pp. 1, 2, 3, center footer: Upper case "A" in "After." (See, e.g., JV-184.)	jurisdiction. "Him or her" has however been replaced with "them." "That" has been removed and replaced with "Order." See comment above. The language used in this subdivision reflects the language found in section 366.31(d)(2)(C). The committee therefore does not agree that the recommended changes are necessary. The committee has added section 224.1(b); 358; 361; 361.6; 366.31and rules 5.697 and 5.903 as reference.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			- Item 2: Suggest adding "from the home" after "removed."	The change has been made.
			- Item 3: Is title necessary, given the title of the form? If the title of the item stays, change "Dispositional" to "Disposition" to match the title of the form.	The committee declines to make this change. The change has been made.
			- Item 4: Should there be an additional line of boxes for a second parent?	
			- Item 7: Delete comma after "read."	The change has been made.
			- Item 9.b: Replace "him or her" with "the nonminor."	The committee declines to make this change.
			- Item 14: Suggestion for gender-neutral language – - "The potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained to the nonminor, ~~and that nonminor~~ who has stated that ~~he or she~~ the nonminor understands those benefits."	The change has been made. The change has been made, however the "they" will be used instead of nonminor in the second part of the sentence: "…who has stated that they understand those benefits."
			- Item 15: Suggestion for gender-neutral language -- "The nonminor was informed that if dependency is established, ~~he or she~~ the	

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	Commenter	Position	Comment	DRAFT Committees Response
			nonminor may have the right to file a request to return to foster care and to have the court resume jurisdiction over ~~him or her as~~ a nonminor dependen~~t~~cy." Item 16c: Suggestion – "Further disposition orders ~~as~~ are stated in Dispositional Attachment: …" - Item 17: Change (because only one circumstance needs to exist) – "There is not clear and convincing evidence that ~~the circumstances~~ a circumstance in Welf. & Inst. Code, § 361 existed immediately prior to the nonminor turning 18 years old." **JV-461(A)** - P. 1, right footer: Add citation, "Welf. & Inst. Code §§ 224.1(b), 245, 358, 361, 361.6, 366.1, 366.3, 366.31; Cal. Rules of Court, rules 5.697, 5.903" - Item 3: Change "who" to "whose." - Item 4. Suggestion— - "The nonminor dependent who ~~is~~ was an Indian child … chosen to have the Indian Child Welfare Act apply ~~to him or her as a~~ in nonminor dependen~~t~~cy."	The change has been made, however "them" will be used towards the end of the sentence: "…resume jurisdiction over them as a nonminor dependent." The committee declines to make this change. The committee has changed the language to reflect the statutory language of section 358(d)(4), that at least one of the conditions of section 361(c) existed immediately prior to the nonminor turning 18 years old. The committee has added section 224.1(b); 358; 361; 361.6; 366.31 and rules 5.697 and 5.903 as reference. The change has been made. The committee declines to make this change because the definition of an "Indian child" in

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	Commenter	Position	Comment	DRAFT Committees Response
			- Item 5a: Suggestion (see CRC 5.697(h)(3)(B)(iii)) — "The nonminor dependent ~~would like~~ requests an Indian Child Welfare Act determination. …"	section 224.1 and rule 5.502(19) include youth between 18-21 years old who are under juvenile court jurisdiction.
			- Item 5b: Suggestion (see CRC 5.697(h)(3)(B)(iii)) —"The nonminor dependent ~~would~~ does not ~~like~~ request an Indian Child Welfare Act determination."	The committee declines to make this change.
			- Item 10: Suggestion for gender-neutral language --"The nonminor dependent's Transitional Independent Living Case Plan ~~does~~ includes a plan for ~~him or her to~~ satisfying at least one of the criteria in Welf. & Inst. Code, § 11403(b) …"	The committee declines to make these changes except for adding "determination" to the end of the sentence.
			- Item 10b: Delete "a" before "community college."	The suggested changes have been made.
			- Item 10c: Insert "employment" after "promote."	The suggested change has been made.
			- Item 10e: Suggestion for consistency with items 10a through 10d and for brevity --"~~The nonminor dependent is n~~Not able to ~~attend a high school, a high school equivalency certificate (GED) program, a college, a~~	The committee declines to make this change. The committee declines to make this change.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committees Response
			~~community college, a vocational education program, or an employment program or activity, or to work 80 hours per month~~ satisfy at least one of the criteria in Welf. & Inst. Code, § 11403(b) due to a medical condition. - Items 11 and 12: Replace "Welfare and Institutions Code section" with "Welf. & Inst. Code, §" to match item 10. - Item 12: Delete "as." - Item 14: Upper case "A" in "Act" and suggested changes -- "The nonminor dependent has elected to have the Indian Child Welfare ~~a~~Act ~~to~~ apply, and the tribal representative ~~from his or her tribe~~ … consulted during the development of the ~~nonminor dependent's~~ Transitional Independent Living Case Plan." - Item 15: Change for gender-neutral language, for consistency with item 13, and for consistency with CRC 5.903(e)(1)(I) -- "The ~~nonminor dependent's~~ Transitional Independent Living Case Plan … reflect the living situation and services consistent, in the nonminor dependent's opinion, with what ~~he or she needs~~ is needed to achieve	Item 10 will be changed to say "Welfare and Institutions Code section…" The committee declines to make this change. The change to "Act" is made and gender-neutral language is added, but the committee declines to make the other suggested revisions. Gender neutral language and "independence" have been added but the committee declines to make the other suggested revisions.

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	Commenter	Position	Comment	DRAFT Committees Response
			successful adulthood and set out benchmarks that indicate how both the county agency and nonminor dependent will know when ~~successful adulthood~~ independence can be achieved." - Item 16: Change for consistency with item 13 -- "The ~~nonminor dependent's~~ Transitional Independent Living Case Plan …" - Query: Are items 18 and 24 sufficient to include all of the findings required under WIC 366.31(e) for a NMD in APPLA? - Item 20b: Change for gender-neutral language -- "The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent ~~in his or her efforts~~ to attain those goals ~~were~~ are stated on the record. - Between items 19 and 20, add the following (see form JV-462, item 22) and renumber the subsequent items: "The county agency ___ has ___ has not made reasonable efforts to maintain relations between the nonminor dependent and individuals who are important to ~~him or her~~	The committee declines to make this change. Under section 366.31(e)(10)(A)-(C), the only requirement missing is an indication whether the court asked the nonminor dependent about their desired permanency outcome. This has been added to item 24. Gender neutral language has been added. The change has been made.

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	Commenter	Position	Comment	DRAFT Committees Response
			the nonminor dependent, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections." - Item 21: Delete "his or her" before "siblings." - Item 25a: Change "to finalize the permanent placement of the nonminor dependent" to "to finalize the permanent plan." (See JV-462, item 30.a.) - Item 25b: Change "placement in foster care" to "current out-of-home placement." (See JV-462, item 30.b.) - After item 26: Query: Should item 25 from the JV-462 be added to this form? "25. It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under rule 5.555 is ordered." **JV-463** - P. 1, right footer: Add citation, "Welf. & Inst. Code §§ 224.1(b), 245, 358; Cal. Rules of Court, rules 5.697"	The change has been made. The committee declines to make this change, as the language reflects the language found in section 366.31(d)(2)(C). The committee declines to make this change because it reflects the language found in section 366.31(d)(2)(F). The suggested new item has been added as item 27.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			- P. 1, box under caption: Suggestion – "To the youth: This form is used to ~~determine if~~ tell the court whether you agree to holding a disposition hearing after you turn 18 years old." - Item 1c: Suggestion for clarity -- "The youth was found to be a minor described by Welfare and Institutions Code section 300 detained pursuant to Welfare and Institutions Code section 319(c)." - Item 2c: Suggest deleting "up." - Below item 3: Suggestion for clarity -- "If the court has appointed you as a guardian ad litem for the nonminor, …" Query -- Should this be numbered item 4? There is an item 5 below it. - Item 5: Query – Should the attorney declaration be required whether or not the nonminor is competent? In other words, should the attorney be required to declare that the issue was discussed with the nonminor's guardian ad litem? Suggestion -- "Declaration of Attorney ~~(Required unless the nonminor is not competent to direct counsel)~~	The committee has added section 224.1(b); 358 and rule 5.697 to the right footer. Portions of this suggestion have incorporated. The suggested change has been made. The committee declines to make this change. The suggested changes have been made. The committee appreciates this suggestion but does not believe that it is required in the context of providing informed consent. The committee feels that communication between the attorney and the guardian ad litem will occur without an express requirement that they do so.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			- "5. I am the attorney for the youth named above. I declare under the penalty of perjury that I have discussed the implications of setting and not setting a nonminor disposition hearing with _____ my client _____ my client's guardian ad litem." - P. 2: Suggested edits to make the text more user-friendly -- To the youth: This page ~~provides information on~~ tells you about your right to agree or not ~~to~~ agree to holding a disposition hearing after you turn 18 years old. When you turn 18, you are legally an adult and you have the decision-making authority of an adult. This form ~~will~~ explains what a disposition hearing is, your rights as an adult, and extended foster care or "AB 12." A nonminor disposition hearing is a special hearing for a youth who became involved in the dependency court right ~~around the time they~~ before turning 18 years old. It happens when the court takes jurisdiction of ~~someone as~~ a child, but doesn't have the disposition hearing until after that child turns 18 ~~years old. The disposition hearing therefore takes~~	The committee appreciates these suggestions to page 2 and has adopted most of them.

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	Commenter	Position	Comment	DRAFT Committees Response
			~~place when the youth is~~ and becomes an adult. The disposition hearing occurs after the court takes jurisdiction of a child~~. T~~at the jurisdiction hearing ~~determines whether~~ by deciding that the court should be involved in the child's life~~, and~~. At the disposition hearing, the court decides ~~determines~~ what should happen to the child next, ~~after the court has become involved. The court decides things~~ such as: whether it is safe to live in the parent's or guardian's home; whom the youth should live with; and ~~what the plan will be~~ how to make the parent's or guardian's home safe for the child. You will need to provide "informed consent." To do this, work with your attorney and submit this form JV-463, the *Nonminor's Informed Consent to Hold Disposition Hearing*. This form must be filed with the court 10 days before the date the disposition hearing is to be heard. When you turn 18 years old, you have all the legal decision-making rights of an adult. ~~This means that y~~ You can decide things like where you live, whether you consent to medical care,	

	Commenter	Position	Comment	DRAFT Committees Response
			where you go to school, and ~~if~~ whether your dependency case will remain open. A parent or social worker no longer makes these decisions for you. ~~First, b~~Before the nonminor disposition hearing can be held, you have to agree to ~~have~~ the hearing. Also, unlike a disposition hearing for a child, the court does not decide if ~~the~~ you~~th~~ should live with ~~their~~ your parent or guardian. The court cannot tell an adult where to live ~~or not live~~. However, ~~while you can decide where you live,~~ if you intend to participate in AB 12, you need to work with your social worker on where you will live and you must be in an approved placement.If you are 18 years old~~,~~ and you agree to ~~proceed with~~ having the nonminor disposition hearing, the court will hold the hearing to ~~determine~~ decide if you were in danger in the home of your parent or guardian immediately before you turned 18 ~~years old~~. This ~~finding~~ decision must be made for you to be eligible for AB 12. If the court does not make this ~~finding~~ decision, the case will be dismissed. To make this decision the court will consider evidence, including the social worker's report, and may hear testimony ~~to make this decision~~.	

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	Commenter	Position	Comment	DRAFT Committees Response
			When you are an adult, the law gives you the right to decide if you want to have a nonminor disposition hearing. If you do not agree, the court will dismiss your case. Your social worker, your attorney, and the court will no longer be ~~formally~~ involved in your life~~.~~ Y, and you will not be eligible for AB 12. It is important to remember that the decision to ~~proceed~~ go ahead with your case after you turn 18 ~~years old~~ belongs to you. A major factor in your decision may be whether you want to participate in AB 12. You should discuss this decision with your attorney and your social worker. Does the proposal adequately address the stated purpose? Yes. Please see General Comments for specific comments. Should rule 5.697 permit a parent or guardian to participate in the nonminor disposition hearing as a party with standing limited to the court's determination of whether clear and convincing evidence of the conditions described in section	The committee appreciates this feedback.

	Commenter	Position	Comment	DRAFT Committees Response
			361(c) existed immediately prior to the nonminor turning 18 years of age? Yes. Does the rule appropriately address nonminors who do not have capacity to give informed consent by requiring that the court appoint a guardian ad litem to make a decision on behalf of the nonminor whether or not to give informed consent? Yes. Should the rule provide that the nonminor disposition hearing must meet the requirements for a title IV-E case review, or should the rule instead require that a nonminor dependent status review hearing be held within 60 days? Or should courts be giving the option to choose between conducting the title IV-E case review at the nonminor disposition hearing or holding a nonminor dependent status review hearing within 60 days, as set out in the proposed rule? The most flexible (and therefore the best) option is to give courts the option to choose between the two alternatives. Would the proposal provide cost savings? If so, please quantify.	The committee notes this response. The committee notes this response. The committee notes this response.

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SPR20-22

Juvenile Law: Nonminor Disposition Hearing – Dependency (Adopt Cal. Rules of Court, rule 5.697; amend rules 5.682 and 5.684; adopt forms JV-461, JV-461(A) and JV-463)

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	Commenter	Position	Comment	DRAFT Committees Response
			This is hard to predict, as nonminor disposition hearings are unlikely to occur with regular frequency. What would the implementation requirements be for courts …? Training – introducing court clerks and clerical staff to new forms and how they should be processed. Revising written court procedures to include new rules and forms. Drafting new docket codes. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update procedures.	The committee notes this response. The committee notes this response. The committee notes this response.

Item number: 26

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Access to Sealed Records (Adopt Cal. Rules of Court, rule 5.860; revise forms JV-595 and JV-595-INFO; approve forms JV 592, JV-593, JV-594, and JV-599)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Tracy Kenny, 916-263-2838, tracy.kenny@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 10/28/2019
Project description from annual agenda: Legislative Changes from the 2018-2019 Legislative Session Project
Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
p. AB 1394 (Daly) Juveniles: sealing of records (Ch. 582, Statutes of 2019) Prohibits a court or probation department from charging any applicant a filing fee to petition to seal juvenile court records.
r. AB 1537 (Cunningham) Juvenile records: inspection: prosecutorial discovery (Ch. 50, Statutes of 2019) Expands a prosecutor's ability to request to access, inspect, or use specified sealed juvenile records if the prosecutor has reason to believe that the record may be necessary to meet a legal obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Juvenile Law: Access to Sealed Records

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.860; revise forms JV-595 and JV-595-INFO; approve forms JV-592, JV-593, JV-594, and JV-599

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 11, 2020

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting one new rule of court, revising two existing forms, and approving four new optional forms to assist courts with the implementation of recently enacted statutory provisions concerning the sealing of juvenile records and access to those records by prosecuting attorneys. The proposal would ensure that all forms accurately reflect the current state of the law on fees for sealing petitions, and would create procedures and forms for courts to consider requests for access to sealed records under recently enacted laws concerning prosecutorial duties to disclose exculpatory or favorable information to defendants.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt California Rules of Court, rule 5.860 to set forth uniform procedures for prosecuting attorneys to seek access to sealed juvenile case records to fulfill their obligations to disclose information to a criminal defendant that may be exculpatory;

2. Approve four new optional forms: *Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-592), *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593), *Response to Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-594), and *Order on Prosecutor Request for Access to Sealed File* (form JV-599) to provide forms for the prosecuting attorney and the courts to use to implement the requirements of rule 5.860;

3. Revise *Request to Seal Juvenile Records* (form JV-595) to remove any reference to fees for the sealing of records; and

4. Revise *How to Ask the Court to Seal Your Records* (form JV-595-INFO) to remove any reference to fees for the sealing of records and include information about when a prosecuting attorney might access sealed records to provide information to a criminal defendant.

The text of the new rule and the new and revised forms is attached at pages 7–17.

Relevant Previous Council Action

In 2019, the Judicial Council revised an information form on sealing of juvenile court records to reflect recent changes in law to allow for prosecuting attorney access to a sealed juvenile case file when the attorney has reason to believe that the record may contain favorable or exculpatory information that must be disclosed to a defendant in a criminal case. At the time that proposal was circulated for comment, the committee sought comment on whether this change should result in new uniform procedures for courts to use to carry out the requirements under the new law. The commenters on that proposal were strongly in favor of the council taking such an action in a future rules cycle.

Forms JV-595 and JV 595-INFO were both originally approved by the council effective January 1, 2016, to implement statutory requirements and have been revised since then to reflect changes in the law.

Analysis/Rationale

Background

In 2014, the Legislature enacted Welfare and Institutions Code section 786[1] to require the sealing and dismissal of specified juvenile petitions when a child has satisfactorily completed probation. In that legislation and in several subsequent bills, the Legislature has sought to provide limited access to those sealed records for a variety of purposes.

[1] Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise indicated.

One such limited purpose is when access is required by a prosecuting attorney to fulfill their constitutional and statutory obligation to disclose exculpatory or favorable information to a defendant in a criminal case. This disclosure obligation stems from the 1963 holding in *Brady v. Maryland* (1963) 373 U.S. 83 and its progeny which require the prosecuting attorney to turn over all exculpatory information that might aid a defendant in mounting a defense or impeaching a witness and is often referred to as "*Brady* disclosure."

In 2018, Assembly Bill 2952 (Stone; Stats. 2018, ch. 1002) enacted an additional provision to section 786, authorizing a prosecuting attorney to access sealed records, which that attorney has reason to believe must be shared pursuant to the attorney's *Brady* disclosure obligation. The provision requires that the court notify the person whose records have been sealed that the prosecutor's request is being considered so that the person may have an opportunity to respond to the request. It further requires the court to review the records and make a specific order with regard to access that protects the confidentiality of the person whose records are being accessed.

In 2019, the Legislature amended Penal Code section 851.7 and Welfare and Institutions Code section 793 which also provide for the sealing of juvenile records to allow prosecuting attorneys to request access to sealed records to fulfill their duties to provide favorable or exculpatory information to a criminal defendant. These provisions are modeled on a recent change to section 781 enacted by Senate Bill 312 (Skinner; Stats. 2017, ch. 679) and, like that provision, do not require any notice to the person whose records are being requested. However, the provision in section 781 is notably narrower than the others in that it only applies to files concerning 707(b) offenses adjudicated for those 14 years of age or older despite the fact that the underlying obligation is based on the defendant's constitutional rights.[2]

In 2015, the Legislature enacted legislation providing that fees for the investigation relating to sealing or a fee to file the petition could only be charged to nonindigent petitioners who were 26 years of age or older. Legislation[3] enacted last year eliminates the authority to charge fees for sealing to any petitioners.

Rule 5.860 sets forth notice and timing requirements for making a request and issuing a court order

Rule 5.860 would set forth the requirements for the filing of a request by a prosecuting attorney, as well as filing timelines for providing notice of the request to the person whose records are being sought and the opportunity for the subject of the request to provide to the court a written and/or in-person response. When the records are requested from those files, the rule would require the requester to file a notice and response form along with the request so that the court can provide the required notice, and it would provide the person receiving notice with 10 days to submit a response to the court. It would require the court to set a hearing if an appearance is requested and notify the person whose records were sealed of the hearing date. In all cases,

[2] See *Brady v. Maryland* (1963) 373 U.S. 83.

[3] AB 1394 (Daly; Stats. 2019, ch. 582)

except those in which an appearance has been requested, the rule would require the court to make an initial order on the request within 21 court days of the filing of the request. If a hearing is requested, an order would be required within five court days of the hearing. The rule specifies that the court may make orders of protection, including an order that the requesting attorney submit the records to be disclosed to the court for review and redaction prior to their release to the defendant.

Four new optional forms would streamline the process for requests

The committee is recommending that the council approve four optional forms to implement the statutory requirements for prosecuting attorneys to make these requests, and provide notice and an opportunity to respond, as well as make an order on the request. *Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-592) would provide a form petition for the prosecuting attorney to request access from the juvenile court to sealed juvenile case files. It allows the prosecutor to set forth the reasons why access is needed, including the relationship between the subject of the records and the defendant in the criminal case. *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593) could be used to notify a person whose records have been sealed and their attorney of record that access is being sought, and that there is a right to provide a response to the request to the court in writing and/or in person. *Response to Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-594) would allow a person who has received notice of the request for access to file a written response for the court's consideration and/or to request an appearance before the court. *Order on Prosecutor Request for Access to Sealed File* (form JV-599) could be used by the court to make its order and specify any protective orders required to protect confidential information from the sealed records. This last form did not circulate for comment, but the committee concluded that it was a critical tool for the court to carry out its obligations under rule 5.860.

Revisions for existing forms to reflect recent statutory changes

The elimination of any authority for courts or probation departments to charge fees for record sealing requests or investigations requires changes to two forms that previously referenced those fees. Form JV-595 (*Request to Seal Juvenile Records*), item 4, and form JV-595-INFO (*How to Ask the Court to Seal Your Records*), item 5, in the instructions on page 2, would be revised to eliminate any reference to fees. In addition, form JV-595-INFO would be revised to reflect that a prosecuting attorney may access sealed records if they contain information favorable to a criminal defendant in another case.

Policy implications

Each of the three statutory provisions allowing for requests by prosecuting attorneys to disclose *Brady* material to criminal defendants is drafted somewhat differently, but the committee ultimately concluded that a uniform procedure for the prosecuting attorney to seek access to sealed records would reduce confusion, and ensure that the confidentiality intended for juvenile records overall would remain protected. Rule 5.860 requires notice to the person whose sealed records are being accessed in all cases, even though this requirement is only included in section 786. The committee determined that if such notice was not required in all cases, that the rule

would be inconsistent with the requirements of section 827, which does require notice to those seeking to disclose unsealed juvenile records, and thus would not provide adequate protection for the confidentiality of the subjects of these records. In addition, the rule does not limit its application to records sealed pursuant to section 781 to those for offenses listed in section 707(b) committed by a youth who is 14 or over because while this limit is included in the statute, the committee concluded that the prosecuting attorney might still conclude that *Brady* requirements require disclosure of information in sealed records not meeting this restriction, and the rule should not specifically preclude the attorney from making that request using these procedures. Instead, that issue should be evaluated on a case-by-case basis balancing the statutory provisions and the constitutional obligations.

Comments

This proposal, with the exception of *Order on Prosecutor Request for Access to Sealed File* (form JV-599), circulated for public comment from April 10 to June 9, 2020, as part of the regular spring comment cycle. The committee received comments from six entities, including the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees (JRS) and four superior courts. Three commenters agreed with the proposal, and three agreed with the proposal if modified. The committee did revise the proposal to incorporate clarifying changes to the rule and forms based on the comments, and to align the notice timelines in rule 5.860 with those that apply to requests to access unsealed juvenile records under rule 5.552. A chart with the full text of the comments received and the committee's responses is attached at pages 18–31.

Alternatives considered

The committee considered amending rule 5.860 to make it a two-step process so that a prosecuting attorney would first request access to a sealed record, and then be required to file a separate petition for disclosure of the record under section 827 and rule 5.552. The committee concluded that such an approach would unduly delay access to these records for defendants, and thus the committee instead amended rule 5.860 to incorporate protections from rule 5.552, including the ability of the court to require that any specific sealed records to be disclosed be first provided to the court for review and redaction.

The committee considered limiting the notice and opportunity to be heard to requests for records sealed under section 786, as that is the only statute that requires such notice to the person whose records are being requested. This narrow statutory reading was rejected because the committee concluded that it was inconsistent with the requirements in section 827 for notice and an opportunity to be heard before disclosure of any juvenile record. Because rule 5.860 applies only to sealed juvenile records, the committee deemed it inconsistent to afford some of those records less procedural protection than unsealed records simply because of an apparent statutory oversight.

The committee also considered not adding the optional order form, as it had not circulated for public comment, but the committee determined that it was very consistent with the content of the forms that did circulate for comment which received significant approval, and would be of value

to the courts and as an optional form would only be used by those courts who found it beneficial and time saving.

Fiscal and Operational Impacts

Printing costs may be incurred by courts to provide the revised mandatory information form. In addition, because the informational form are available in other languages, there will be costs to translate the revised form. During the comment period, courts also noted that there would be training impacts on their court staff and judicial officers, and requirements to update system codes and procedures. All of these impacts are a result of legislative changes and are necessary to make the forms legally accurate and to implement the uniform process that numerous commenters requested when the prior proposal was circulated for comment. The approval of optional forms should make it easier for courts to comply with their existing statutory duties.

Attachments and Links

1. Cal. Rules of Court, rule 5.860, at pages 7–8
2. Forms JV-592, JV-593, JV-594, JV-595, JV-595-INFO, and JV-599 at pages 9–17
3. Chart of comments, at pages 18–31
4. Link A: AB 2952, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2952*
5. Link B: AB 1537, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1537*
6. Link C: SB 312, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB312*
7. Link D: AB 1394, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1394*

Rule 5.860 of the California Rules of Court is adopted, effective January 1, 2021, to read:

Rule 5.860. Prosecuting attorney request to access sealed juvenile case files

(a) Applicability

This rule applies when a prosecuting attorney is seeking to access, inspect, utilize, or disclose a record that has been sealed by the court under sections 781, 786, or 793, or Penal Code section 851.7, and the attorney has reason to believe that access to the record is necessary to meet the attorney's statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.

(b) Contents of the request

Any request filed with the juvenile court under this rule must include the prosecuting attorney's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed. The date must allow for sufficient time to meet the notice and hearing requirements of this rule. Form JV-592, *Prosecutor Request for Access to Sealed Juvenile Case File,* may be used for this purpose.

(c) Notice and opportunity to respond

(1) *Notice requirements*

(A) The request must include a form for the court to notify the person whose records are to be accessed as well as that person's attorney of record, and a form for those individuals to respond in writing and to request an appearance before the juvenile court. Forms JV-593, *Notice of Prosecutor Request for Access to Sealed Juvenile Case File,* and JV-594, *Response to Prosecutor Request for Access to Sealed Juvenile Case File,* may be used for this purpose.

(B) The juvenile court must notify the person with the sealed record and that person's attorney of record using the documents prepared by the prosecuting attorney within two court days of the request being filed.

(2) *Requirements if a response is filed*

(A) If a written response is filed no more than 10 days after the date the notice was issued and no appearance has been requested, the clerk of the court must provide that response to the juvenile court for its consideration as it reviews the prosecuting attorney's request.

(B) If a response is filed no more than 10 days after the date the notice was issued and an appearance is requested, the clerk of the court must set a hearing and provide notice of the hearing to the person with the sealed record, the attorney of record for that person, and the prosecuting attorney who filed the request.

(d) Juvenile court review and order

The court must review the case file and records that have been referenced by the prosecuting attorney's request as well as any response provided as set forth in subdivision (c)(2). The court must approve the request, in whole or in part, if it determines that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the court approves the request, the order must include appropriate limits on the access, inspection, utilization, and disclosure of the sealed record information in order to protect the confidentiality of the person whose sealed record is at issue. Such limits may include protective orders to accompany authorized disclosure, discovery, or access, including an order that the prosecuting attorney first submit the records to be disclosed to the court for its review and possible redaction to protect confidentiality. The court must make its initial order within 21 court days of when the request is filed, unless an appearance has been requested under subdivision (c)(2), in which case the court must act within five court days of the date set for the appearance.

JV-592 Prosecutor Request for Access to Sealed Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-502.v6.080320.cz.AEM

Fill in court name and street address:

Superior Court of California, County of

Juvenile Case Number:

1 Petitioner *(name):*

_____

is a prosecuting attorney requesting access to information in the sealed juvenile court file of:

Child's Name: _____

Case Name: _____

2 Petitioner has reason to believe that access is necessary to meet the constitutional obligation to disclose favorable or exculpatory evidence to a:

defendant *(name):* _____

in a criminal case *(case number):* _____

3 The file was sealed by the court pursuant to:

a. ☐ Penal Code section 851.7;
b. ☐ Welfare and Institutions Code section 781;
c. ☐ Welfare and Institutions Code section 793; or
d. ☐ Welfare and Institutions Code section 786

I am filing a *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593) with this petition to be served on the subject of the file and their attorney of record.

4 The records I need access to are:

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 4

5 The reasons that I need access to those records are (include the relationship of the subject of the records to the defendant in the criminal case):

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 5

Date Needed By: _____

Date: _____

▶ _____
Signature

JV-593 Notice of Prosecutor Request for Access to Sealed Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
JV-593.v6.080320.cz.AEM

DATE: _____

TO: _____

Child's name: _____

Address: _____

Attorney of record: _____

Address: _____

Fill in court name and street address:

Superior Court of California, County of

Courts fills in case number when form is filed

Criminal Case Number:

Courts fills in case number when form is filed

Juvenile Case Number:

1 A prosecuting attorney *(name):* _____ is requesting access to the sealed juvenile file in case number: _____ concerning *(child's name):* _____ because the attorney has reason to believe that there is information in the case file that may be necessary to disclose to a criminal defendant *(name):* _____ because it is evidence that may be favorable or exculpatory to that person.

2 The information that the prosecuting attorney wants to access and the reasons why the attorney believes access may be necessary are described in the attached *Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-592).

3 You have the right (but are not required) to respond to the court before the judge decides if the prosecutor should get access to your file. You can respond in writing by completing the *Response to Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-594) that came with this notice, and mailing it back to the court.

4 You also have a right to ask the juvenile court for a hearing where you can appear to provide information to the court before it makes its decision. Check the box on item 4 on form JV-594 if you want the court to set a hearing. **If you do not file a response within 10 days after the date on this notice, the court will review the request without a hearing.**

5 *Important*: You must return form JV-594 to the court listed at the address above within **10** days of the date at the top of this form. **If you do not return it by that deadline, the court will make its determination on the request without your input.**

Judicial Council of California
www.courts.ca.gov
New January 1, 2021, Optional Form

Notice of Prosecutor Request for Access to Sealed Juvenile Case File

Welfare and Institutions Code, § 786 Cal. Rules of Court, rule 5.860

JV-594 Response to Prosecutor Request for Access to Sealed Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
JV-594.v5.080320.cz.AEM

This form can be used to give the juvenile court your response when you receive notice that a prosecuting attorney wants to access your sealed records because they may contain information that would be helpful to the criminal defense of another person who was charged with a crime. You do not have to respond but if you want to respond or have a hearing on the request, you must return this form to the court within 10 days of the date stamped on the *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593) that came with this form.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Criminal Case Number:

Court fills in case number when form is filed.

Juvenile Case Number:

1. My name: _____

2. Case Number *(from form JV-593):* _____

3. I understand that a prosecuting attorney is requesting access to my sealed juvenile court records in the action connected to the case number above, and I want the court to consider the following when it determines if the request should be approved:

   _____
   _____
   _____
   _____
   _____
   _____

4. ☐ I want to come to court to respond to the prosecuting attorney's request. The court can notify me of the date and time for my appearance at:

   Name: _____
   Address: _____
   City: _____ State: _____ Zip: _____
   Telephone: _____

5. ☐ I have no written response to the request, and I do not wish to appear in court.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

JV-595 Request to Seal Juvenile Records

Probation stamps date here when form is received.

DRAFT
Not approved by
the Judicial Council
JV-595.v4.080320.cz.AEM

This form can be used to petition the juvenile court to seal your juvenile records. More information about sealing is available on form JV-595-INFO, *How to Ask the Court to Seal Your Records*.

Submit this form to the probation department in the last county where you were on juvenile probation or, if you were not on probation, in any county where you had contact with law enforcement or probation that did not result in a court case. Once the probation department receives the completed form, it will have 90 days to file a record-sealing petition with the court for you, or 180 days if you include agencies outside of this county.

Fill in court name and street address:

Superior Court of California, County of

Fill in your name:

Name:

Fill in case number, if known:

Case Number:

1 My information:

a. Name: _____

b. AKA *(nickname or other family name):*

_____

c. Address: _____

d. City, state, zip: _____

e. Area code and telephone number: _____

f. Date of birth: _____

g. Email address: _____

2 ☐ I had a case(s) that went to court.

Case file number(s) *(if known):* _____

The date probation was terminated *(if known):* _____

☐ I don't remember my case number and/or date.

☐ See attached. *(If you need more space, you may attach a separate page.)*

3 ☐ I had contact with law enforcement but did not go to court.

☐ Date(s) I had contact with law enforcement: _____

☐ Name(s) of law enforcement or other agency(ies): _____

☐ See attached. *(If you need more space, you may attach a separate page.)*

4 I understand that the probation department is responsible for requesting the juvenile court to seal the records of only those agencies in its records and those listed on page 2 of this form. I understand that after I file this document the probation department will have 90 days to conduct an investigation and file a record-sealing petition for me with the juvenile court. I also understand that some records may not be eligible for sealing. I am aware that form JV-595-INFO, *How to Ask the Court to Seal Your Records,* provides more information on this process.

Your name: _____

Case Number:

Note: When you file this form with the probation department, it will research your case history and attach a list of contacts and addresses of all agencies that it knows have records of the case(s) and contacts(s) you listed on page 1. If you have had contacts with law enforcement or another agency with a record of your offense and that entity may not have been reported to the probation department, please list it below, or that record may not be sealed. If your case was transferred from one county to another, your records in both counties will be sealed. If you have a probation record in more than one county and that record was not transferred, you may ask the court to seal that record as well. If the court does not seal that record, it will inform you that you need to file this form in that county. Contacts not included on this form may not be sealed. The court may seal only those records listed on the petition.

5 Include all contacts (with addresses) you had, before your 18th birthday, with the agencies below that might not be part of your probation records:

- ☐ Court: _____
- ☐ Probation Department: _____
- ☐ Sheriff's Department: _____
- ☐ Police Department: _____
- ☐ California Highway Patrol: _____
- ☐ Department of Motor Vehicles: _____
- ☐ Law Enforcement: _____
- ☐ School(s): _____
- ☐ Homeland Security: _____
- ☐ Other: _____
- ☐ See attached. *(If you need more space, you may attach a separate page or pages listing the contacts.)*

I declare that the information on this form is true and correct to the best of my knowledge.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

JV-595-INFO How to Ask the Court to Seal Your Records

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If the court makes those records **private** (sealed), it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.

There are now three ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal, or informal) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at the completion of probation, see form **JV-596-INFO.**

If probation sealed your diversion records for satisfactory completion, you may wish to ask the court to seal any remaining records of your behavior.

As of January 1, 2018, if you participate in a diversion program or other supervision program instead of going to court, and the probation department determines that you satisfactorily completed that program, the probation department will seal your probation department records and the records for any program you were required to complete. If the probation department determines that you did not satisfactorily complete the program, it will not seal those records, but will give you a form to tell you why and a form that you can use to tell the court why you think you did satisfactorily complete the program. If the court agrees with you, it will order your probation and program records sealed. Because probation did not seal any arrest records at this time, you may want to ask the court to seal any other records relating to this conduct when you are eligible to ask for record sealing as explained on this form.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer or the juvenile court clerk in the county where you had a case or contact.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order, if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if you owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.
The court will not consider outstanding fines and court ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

When do you *not* qualify to seal your records?

- If you were convicted as an adult of an offense involving moral turpitude, such as:
  - A sex or serious drug crime;
  - Murder or other violent crime; or
  - Forgery, welfare fraud, or other crime of dishonesty.
- If, when you were 14 or older, the court found that you committed a sex offense listed in Welfare and Institutions Code section 707(b) for which you must register under Penal Code section 290.008 because you were paroled from the Department of Juvenile facilities.

If you are unsure if you qualify, ask your attorney.

Who can see your sealed records?

- DMV can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- A prosecuting attorney may see your records that were sealed for an offense listed under Welfare and Institutions Code section 707(b) in a later proceeding for the reasons listed in section 781(d).

- If your sealed record was for a 707(b) offense when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged with a later felony.
- You can request the court to unseal your records if you want to have access to them or allow someone else to see them.
- If a prosecutor thinks something in your record would be helpful to the defense of someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information.
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

Can employers see your records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask about you.

How do you ask to have your records sealed?

1. You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records,* at *www.courts.ca.gov/forms.htm,* can be used, or your court may have a local form.
2. When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation, and attach it to your petition.
3. If you think there are agencies that might have records on you that were never sent to probation, you need to name those agencies, or the court will not know to seal those records.
   If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See *http://oag.ca.gov/fingerprints/security* for more information.
4. Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) Note: A small number of counties require you to take your form to the court. More information on each county's specific requirements is available at *www.courts.ca.gov/28120.htm*.
5. Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.
6. The court will review your petition. The court may decide right away to seal your juvenile records, or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date, time, and location of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.
7. If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your petition.
   ***Important!* The court can seal only records it knows about. Make sure you list *all* records from *all* counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.**
8. If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. If the sealed records are for a 707(b) offense committed when you were 14 or older, the court will not order those records destroyed.
9. The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.

Questions?

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at *www.courts.ca.gov/28120.htm*.

JV-599 Order on Prosecutor Request for Access to Sealed File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-599.v3.080320.CZ.AEM

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Juvenile Case Number:

Court fills in case number when form is filed.

Criminal Case Number:

1 Petitioner *(name):* _____
is a prosecuting attorney requesting access to information in the sealed juvenile court file of:
Child's Name: _____
Case Name: _____

2 Petitioner has reason to believe that access is necessary to meet the constitutional obligation to disclose favorable or exculpatory evidence to a:
defendant *(name):* _____
in a criminal case *(case number):* _____

The court finds and orders:

3 ☐ After review of the sealed juvenile case file and review of any filed objections ☐ and a noticed hearing, the court denies the request. Disclosure is not required to enable the prosecuting attorney to comply with the disclosure obligation.

4 ☐ After review of the juvenile case file and review of any filed objections ☐ and a noticed hearing, the court grants the request. The court has determined that access to this sealed record or portion of this sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation.

a.) ☐ The following records may be disclosed to the defendant listed in item 2:
_____
_____
_____

b.) ☐ See attached

Additional orders:

5 ☐ Disclosure subject to protective order *(list orders):*
_____
_____
_____

6 ☐ Release of records listed in item 4a only.

7 ☐ Release of records only after prosecutor has reviewed the sealed file and submitted the records to be disclosed to the court for review and redaction.

8 ☐ Other: _____
_____

9 ☐ See attached.

Date: _____

_____
Judge or Judicial Officer

Judicial Council of California
www.courts.ca.gov
New January 1, 2021, Optional Form

Welfare and Institutions Code, §§ 781, 786, 793; Penal Code, § 851.7; Cal. Rules of Court, rule 5.860

SPR20-23

Juvenile Law: Access to Sealed Records (Adopt Cal. Rules of Court, rule 5.860; revise forms JV-595 and JV-595-INFO; approve forms JV-592, JV-593, JV-594, and JV-599)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	A	**JRS Position: Agree** with proposed changes. The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.). • Results in additional training, which requires the commitment of staff time and court resources. • Increases court staff workload. **Request for Specific Comments:** **Does the proposal appropriately address the stated purpose?** Yes. **Are the optional forms useful for complying with the notice and response provisions in section 786?** Yes. **Will the approach in this proposal of having a standalone rule and process for Brady access to sealed records improve the administration of these requests, or should this process be incorporated into the procedures for seeking access to juvenile records under section 827 and rule 5.552?**	No response required. The committee recognizes this impact, but as noted in the comment JRS deems this proposal to be an effective way to implement Brady access to sealed juvenile records. No response required. The committee concurs and will move the forms forward.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-23

Juvenile Law: Access to Sealed Records (Adopt Cal. Rules of Court, rule 5.860; revise forms JV-595 and JV-595-INFO; approve forms JV-592, JV-593, JV-594, and JV-599)

All comments are verbatim unless indicated by an asterisk (*).

			The standalone process works well and focuses the parties on the Brady issue. We can see merit in all Brady requests being processed the same and on the same timeline.	The committee agrees and will maintain the rule to apply to all petitions to access sealed records to comply with Brady obligations.
2.	Orange County Bar Association By Scott Garner, President	AM	SPR20-23 adds new CRC 5.860, adds three new optional forms (JV-592, JV-593, and JV-594), and revises an existing form (JV-595 as well as JV-595-INFO). New CRC 5.860 sets forth the requirements for a prosecutor who is seeking to access records sealed pursuant to PC 851.7, or WIC 781, 786, or 793, when the prosecutor believes accessing such records is necessary to comply with disclosure requirements in a criminal case. It details what must be included in the form of the request, the special requirements of WIC 786 in terms of notice, and the juvenile court's obligation in terms of its record review and subsequent order. I do not believe this should be implemented into CRC 5.552/WIC 827; I believe it should stand alone as proposed. Optional forms JV-592, JV-593, and JV-594 all track with proposed CRC 5.860. These forms do appear useful in providing guidance as to these requests. The changes to JV-595 (and JV-595 INFO) reflect recent legislation under AB-1537, which eliminated the authority to charge fees to any person petitioning to seal his or her records.	No response required. The committee has retained this standalone approach because this comment and the comments received have largely supported it.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

All comments are verbatim unless indicated by an asterisk (*).

			I would suggest two modifications for clarity's sake: 1) CRC 5.860(b): "The date must allow for sufficient time to meet reasonable given the notice and hearing requirements of this rule." – I would recommend they clarify the language here. I am not sure if there is a word missing or what is meant here. 2) CRC 5.860(a): "… under Penal Code section 851.7 or sections 781, 786, or 793…" – I would recommend that they add "Welfare and Institutions Code" before sections 781, 786, or 793 to be clear.	This sentence has been clarified to read: "The date must allow for sufficient time to meet the notice and hearing requirements of this rule."
3.	Superior Court of California, County of Los Angeles By Bryan Borys Director of Research and Data Management	A	• Does the proposal appropriately address the stated purpose? Answer: Yes • Are the optional forms useful for complying with the notice and response provisions in section 786? Answer: Yes • Will the approach in this proposal of having a standalone rule and process for Brady access to sealed records improve the administration of these requests, or should this process be incorporated into the procedures for seeking access to juvenile records under section 827 and rule 5.552? Answer: Having a standalone rule and process for Brady access to	No response required. The committee agrees and is proposing adoption of these forms. The committee has retained this approach because the comments received have largely supported it.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			sealed records would improve the administration of these requests because notice is not required in this instance. It should not be incorporated into the procedures for seeking access to juvenile records under section 827 and rule 5.552 as these requests do require notice and wait time for objections. • Should the rule and or form address the narrow application of the statutory provision in section 781 to 707(b) offenses adjudicated for those 14 or over, or should it apply in any case in which a prosecutor might seek access to comply with Brady obligations? Answer: The rule should apply in any case in which a prosecutor might seek access to comply with Brady obligations. • Would the proposal provide cost savings? If so, please quantify. Answer: No. There would be slight cost increases of noticing and paper. • 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? Answer: Training for judicial officers and staff. • Would 4 months from Judicial Council approval of this proposal until its effective date	The committee concurs that since there is a constitutional obligation that the rule should apply to the specific requirements of the statute and more broadly to any request. The committee notes these costs, but also is aware that notice is required per the statutory change and the forms will assist in carrying that out. The committee will note this in its report to the council. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

All comments are verbatim unless indicated by an asterisk (*).

			provide sufficient time for implementation? Answer: Yes	
4.	Superior Court of California, County of Orange, Juvenile Division	AM	**Rule 5.860 –** ▪ In the first paragraph under Applicability, it refers to Penal Code section 851.7 or section 781, 786, 793. Recommend to add "Welfare and Institutions Code" before "section 781, 786, 793." ▪ Every time section 786 is mentioned, it fails to reference the case law which should be Welfare and Institutions Code. **JV-592 –** Prosecutor Request for Access to Sealed Juvenile Case File ▪ On number 2, is the "a:" needed since there is nothing else following it? ***Does the proposal appropriately address the stated purpose?*** Yes. ***Are the optional forms useful for complying with the notice and response provisions in section 786?*** Yes, they are very well	Rule 5.502(36) provides that the use of the term Section in Title 5, Division 3 of the California Rules of Court means a section of the Welfare and Institutions Code unless otherwise specified. Consistent with this rule only specifies the Code when it is not the Welfare and Institutions Code. The a: is an article in that item rather than a subdivider so the committee has retained it. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			thought out and provide all the right information. ***Will the approach in this proposal of having a standalone rule and process for Brady access to sealed records improve the administration of these requests, or should this process be incorporated into the procedures for seeking access to juvenile records under section 827 and rule 5.552?*** It can go either way. There's not a lot of mention of sealed records in WIC 827 until the end of the code. As far as the court's in-house procedures it might make sense to place in the 827 procedures since it might be processed the same person that processes the 827 requests. ***Should the rule and or form address the narrow application of the statutory provision in section 781 to 707(b) offenses adjudicated for those 14 or over, or should it apply in any case in which a prosecutor might seek access to comply with Brady obligations?*** It should apply in any case in which a prosecutor might seek access to comply	The committee has opted to move these forms forward with the proposal based on feedback from commenters. Based on the feedback in these comments the committee is maintaining the standalone rule, but has added some language from rule 5.552 concerning protective orders to ensure that information being disclosed or accessed is sufficiently protected and developed an optional order form (proposed form JV-599) for the court to specify its restrictions.

			with Brady obligations. ***Would the proposal provide cost savings? If so, please quantify.*** No. ***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?*** Update all requests for documents procedures to add this new process. Event Codes for Case Manager would be created and submitted to IT for creation in the system and testing done. Once procedures and event codes are completed then training would be conducted. Training would be around 1 to 2 hours. ***Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for***	The committee concurs that since there is a constitutional obligation that the rule should apply to the statute and more broadly to any request. No response required. The committee will note these impacts in its report to the council.

All comments are verbatim unless indicated by an asterisk (*).

			implementation? 4 months will be sufficient time for implementation. ***How well would this proposal work in courts of different sizes?*** This proposal would be able to work in any size court.	No response required. No response required.
5.	Superior Court of California, County of Riverside By Susan Ryan, Managing Attorney	A	COMMENT: Agree, however these requests can also be handled under WIC § 827 and rule 5.552. Requiring juvenile courts to rule on these requests within 21 court days of filing or hearing may not be enough time. Does the proposal appropriately address the stated purpose? The proposal does address the purposes as laid out in AB 2952 and SB 312. Are the optional forms useful for complying with the notice and response provisions in section 786?? The three optional forms, JV-592, JV-593 and JV-594 will be useful to comply with the notice and response requirements. The fact that the JV-593, Notice of Prosecutor Request for	Given that the access is being sought for Brady purposes the committee concluded that 21 court days is appropriate in order not to delay the underlying criminal matter more than necessary. No response required. The committee agrees and is including these forms with the proposal moving forward.

			Access to Sealed Juvenile Case File and the JV-594, Response to Prosecutor Request for Access to Sealed Juvenile Case File, must be provided by the prosecutor making the request will be beneficial to court staff in that staff will not need to determine when notice is necessary and it will save the courts time in not needing to prepare these notices. Will the approach in this proposal of having a standalone rule and process for Brady access to sealed records improve the administration of these requests, or should this process be incorporated into the procedures for seeking access to juvenile records under section 827 and Rule 5.552? A standalone rule is useful. WIC Section 827 and Rule 5.552 are sometimes difficult for staff and the public to understand. Should the rule and or form address the narrow application of the statutory provision in section 781 to 707(b) offenses adjudicated for those 14 or over, or should it apply in any case in which a prosecutor might seek access to comply with Brady obligations? The rule should address the WIC Section 781 statutory provision that notice need not be given if the request only applies to files concerning WIC 707(b) offenses adjudication for minors 14 years and older. Since the prosecutor is	The committee concurs that a standalone rule is useful in this context and has maintained it. While notice is only expressly required if the file was sealed pursuant to section 786, the committee has concluded that any Brady request concerning sealed files should be governed by the same

			required to include the JV-593 and JV-594 when notice is required, forms really do not need to go into detail about this narrow statutory provision of WIC Section 781. Would the proposal provide cost savings? If so, please quantify. There would be not cost savings to the courts. 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), change docket codes in case management systems, or modify case management systems. The court would need to create new procedures for clerk's office and courtroom staff for the filing and processing of these types of requests. New filing codes for the forms and new minute codes in the case management system for hearings and orders would be needed. Hearing codes to set hearings when an appearance is requested would also need to be created as well as JBSIS stats for these types of petitions and hearings would need to be accounted for. Staff training on the new forms and procedures would need to be completed for all juvenile courtroom and clerk's office staff. Perhaps one to two hours to review training materials would be needed.	notice provisions to be consistent with the notice requirements in section 827. No response required. The committee will note these impacts in its report to the council.

All comments are verbatim unless indicated by an asterisk (*).

			Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? The same creation of new filing and minute codes as well as procedures would likely need to occur in any size court. The proposals should work well for courts of any size.	No response required. No response required.
6.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	AM	**GENERAL COMMENTS:** Rule 5.552 only requires 10 days notice. There is no need for this new rule to require 15. There is a typo in the second sentence of rule 5.860(b). As written, it does not make sense. JV-592: The case name would be essentially the same as the child's name. JV-593, item 4 should refer to the box on item 4 on the JV-594.	The committee concurs and has modified the rule to require 10 days notice. This sentence has been clarified to read: "The date must allow for sufficient time to meet the notice and hearing requirements of this rule." The committee is using a standard convention for juvenile forms to ensure clarity. The committee has corrected this reference.

			JV-593, item 5 should make it clear the court needs to receive the response by the deadline. JV-594: It is not clear which case number (juvenile or criminal) is to be used. Does the proposal appropriately address the stated purpose? Yes. Are the optional forms useful for complying with the notice and response provisions in section 786? Yes. Will the approach in this proposal of having a standalone rule and process for *Brady* access to sealed records improve the administration of these requests, or should this process be incorporated into the procedures for seeking access to juvenile records under section 827 and rule 5.552? This is a separate process, so a separate rule and forms are helpful. However, I recommend that rule 5.552 and rule 5.860 both include a subdivision that explains how the two rules work together. In San Diego, the prosecutor first seeks access to review the sealed records and then files a separate request under rule 5.552 to use the documents that are found to be covered by Brady. The documents the	The committee has reworded the sentence to warn that it needs to be returned by the deadline. The committee concluded that it would be useful to have both case numbers and has added them to the caption. No response required. The committee concurs and is including them with the proposal. The committee agrees that there should be a standalone rule and has incorporated the ability to include protective orders and redactions into rule 5.860 so that appropriate protections can be obtained as part of that process, rather than requiring a wholly separate procedure.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

			prosecutor seeks to release are submitted with the second request so that the judge can review them, order any necessary redactions, and issue a protective order. This would be an unnecessarily long process if the prosecutor has to give 15 days notice under rule 5.860 and then 10 days notice under rule 5.552. I believe the intention is that this would be a one-step process and the prosecutor only has to comply with rule 5.860. This means the court would not have an opportunity to review and redact the documents the prosecutor intends to release. There is also nothing in rule 5.860 about a protective order. Should the rule and or form address the narrow application of the statutory provision in section 781 to 707(b) offenses adjudicated for those 14 or over, or should it apply in any case in which a prosecutor might seek access to comply with *Brady* obligations? Although the wording in each statute is different, it does not make sense to treat access to sealed records differently depending upon the sealing statute that was used. The same procedures should apply to every case in which a prosecutor seeks access to sealed records to comply with Brady obligations. Would the proposal provide cost savings? If so, please quantify.	The committee agrees with this input and has concluded that any Brady request concerning sealed files should be governed by the same rule, including the notice requirements.

SPR20-23

Juvenile Law: Access to Sealed Records (Adopt Cal. Rules of Court, rule 5.860; revise forms JV-595 and JV-595-INFO; approve forms JV-592, JV-593, JV-594, and JV-599)

All comments are verbatim unless indicated by an asterisk (*).

			No. If anything, it adds costs by requiring a new process and hearing. In San Diego, we already have a process in place. We will have to update our process to comply with the new rule. 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? Training the disclosure clerk, updating local procedure, and creating new minute order codes. Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update procedures. How well would this proposal work in courts of different sizes? It appears that the proposal will work for courts of various sizes.	The committee will note these impacts, but also notes that the court agreed with the proposal with minor modification. The committee will note these impacts in its report to the council. The council is expected to act on the forms in September for a January 1, 2021 effective date, thus the forms will be available more than 30 days in advance. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Item number: 27

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Guardianship Rules and Forms (amend Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815; revise forms JV-320 and JV-418)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, Corby.Sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
AB 819 (Stone) Foster care (Ch. 777, Statutes of 2019) Requires the court to terminate its dependency jurisdiction and to retain jurisdiction over the child as a ward of the legal guardianship, following establishment of a legal guardianship, if a relative of the child is appointed guardian, as authorized.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No. 20-186
For business meeting on September 24–25, 2020

Title
Juvenile Law: Guardianship Rules and Forms

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815; revise forms JV-320 and JV-418

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 10, 2020

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending nine California Rules of Court that provide procedures to establish, terminate, modify, or oversee guardianships in juvenile court proceedings and revising two forms used for court orders in those proceedings. The amendments and revisions are required to conform to recent statutory amendments, resolve inconsistencies with existing statutes and other rules of court, and make technical corrections.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.510(c)(1)(A) to clarify the juvenile court's exclusive jurisdiction over guardianships in child welfare proceedings;

2. Amend rule 5.620(d) to clarify that the juvenile court may appoint a guardian in a dependency proceeding at the dispositional hearing and to correct a cross-reference to rule 5.695;

3. Amend rule 5.620(e) to clarify that it applies exclusively to existing probate guardianships and to conform its requirements to statute;

4. Amend rule 5.625(b) to clarify the procedures for appointing a guardian in a juvenile justice proceeding and indicate the court's discretion, after appointing a guardian, to continue wardship and supervision or to terminate wardship;

5. Amend rule 5.625(c) to clarify that it applies exclusively to existing probate guardianships and to conform its requirements to statute;

6. Amend rule 5.695(a) to indicate that the requirements in Welfare and Institutions Code section 360(a) must be met for the court to appoint a legal guardian at the dispositional hearing and to clarify the conditions precedent to the clerk's duty to issue letters of guardianship;

7. Amend rule 5.725(a) to add references to statutes governing the appointment of a guardian in juvenile justice proceedings;

8. Amend rule 5.735 to clarify notice requirements and specify the limits on the court's discretion to retain dependency jurisdiction when appointing a guardian;

9. Amend rule 5.740(a)(4) to clarify that the limits on the court's discretion to retain dependency jurisdiction added by AB 819 continue to apply at postpermanency review hearings;

10. Amend rule 5.785 to make a technical correction;

11. Amend rule 5.815 to (1) clarify that Welfare and Institutions Code section 366.26 supplies the procedures for appointment of a guardian in a juvenile justice proceeding; (2) specify the methods for the probation officer, the child's attorney, and the court to recommend, request, or consider appointing a guardian for a ward; and (3) replace text that duplicates statutory language with references to the appropriate code sections;

12. Revise *Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31* (form JV-320) to add references to applicable statutes and rules, clarify the instructions for completing the form, replace or remove gender-specific terms, specify that the appointment of a guardian is not effective until letters of guardianship have been signed and issued, add instructions to item 15c to indicate the circumstances in which the court must terminate dependency jurisdiction, delete item 22, renumber items 23–27 as items 22–26, and make additional technical corrections; and

13. Revise *Dispositional Attachment: Appointment of Guardian* (form JV-418) to allow appointment of a guardian for a child who is not adjudged a dependent, indicate that the court has read and considered the required assessment, specify that the appointment of a guardian is not effective until letters of guardianship have been signed and issued, and make technical corrections.

The text of the amended rules and the revised forms are attached at pages 8–22.[1]

Relevant Previous Council Action

The Judicial Council adopted rule 1464 of the California Rules of Court, effective January 1, 1991, to establish procedures for appointment of a guardian in a child welfare proceeding.[2] Rule 1464 was renumbered rule 5.735 effective January 1, 2007, and was last amended effective January 1, 2017. The council adopted rule 1496.2, effective January 1, 2004, to establish procedures for appointment of a guardian in juvenile justice proceedings. Rule 1496.2 was renumbered rule 5.815 effective January 1, 2007, and was last amended effective July 1, 2016. The other rules in this proposal have been amended multiple times since their adoption for reasons not directly relevant to the committee's recommendation.

At the request of the state Department of Social Services, the Judicial Council adopted form JV-320, effective January 1, 1991, for the juvenile court to use to make findings and orders at a hearing under Welfare and Institutions Code section 366.26 to select and implement a permanent plan.[3] Form JV-320 has been revised multiple times since its adoption, most recently in 2019 in response to amendments to California's implementation of the federal Indian Child Welfare Act (ICWA). The council approved form JV-418 in 2005 as part of a package of forms for courts to use to make findings and orders at dispositional hearings in child welfare cases. This form was also last revised in 2019 in response to the statutory amendments conforming California law to ICWA.

Analysis/Rationale

The proposed rule amendments and form revisions are urgently needed to conform the rules and forms to new and existing statutory requirements. They will also promote efficiency when guardianship is considered as an option for a child under the juvenile court's child welfare or

[1] This report outlines the Family and Juvenile Law Advisory Committee's recommended amendments to subdivision (a) of rule 5.740. In a separate report, the committee also recommends adding a new subdivision (c) to rule 5.740. See Judicial Council of Cal., Advisory Com. Rep., *Juvenile Law: Information, Documents, and Services for Youth 16 Years of Age and Older* (Aug. 5, 2020). The committee has submitted both reports for the Judicial Council's consideration at its September 25, 2020, meeting. To prevent the inadvertent omission of either set of amendments on publication, the text of rule 5.740 attached to this report includes the amendments recommended in both reports.

[2] All subsequent references to rules are to the California Rules of Court unless otherwise specified.

[3] All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

juvenile justice jurisdiction by clarifying the procedures for appointing a guardian in both types of juvenile court proceedings.

The juvenile court has authority to appoint a guardian for a child in child welfare proceedings as specified in sections 360 and 366.26. Sections 727.3, 727.31, and 728 give the court analogous authority in juvenile justice proceedings. After the establishment of a guardianship in a child welfare proceeding, the court generally has discretion to continue dependency jurisdiction over the child or terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship under section 366.4.[4]

Assembly Bill 819

Until December 31, 2019, if the court appointed a relative as guardian, section 366.3(a) required the court to terminate its dependency jurisdiction and proceed under section 366.4 *if the child had been placed with the relative* for at least six months unless the guardian objected to termination or the court made a finding of exceptional circumstances. Effective January 1, 2020, Assembly Bill 819 (Stats. 2019, ch. 777, § 18) amended section 366.3(a)(3) to require the juvenile court, on appointment of a relative or nonrelative extended family member (NREFM) as guardian, to dismiss dependency jurisdiction *if the guardian's home had been approved as a resource family home* for at least six months.

This statutory amendment requires conforming amendments to rules 5.735 and 5.740 and a revision to form JV-320. The amendments to rule 5.735 clarify the notice requirements in subdivision (b), spell out in paragraph (c)(4) the court's discretion to retain dependency jurisdiction or terminate dependency and retain jurisdiction over the guardianship, and specify the limits to that discretion when the court appoints a relative or NREFM as guardian, as amended by AB 819, in paragraph (c)(5). (Welf. & Inst. Code, §§ 366.26, 366.3.)

The amendments to rule 5.740(a)(4) specify that the limits on the court's discretion to retain or terminate dependency jurisdiction added by AB 819 continue to apply at each postpermanency hearing until the court has terminated dependency. (*Id.,* § 366.3.) In addition, the revisions to item 15c on *Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31* (form JV-320) remind the person completing the form of the limits on the court's discretion to retain dependency jurisdiction after appointing a relative or NREFM as the guardian of a dependent child.

Additional amendments and revisions

In addition, review of the juvenile court rules and forms that apply to juvenile court guardianship proceedings revealed inconsistencies among the rules and with existing statutory requirements, as well as an overall lack of clarity regarding the requirements for establishing, modifying, and terminating a guardianship in juvenile court. This proposal addresses these issues by bringing the

[4] Welf. & Inst. Code, §§ 360(a), 366.3(a)(3).

rules and forms into harmony with the law and each other. Finally, the proposal recommends technical corrections to the rules and forms.

The committee recommends several rule amendments to clarify the extent of the juvenile court's jurisdiction to modify or terminate existing probate guardianships and to establish, modify, or terminate juvenile court guardianships. The amendments to rule 5.510(c)(1)(A) clarify that the juvenile court has exclusive jurisdiction to hear guardianship proceedings after a dependency petition is filed until the petition is dismissed or dependency jurisdiction is terminated. (Welf. & Inst. Code, § 304.) The amendments to rule 5.620(d) clarify the statutory source of the court's authority to appoint a guardian at the dispositional hearing in a child welfare case (*id.,* § 360(a)), while amendments to rule 5.620(e) clarify that it applies exclusively to existing probate guardianships, align the required procedures with statute, and update a statutory reference. (*Id.,* § 728(a) & (b).)

The amendments to rule 5.625(b) have a similar effect in juvenile justice proceedings by clarifying that the procedures for appointing a guardian in those proceedings are governed by section 366.26 and that the court has discretion to continue wardship and supervision of the child or to terminate wardship. (Welf. & Inst. Code, § 728(c)–(e).) The limits on the court' discretion modified by AB 819, however, do not apply to guardianships established in juvenile justice proceedings. The amendments to rule 5.625(c) clarify that it applies exclusively to probate guardianships, align the required procedures with statute, and update a statutory reference. (*Id.,* § 728(a) & (b).)

The amendments to rule 5.695(a) refer expressly to section 360(a), which spells out detailed conditions that must be met for the court to appoint a guardian for a child at the dispositional hearing, and also clarifies that the clerk's duty to issue letters of guardianship does not arise until the appointed guardian has signed the required affirmation. (*Id.,* § 360(a); Prob. Code, §§ 2300, 2310.) The amendments to rule 5.725(a), which applies both to dependent children and wards of the juvenile court, add references to the previously omitted statutes governing appointment of a guardian for a ward in juvenile justice proceedings. (Welf. & Inst. Code, §§ 366.26, 727.3, 728(c)–(e).)

In rule 5.815, the amendments clarify that the procedures for appointment of a guardian in a juvenile justice proceeding are supplied exclusively by section 366.26, which governs a hearing to select a permanent plan, including appointment of a guardian, in a child welfare proceeding. The amendments also specify the methods for the probation officer, the child's attorney, and the court, respectively, to recommend, request, or consider appointing a guardian for a ward, and replace text that duplicates statute with references to the appropriate code sections. (Welf. & Inst. Code, §§ 366.26, 727.3, 728(c)–(e).)

Additional revisions to form JV-320 add references to applicable governing code sections and rules of court, clarify the instructions to courts or attorneys completing the form, replace or remove gender-specific terms when appropriate, clarify the standards for determining that the child is likely to be adopted, clarify that the appointment of a guardian is not effective until

letters of guardianship have been signed and issued, delete item 22 because it duplicates item 4b, renumber items 23–27 as items 22–26, and make other technical corrections. (*Id.,* §§ 366.26, 366.3, 727.3, 727.31, 728(c)–(e).)

Finally, the revisions to *Dispositional Attachment: Appointment of Guardian* (form JV-418) clarify that the court may, as authorized by section 360(a), appoint a guardian for a child who is *not* adjudged a dependent; indicate that, before appointing a guardian at the dispositional hearing, the court is required to have read and considered the report and assessment completed under section 361.5(g); specify that the appointment of a guardian is not effective until letters of guardianship have been signed and issued; and make technical revisions. (*Id.,* §§ 360(a).)

Policy implications

The recommended amendments and revisions promote at least three Judicial Council policy objectives—modernization of the rules of court, quality of justice and service to the public, and promotion of access to the courts—by ensuring that the Judicial Council rules and forms reflect accurate legal information to make it easier for litigants to gain access to the courts.

Comments

This proposal circulated for comment as part of the spring 2020 invitation-to-comment cycle, from April 10 to June 9, 2020, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. Of the six commenters who responded, three agreed with the proposal and three did not indicate a position. Two commenters that did not indicate a position, the Superior Court of Orange County and the Superior Court of San Diego County, expressed agreement in the body of their comments. One commenter neither indicated a position nor provided a substantive comment. A chart with the full text of the comments received and the committee's responses is attached at pages 23–26.

The Executive Committee of the Family Law Section (FLEXCOM) of the California Lawyers Association agreed with the proposal and suggested that the committee add language to rule 5.740(a)(4) to clarify that the juvenile court is not required to terminate dependency jurisdiction over a child for whom the court has appointed a relative or nonrelative extended family member (NREFM) as guardian if the relative or nonrelative extended family member guardian objects, or upon a finding of exceptional circumstances.

The committee agreed that more specificity was needed and modified its recommendation to add language to rule 5.735(c)(4) to (1) specify the court's discretion to retain dependency jurisdiction or terminate dependency jurisdiction and retain jurisdiction under section 366.4 over a child for whom it has appointed a guardian (2) add paragraph (5) to rule 5.735(c) to specify the requirements for terminating jurisdiction over a child after the court has appointed a relative or NREFM as the child's guardian, and (3) add the suggested language to rule 5.740(a)(4) to clarify

that these requirements continue to apply at a postpermanency hearing when the court has retained dependency jurisdiction over a child for whom it has appointed a guardian.

The Superior Court of Orange County raised a question about the language "guardian of the person of the ward" in rule 5.625(b), interpreting "of the person" and "of the ward" as equivalent alternatives. To clarify the terminology, the committee modified the recommended language of the rule to read, "At any time during wardship of a child under 18 years of age, the court may appoint a legal guardian of the person for the child …." This language is intended to clarify that the rule—like section 728(c), the statute it implements—applies to a "guardian of the person"; that is, a guardian who has legal and physical custody of the child. This term is intended to distinguish that guardian from a guardian of the estate, who would be responsible for the management of the child's property.

The Superior Court of San Diego County suggested that rule 5.815(b)(1) list all the elements required by statute to be included in the assessment referred to in section 366.26(d). Based on the Judicial Council drafting style and committee policy not to repeat statutory language in rules and the absence of corresponding statutory language in rule 5.735, which applies to appointment of a guardian for a dependent child, the committee decided not to list each required element. Instead, the committee has modified the language of the rule to specify that the assessment must include the elements required by section 727.31(b), which applies to the assessment prepared for a selection and implementation hearing in a juvenile justice proceeding.

Alternatives considered

In addition to the alternatives considered in response to the comments received, the committee also considered limiting its recommendation to the amendments and revisions required by AB 819. After deliberation, however, the committee determined that the additional rule amendments and form revisions were needed to conform to existing statutory requirements and resolve uncertainty about the authority and procedures for establishment of guardianships in juvenile court proceedings.

Fiscal and Operational Impacts

The committee does not anticipate that the proposal will have significant fiscal or operational impacts on the judicial branch, justice partners, attorneys, self-represented litigants, or others. The proposal may require courts to alter their minute order templates or local forms. Some of these changes would be required by the statutory amendments regardless of the proposal. Other elements of the proposal are intended to clarify procedures, and these clarifications should promote more efficient case management and court proceedings.

Attachments and Links

1. Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815, at pages 8–16
2. Forms JV-320 and JV-418, at pages 17–22
3. Chart of comments, at pages 23–26

Rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815 of the California Rules of Court are amended, effective January 1, 2021, to read:

Rule 5.510. Proper court; determination of child's residence; exclusive jurisdiction

(a)–(b) * * *

(c) Exclusive jurisdiction (§§ 304, 316.2, 726.4)

(1) Once a petition has been filed under section 300, the juvenile court has exclusive jurisdiction of the following:

(A) All issues regarding custody and visitation of the child, including legal guardianship; and

(B) * * *

(2) * * *

Rule 5.620. Orders after filing under section 300

(a) Exclusive jurisdiction (§ 304)

Once a petition has been filed alleging that a child is described by section 300, and until the petition is dismissed or dependency is terminated, the juvenile court has exclusive jurisdiction to hear proceedings relating to the custody of the child and visitation with the child and establishing a legal guardianship for the child.

(b)–(c) * * *

(d) Appointment of a legal guardian ~~of the person~~ (§§ 360, 366.26)

If the court finds that the child is described by section 300, it may appoint a legal guardian at the disposition hearing, as described in section 360(a) and rule 5.695~~(b)~~(a), or at the hearing under section 366.26, as described in that section and rule 5.735. The juvenile court maintains jurisdiction over the guardianship, and a petition~~s~~ to terminate or modify ~~such~~ that guardianship~~s~~ must be heard in juvenile court under rule 5.740(c).

(e) Termination or modification of previously established probate guardianships (§ 728)

At any time after the filing of a petition under section 300 and until the petition is dismissed or dependency is terminated, the court may terminate or modify a

guardianship of the person previously established ~~by the juvenile court or the probate court~~ under the Probate Code.

~~If~~ The social worker may recommend~~s~~ to the court~~, by filing *Juvenile Dependency Petition (Version One)* (form JV-100) and *Request to Change Court Order* (form JV-180),~~ in a report accompanying an initial or supplemental petition that an existing probate guardianship be modified or terminated~~, the court must order the appropriate county agency to file the recommended motion~~. The probate guardian or the child's attorney may also file a motion to modify or terminate an existing probate guardianship.

(1) The hearing on the petition or motion may be held simultaneously with any regularly scheduled hearing regarding the child. ~~Notice~~ The notice requirements ~~under~~ in ~~Probate Code~~ section ~~1511~~ 294 apply.

(2) * * *

Rule 5.625. Orders after filing of petition under section 601 or 602

(a) * * *

(b) Appointment of a legal guardian ~~of the person~~ (§§ 727.3, 728)

At any time during wardship of a ~~person~~ child under 18 years of age, the court may appoint a legal guardian of the person~~, or may terminate or modify a previously established guardianship,~~ for the child in accordance with the requirements in section 366.26 and rule 5.815.

(1) On appointment of a legal guardian, the court may continue wardship and conditions of probation or may terminate wardship.

(2) The juvenile court retains jurisdiction over the guardianship. All proceedings to modify or terminate the guardianship must be held in juvenile court.

(c) Termination or modification of previously established probate guardianships (§ 728)

At any time after the filing of a petition under section 601 or 602 and until the petition is dismissed or wardship is terminated, the court may terminate or modify a guardianship of the person previously established under the Probate Code. The probation officer may recommend to the court in a report accompanying an initial or supplemental petition that an existing probate guardianship be modified or

terminated. The guardian or the child's attorney may also file a motion to modify or terminate the guardianship.

(1) The hearing on the petition or motion may be held simultaneously with any regularly scheduled hearing regarding the child. The notice requirements in section 294 apply.

(2) If the court terminates or modifies a previously established probate guardianship, the court must provide notice of the order to the probate court that made the original appointment. The clerk of the probate court must file the notice in the probate file and send a copy of the notice to all parties of record identified in that file.

Rule 5.695. Findings and orders of the court—disposition

(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)

At the disposition hearing, the court may:

(1)–(2) * * *

(3) If the requirements of section 360(a) are met, appoint a legal guardian for the child without declaring dependency and order the clerk, as soon as the guardian has signed the required affirmation, to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents ~~as described~~ in section 827;

(4) If the requirements of section 360(a) are met, declare dependency, ~~and~~ appoint a legal guardian for the child, ~~if the requirements of section 360(a) are met~~ and order the clerk, as soon as the guardian has signed the required affirmation, to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents ~~as described~~ in section 827;

(5)–(7) * * *

(b)–(i) * * *

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.3, 727.31)

(a) Application of rule

This rule applies to children who have been declared dependents or wards of the juvenile court.

(1) * * *

(2) ~~Only~~ Sections 360, 366.26, ~~and~~ 727.3, 727.31, and 728 ~~apply~~ provide the exclusive authority and procedures for the juvenile court to ~~establishing~~ establish a legal guardianship for a dependent child or ward of the court.

(3) * * *

(b)–(e) * * *

~~**(f) Procedures—legal guardianship**~~

~~The proceedings for appointment of a legal guardian for a dependent child of the juvenile court must be in the juvenile court as provided in rule 5.735.~~

~~**(g)**~~**(f)** * * *

~~**(h)**~~**(g)** * * *

Rule 5.735. Legal guardianship

(a) Proceedings in juvenile court (§§ 360, 366.26~~(d)**~~)**

The proceedings for the appointment of a legal guardian for a dependent child must be held in the juvenile court. The ~~request~~ recommendation for appointment of a guardian must be included in the social study report prepared by the county welfare department or in the assessment prepared for the hearing under section 366.26. Neither a separate petition nor a separate hearing is required.

(b) Notice; hearing

Unless the court proceeds under section 360(a) at the dispositional hearing, notice ~~for the guardianship~~ of the hearing at which the court considers appointing a legal guardian must be given under section 294, and the hearing must ~~proceed~~ be conducted under the procedures in section 366.26.

(c) Findings and orders

(1) If the court finds that legal guardianship is the appropriate permanent plan, the court must appoint the guardian and order the clerk to issue letters of guardianship~~,~~ (*Letters of Guardianship (Juvenile)* (form JV-330)) as soon as the guardian has signed the required affirmation. ~~which will not be~~ These letters are not subject to the confidentiality protections ~~described~~ in section 827.

(2)–(3) * * *

(4) Except as provided in (5), on appointment of a legal guardian under section 360 or 366.26, the court may retain dependency jurisdiction or terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship under section 366.4.

(5) If the court appoints a relative or nonrelative extended family member as the child's legal guardian and the other requirements in section 366.3(a)(3) apply, the court must terminate dependency jurisdiction and retain jurisdiction over the child under section 366.4 unless the guardian objects or the court finds that exceptional circumstances require it to retain dependency jurisdiction.

(d) * * *

Rule 5.740. Hearings ~~subsequent to~~ after selection of a permanent plan (§§ 366.26, 366.3, 16501.1)

(a) Review hearings—adoption and guardianship

Following an order for termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, or a plan for the establishment of a legal guardianship under section 366.26, the court must retain jurisdiction and conduct review hearings at least every 6 months to ensure the expeditious completion of the adoption or guardianship.

(1)–(3) * * *

(4) ~~When~~ After a legal guardianship is ~~granted~~ established, the court may continue dependency jurisdiction ~~if it is in the best interest of the child,~~ or ~~the court may~~ terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship under section 366.4. If the court appoints

a relative or nonrelative extended family member as the child's guardian and the other requirements in section 366.3(a)(3) apply, the court must terminate dependency jurisdiction and retain jurisdiction over the child under section 366.4 unless the guardian objects or the court finds that exceptional circumstances require it to retain dependency jurisdiction.

(5)–(6) * * *

(b) * * *

(c) Review hearings—youth 16 years of age and older

If the youth is 16 years of age or older, the procedures in section 391 must be followed.

(1) If it is the first review hearing after the youth turns 16 years of age, the social worker must provide the information, documents, and services required by section 391(a) and must use *First Review Hearing After Youth Turns 16 years of Age—Information, Documents, and Services* (form JV-361).

(2) If it is the last review hearing before the youth turns 18 years of age, the social worker must provide the information, documents, and services required by section 391(b)–(c) and must use *Review Hearing for Youth Approaching 18 Years of Age—Information, Documents, and Services* (form JV-362).

(3) If it is a review hearing after the youth turns 18 years of age, the social worker must provide the information, documents, and services required by section 391(c) and must use *Review Hearing for Youth 18 Years of Age or Older—Information, Documents, and Services* (form JV-363). If the court is terminating jurisdiction at this review hearing, the social worker must also provide the information, documents, and services required by section 391(h), must follow the procedures in rule 5.555, and must use *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365).

~~(c)~~**(d)** * * *

Rule 5.785. General conduct of hearing

(a)–(b) * * *

(c) Case plan

* * *

(1)–(2) * * *

(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:

(A) * * *

(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the probation officer to give the child the opportunity to review the case plan, sign it, and receive a copy, unless the court finds that the child was unable, unavailable, or unwilling to participate.

(4)–(5) * * *

Rule 5.815. ~~Appointment of legal guardians for wards of the juvenile court; modification or termination of guardianship~~ Legal guardianship—wards (§§ 366.26, 727.3, 728)

(a) Proceedings in juvenile court ~~(§ 728)~~

Proceedings for the appointment of a legal guardian for a child who is a ward of the juvenile court ~~under section 725(b)~~ may be held in the juvenile court~~.~~ under the procedures specified in section 366.26.

(b) ~~Recommendation for~~ Hearing to consider guardianship ~~(§ 728(c))~~

On the recommendation of the probation officer supervising the child in the social study and case plan required by sections 706.5(c)–(d) and 706.6(n), the motion of the child's attorney ~~representing the child~~ under section 778, or the court's ~~own motion and order~~ determination under section 727.3 that a legal guardianship ~~should be appointed~~ is the appropriate permanent plan for the child, the court must set a hearing to consider the establishment of a legal guardianship and must order the probation officer to prepare an assessment that includes:

(1) ~~A review of the existing relationship between the child and the proposed guardian;~~ All the elements required to be addressed in the assessment prepared under Welfare and Institutions Code section 727.31(b); and

~~(2) A summary of the child's medical, developmental, educational, mental, and emotional status;~~

~~(3) A social history of the proposed guardian, including a screening for criminal records and any prior referrals for child abuse or neglect;~~

~~(4) An assessment of the ability of the proposed guardian to meet the child's needs and the proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship; and~~

~~(5)~~(2) A statement confirming that the proposed guardian has been provided with a copy of ~~*Guardianship Pamphlet*~~ *Becoming a Child's Guardian in Juvenile Court* (form JV-350-INFO) or ~~*Guardianship Pamphlet (Spanish)*~~ *La función de un tutor nombrado por la corte de menores* (form ~~JV-350S~~ JV-350-INFO S).

(c) ~~Forms~~ Probation officer's recommendation

~~The probation officer or child's attorney may use *Juvenile Wardship Petition* (form JV-600) and *Petition to Modify Previous Orders – Change of Circumstances* (form JV-740) to request that a guardianship hearing be set.~~ The probation officer's recommendation for appointment of a legal guardian may be included in the social study report and case plan submitted under sections 706.5 and 706.6. Neither a separate petition nor a separate hearing is required.

(d) * * *

(e) Conduct of hearing

The proceedings for appointment of a legal guardian must be conducted according to the procedural requirements of section 366.26, except for subdivision (j). The court must read and consider the assessment prepared by the probation officer and any other relevant evidence. The preparer of the assessment must be available for examination by the court or any party to the proceedings.

(f) Findings and orders

~~If the court finds that establishment of a legal guardianship is necessary or convenient and consistent with the rehabilitation and protection of the child and with public safety,~~ If the court makes the necessary findings under section 366.26(c)(4)(A), the court must appoint a legal guardian for the child and order the clerk to issue letters of guardianship (*Letters of Guardianship (Juvenile)* (form JV-

330)) as soon as the appointed guardian has signed them. These letters are not subject to the confidentiality protections in section 827.

(1)–(2) * * *

(g) Modification or termination of ~~the~~ juvenile court guardianship~~, or appointment of a co-guardian or successor guardian (§ 728(f))~~

A petition to modify or terminate a legal guardianship established by the juvenile court, including a petition to appoint a co-guardian or successor guardian, ~~or to modify or supplement orders regarding the guardianship~~ must be filed and heard in juvenile court. The procedures described in rule 5.570 must be followed, and ~~*Juvenile Wardship Petition* (form JV-600) and *Petition to Modify Previous Orders—Change of Circumstances* (form JV-740)~~ *Request to Change Court Order* (form JV-180) must be used. The hearing on the ~~motion~~ petition may be held ~~simultaneously~~ concurrently with any regularly scheduled hearing regarding the child.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

Child's name:
Date of birth: Age:
Parent's name *(if known):*
Parent's name *(if known):*

1. a. Hearing date: Time: Dept.: Room:
   b. Judicial officer:
   c. Parties and attorneys present:

2. ☐ The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), 366.25(b), or 727.31(b) and the report and recommendation of the
   ☐ social worker ☐ probation officer ☐ and other evidence.

3. ☐ The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. ☐ Notice has been given as required by law.
   b. ☐ This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.3; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.

5. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welfare and Institutions Code section 349(d) of the right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

6. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.

7. ☐ The court previously made a finding denying or terminating reunification services, under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
   ☐ parent *(name):*
   ☐ parent *(name):*

Form Adopted for Mandatory Use
Judicial Council of California
JV-320 [Rev. January 1, 2021]

Welfare and Institutions Code, §§ 361.31, 361.7, 366.24, 366.26, 366.3, 727.3, 727.31, 727.4, 728, 16501.1; Cal. Rules of Court, rules 5.486, 5.504, 5.590, 5.725, 5.735, 5.810, 5.815, 5.820
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. a. ☐ The court finds, by clear and convincing evidence, that it is likely the child will be adopted.
   b. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and
      (1) ☐ The court has heard and considered all relevant, admissible evidence, including:
         (A) ☐ Qualified expert witness testimony provided by _____ (*Name of Witness*); and
         (B) ☐ Evidence regarding the prevailing social and cultural practices of the child's tribe; and
      (2) ☐ The court finds beyond a reasonable doubt that continued physical custody by the ☐ mother ☐ father ☐ Indian custodian ☐ other *(name and relationship to child):* is likely to result in serious emotional or physical damage to the child.

9. The parental rights of
   a. ☐ parent *(name):*
   b. ☐ parent *(name):*
   c. ☐ alleged fathers *(names):*
   d. ☐ unknown mother ☐ all unknown fathers
   are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
   e. **The adoption is likely to be finalized by *(date):***
   (If item 9 is completed, skip items 10–16 and go directly to item 17.)

10. This case involves an Indian child. The parental rights of
   a. ☐ parent *(name):*
   b. ☐ parent *(name):*
   c. ☐ Indian custodians *(names):*
   d. ☐ alleged fathers *(names):*
   e. ☐ unknown mother ☐ all unknown fathers
   are modified in accordance with the tribal customary adoption order of the *(specify):* _____ tribe, dated _____ and comprising _____ pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.
   (If item 10 is completed, skip items 11–16 and go directly to item 17.)

11. ☐ The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of giving the child a stable and permanent home through legal guardianship. Removal of the child from the custody of this relative would be detrimental to the child's emotional well-being. *(If item 11 is checked, skip items 12–14 and go directly to item 15 (guardianship).)*

12. ☐ Termination of parental rights would be detrimental to the child for the following reasons: *(If item 12 is checked, check the applicable reasons below, skip items 13–14, and go directly to item 15 (guardianship) or 16 (continued foster care).)*
   a. ☐ The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
   b. ☐ The child is 12 years of age or older and objects to termination of parental rights.
   c. ☐ The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
   d. ☐ The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child.
      NOTE: Do not check item 12d if the child is either:
      (1) under the age of 6; or
      (2) a member of a sibling group, at least one member of which is under the age of 6, that is or should be placed together.
   e. ☐ There would be substantial interference with the child's sibling relationship.

CHILD'S NAME:	CASE NUMBER:

12. f. ☐ The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(1) Termination of parental rights would substantially interfere with the child's connection to the tribal community or the child's tribal membership rights.

(2) The child's tribe has identified guardianship or another permanent plan for the child.

13. ☐ Termination of parental rights would not be detrimental to the child, but the child is difficult to place for adoption and there is no identified or available prospective adoptive parent for the child because the child *(check the applicable reason or reasons below and complete item 14):*

a. ☐ is a member of a sibling group that should stay together.
b. ☐ has a diagnosed medical, physical, or mental disability.
c. ☐ is 7 years of age or older.

14. a. ☐ Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order):*

(Do not check item 14a for a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c, as appropriate, skip items 15 and 16, and go directly to item 17.)

b. ☐ Visitation between the child and
☐ parent *(name):*
☐ parent *(name):*
☐ legal guardian *(name):*
☐ other *(name):*
is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

15. ☐ The child's permanent plan is legal guardianship.
☐ *(Name):*
is appointed guardian of the child's person ☐ and estate. The clerk is ordered to issue *Letters of Guardianship* once the appointed guardian has signed the required oath or affirmation. This appointment is not effective until letters have issued.

(Do not check item 15 for a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b, as appropriate, complete item 15c or 15d, then skip item 16 and go directly to item 17.)

a. ☐ Visitation between the child and
☐ parent *(name):*
☐ parent *(name):*
☐ legal guardian *(name):*
☐ other *(name):*
is scheduled as follows *(specify):*

b. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

c. ☐ Dependency ☐ Wardship jurisdiction is terminated.
(If the child is a dependent and the appointed guardian is a relative or nonrelative extended family member whose home has been approved as a resource family home for at least six months, the court must terminate dependency unless the guardian objects or the court makes a finding of exceptional circumstances.)

The juvenile court retains jurisdiction over the guardianship under Welfare and Institutions Code section 366.4 or 728(f).

d. ☐ Dependency ☐ Wardship jurisdiction is not terminated. Dependency or wardship jurisdiction is likely to be terminated by *(date):* _____.

CHILD'S NAME:	CASE NUMBER:

16. a. ☐ The child remains placed with *(name of placement):*
with a permanent plan of *(specify):*

(1) ☐ Returning home
(2) ☐ Adoption
(3) ☐ Tribal customary adoption
(4) ☐ Legal guardianship
(5) ☐ Permanent placement with a fit and willing relative
(6) ☐ Independent living with identification of a caring adult to serve as a lifelong connection

The barriers to achieving the child's permanent plan are *(specify):*

The child's permanent plan is likely to be achieved by *(date):*

(If item 16a is checked, provide for visitation in items 16b and 16c, as appropriate, and go to item 17.)

b. ☐ Visitation between the child and
☐ parent *(name):*
☐ parent *(name):*
☐ legal guardian *(name):*
☐ other *(name):*
is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

17. ☐ The child is an Indian child. The court finds that the child's permanent plan complies with the placement preferences because:

a. ☐ The permanent plan is not adoption, and *(choose one):*
(1) ☐ The child is placed with a member of the child's extended family, as defined by Welf. & Inst. Code, § 224.1(c); or
(2) ☐ A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
(3) ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
(4) ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
(5) ☐ The child is placed in accordance with the preferences established by the tribe; or
(6) ☐ The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

b. ☐ The permanent plan is adoption, and *(choose one):*
(1) ☐ The child is placed with a member of the child's extended family; or
(2) ☐ A diligent search was made for a placement with a member of the child's extended family, those efforts are documented in detail in the record, and the child is placed with other members of the child's tribe; or
(3) ☐ An diligent search was made for a placement with a member of the child's extended family or other member of the child's tribe, those efforts are documented in detail in the record, and the child is placed with another Indian family; or
(4) ☐ The child is placed in accordance with the preferences established by the tribe; or
(5) ☐ The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in detail in the record.

CHILD'S NAME:	CASE NUMBER:

18. ☐ The child's placement is necessary.

19. ☐ The child's placement is appropriate.

20. ☐ The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan.

21. ☐ The child is an Indian child, and active efforts, as detailed in the record, ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
If active efforts were made, those efforts have proved ☐ successful ☐ unsuccessful.

22. ☐ The child remains a ☐ dependent ☐ ward of the court. *(Do NOT check item 22 if item 15c is checked.)*

23. ☐ All prior orders not in conflict with this order remain in full force and effect.

24. ☐ Other *(specify):*

25. ☐ Next hearing date: Time: Dept.: Room:
   a. ☐ Continued hearing under section 366.26 for receipt of report on attempts to locate an appropriate adoptive family
   b. ☐ Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
   c. ☐ Six-month postpermanency review
   d. ☐ Other *(specify):*

26. The
   a. ☐ Parent *(name):*
   b. ☐ Parent *(name):*
   c. ☐ Indian custodian *(name):*
   d. ☐ Child
   e. ☐ Other *(name):*

   have been advised of their appeal rights under Cal. Rules of Court, rule 5.590.

Date: _____ _____
JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: APPOINTMENT OF GUARDIAN
(Welf. & Inst. Code, § 360(a))

1. ☐ The child is a person described under Welf. & Inst. Code, § 300 *(check all that apply):*
   ☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)
   ☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)
2. ☐ The child ☐ is ☐ is not adjudged a dependent of the court.
3. a. ☐ Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for removal from the home; or
   b. ☐ The child is an Indian child, and active efforts, as detailed in the record, ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. If active efforts were made, those efforts have proved ☐ successful ☐ unsuccessful.
4. a. ☐ The county agency solicited and integrated into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* _____.
   b. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* _____, and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
   c. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* _____, and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.
5. The court advised the
   ☐ mother ☐ biological father ☐ legal guardian
   ☐ presumed father ☐ Indian custodian ☐ other *(specify):*
   that no reunification services will be provided as a result of the guardianship of the child established in this matter.
6. The ☐ mother ☐ biological father ☐ legal guardian
   ☐ presumed father ☐ Indian custodian ☐ other *(specify):*
   signed a *Guardianship (Juvenile)—Consent and Waiver of Rights* (form JV-419), agreeing to the guardianship of the child, the waiver of his or her rights to family maintenance services and family reunification services, and, in the case of an Indian child, the waiver of his or her rights under the Indian Child Welfare Act. A signed form JV-419 for each individual indicated above was filed with the court.
7. a. ☐ The child signed a *Guardianship (Juvenile)—Child's Consent and Waiver of Rights* (form JV-419A), agreeing to the establishment of the guardianship and the waiver of his or her rights to family maintenance services and family reunification services. The child's signed form JV-419A was filed with the court.
   b. ☐ The child is prevented from providing a meaningful response to the request for guardianship and a waiver of his or her rights to family maintenance services and family reunification services because of the child's
      (1) ☐ age.
      (2) ☐ physical condition.
      (3) ☐ emotional condition.
      (4) ☐ mental condition.
8. ☐ The child is an Indian child, and an authorized representative of the child's tribe signed form JV-419 confirming the tribe's agreement to the establishment of guardianship of the child, the waiver of the tribe's interests in family maintenance services and family reunification services, and the waiver of the tribe's rights under the Indian Child Welfare Act.
9. ☐ The court has read and considered the assessment specified in section 361.5(g). Based on that assessment and all other relevant evidence before the court, the court finds that the establishment of a guardianship and the appointment of the person named in item 10 are in the child's best interest.
10. The court appoints *(name):*
    to be the guardian of the child's person ☐ and estate and orders the clerk to issue letters of guardianship once the guardian has signed the required oath or affirmation. This appointment is not effective until letters have issued.
11. ☐ The county agency is ordered to release the child to the person named in item 10.

Form Approved for Optional Use
Judicial Council of California
JV-418 [Rev. January 1, 2021]

Welfare and Institutions Code, § 360(a);
Cal. Rules of Court, rule 5.695
www.courts.ca.gov

SPR20-24

Juvenile Law: Guardianship Rules and Forms (Amend Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815; revise forms JV-320 and JV-418)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Executive Committee, Family Law Section, California Lawyers Association by: Saul Bercovitch, Director of Governmental Affairs Sacramento	A	FLEXCOM agrees with this proposal. As to the proposed changes to Rule 5.740(a)(4), for clarity and consistency with the code section, FLEXCOM suggest adding the following at the end of the subdivision: "...except if the relative or nonrelative extended family member guardian objects, or upon a finding of exceptional circumstances."	The committee appreciates FLEXCOM's review of the proposal. The committee agrees with the suggested change and has modified its recommendation accordingly.
2.	Los Angeles County Department of Child and Family Services Los Angeles County Counsel	NI	There were no comments from DCFS or county counsel subject matter experts on these proposed revisions.	The committee appreciates the department's review of the proposal. No further response required.
3.	Orange County Bar Association by: Scott B. Garner, President Newport Beach	A	Does the proposal appropriately address the stated purpose? *Yes.*	The committee appreciates the bar association's review of the proposal. No further response required.
4.	San Diego County Child Welfare Services by: Karla Morales, Policy Analyst	A	No specific comment provided.	The committee appreciates the department's review of the proposal. No further response required.
5.	Superior Court of Orange County	NI	This is a welcomed update for consistency between the rules and forms regarding legal guardianship. 5.625(b): Should the rule state "of the person" or "of the ward"?	The committee appreciates the court's review of the proposal. The committee has modified the recommended language of the rule to read: "At any time during wardship of a child under 18 years of age, the court may appoint a legal guardian of the person for the child …." This language is intended to clarify that the rule—like section 728(c), the statute it implements—applies to a "guardian of the person," that is, a

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-24

Juvenile Law: Guardianship Rules and Forms (Amend Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815; revise forms JV-320 and JV-418)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				guardian who has legal and physical custody of the child. This term is intended to distinguish that guardian from a guardian of the estate, who would be responsible for the management of the child's property.
			Applies to all amended rules: "legal guardian" and "guardian" are used throughout the rules, it is not consistent.	The committee has revised its recommendation to use the term "legal guardian" when necessary for consistency.
			Does the proposal appropriately address the stated purpose? Yes.	No response required.
			Would the proposal provide cost savings? If so, please quantify. No cost savings identified.	No response required.
			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? Juvenile Justice courtroom staff will need to be trained to use the Request to Change Court Order JV-180 forms. Currently the process for the JV-180 is used in dependency only. The procedure would need to be updated to reflect that it is also used for juvenile justice case type and add that the clerk's duty to issue letters of guardianship does not happen until the	The committee recognizes that some training and updating may be needed in courts that do not use form JV-180 in juvenile justice proceedings. It hopes that once this process is complete, these courts will find the use of form JV-180 in both child welfare and juvenile justice proceedings simpler and easier than using two different forms.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-24

Juvenile Law: Guardianship Rules and Forms (Amend Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815; revise forms JV-320 and JV-418)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			appointed guardian has signed the required affirmation. The case management system may need to be updated to reflect that the procedures for appointing a guardian in juvenile justice cases are governed by section 366.26 for minute order language. ***Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes, three months would be sufficient time. ***How well would this proposal work in courts of different sizes?*** This proposal should work for courts of any size.	No response required. No response required.
6.	Superior Court of San Diego County by: Mike Roddy, Executive Officer	NI	**GENERAL COMMENTS:** This is a good proposal that improves the guardianship rules and forms. Rule 5.815(b): Normally it is good to remove text that simply restates a statute, but in subdivision (b) it is helpful to have the full list of what must be included in the report. The long list of cross-references is too cumbersome. Rule 5.815(e): The reference to rule 5.735, which is the corresponding rule for dependency guardianships, does not seem to be necessary or appropriate. ***Does the proposal appropriately address the stated purpose?***	The committee appreciates the court's review of the proposal. The committee does not recommend listing all the statutory requirements in the rule, as that list would be even more cumbersome than the list of cross-references. The committee agrees with the suggested change and has modified its recommendation accordingly.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-24

Juvenile Law: Guardianship Rules and Forms (Amend Cal. Rules of Court, rules 5.510, 5.620, 5.625, 5.695, 5.725, 5.735, 5.740, 5.785, and 5.815; revise forms JV-320 and JV-418)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Yes.	No response required.
			Would the proposal provide cost savings? If so, please quantify.	
			No, it does not significantly change existing procedures.	No response required.
			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?	
			Implementation should not be difficult. We would need to review our existing guardianship procedures and minute order codes to make sure nothing needs to be updated.	No response required.
			Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	
			Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update procedures.	No response required.
			How well would this proposal work in courts of different sizes?	
			It appears that the proposal will work for courts of various sizes.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Approval of Compromise of Claim for Minor or Person With Disability (amend Cal. Rules of Court, rules 3.1384, 7.101, 7.950, 7.950.5, 7.951, 7.952, and 7.955; revise forms MC-350, MC-350(A-13b(5)), MC-350EX, MC-351, MC-355, MC-356, MC-357, and MC-358

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Judicial Council forms for court approval of minor's compromise: Recommend circulation of proposal to revise and consider renumbering the Judicial Council forms adopted for use in proceedings to approve the compromise of a claim on behalf of a minor or person with a disability and to order deposit or withdrawal of funds from a blocked account. Consider whether to recommend making some or all of these forms confidential to protect the identity of the child or the child's guardian ad litem.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
The chair of PMHAC, Judge Lee, recommends that this report be placed on the discussion agenda to highlight the council's efforts to promote access to justice for minors and persons with disabilities at a time when these vulnerable groups are receiving political attention. The revisions to the forms in this proposal address two bottlenecks in the process for approval of a compromise or settlement and securing the proceeds for a minor or person with a disability. First, the revisions clarify and request the information required for the court to approve a compromise or settlement. This change promotes the filing of complete initial petitions, thereby reducing the need to continue hearings so that the petitioner can amend or supplement the petition to provide the required information. Second, the revisions ensure that a request and order to deposit all or part of the proceeds in a blocked account use consistent and appropriate terminology. These revisions will reduce the frequency with which a bank refuses to open an account in the name of the petitioner, thereby reducing the frequency with which the petitioner needs to return to court to seek a clarifying order or orders. The revisions result in the minor or person with a disability receiving the proceeds of the compromise of settlement sooner by providing for a more efficient, but no less thorough, review and approval process.

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 24–25, 2020

Title
Rules and Forms: Approval of Compromise of Claim for Minor or Person With a Disability

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 3.1384, 7.101, 7.950, 7.950.5, 7.951, 7.952, and 7.955; revise forms MC-350, MC-350(A-13b(5)), MC-350EX, MC-351, MC-355, MC-356, MC-357, and MC-358

Recommended by
Probate and Mental Health Advisory Committee
Hon. Jayne C. Lee, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 12, 2020

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends revising eight forms used in proceedings to approve the compromise of a claim or action or the disposition of the proceeds of a judgment for a minor or person with a disability. The proposed revisions are needed to (1) clarify that the petitioner must disclose the full effect of the compromise on the legal and financial rights of others, including all insurers and medical service providers; (2) clarify that the petitioner is acting on behalf of the minor or person with a disability, especially when depositing the proceeds of the compromise or judgment in a blocked account; (3) clarify that an adult claimant who has the capacity to consent to an order approving a compromise, settlement, or disposition and does not have a conservator of the estate must give express consent to such an order; and (4) make clarifying revisions and technical corrections to the forms' titles, language, and format, as well as technical amendments to seven California Rules of Court that apply to these proceedings. The revisions and amendments will improve access to the courts for minors

and persons with disabilities, protect the interests of those persons, and allow prompt and secure distribution of the proceeds of settlements and judgments entered in their favor.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rules 3.1384, 7.101, 7.950, 7.950.5, 7.951, 7.952, and 7.955 of the California Rules of Court to update references to statutes, rules, and forms, clarify language, and make technical corrections;

2. Revise form MC-350 to change the title to *Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability,* clarify the instructions for using the form, provide for the possibility that the court has approved the petitioner's use of a pseudonym, clarify that the petitioner is acting in a representative capacity on behalf of the claimant, clarify that an adult claimant with capacity and without a conservator must give express consent to the requested orders and provide an opportunity for such a claimant to give consent, emphasize that petitioners must give the courts complete information about outstanding expenses and liens; and simplify language, update statutory references, and make technical corrections throughout;

3. Revise form MC-350(A-13b(5)) to change the title to *Additional Medical Service Providers Attachment to Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment,* renumber the form as MC-350(A-12b(5)) to reflect the renumbering of item 13 on form MC-350, clarify the instructions for using the form, and make technical corrections;

4. Revise form MC-350EX to change the title to *Petition for Expedited Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability,* clarify the instructions for using the form and the circumstances in which a petitioner must use form MC-350, provide for the possibility that the court has approved the petitioner's use of a pseudonym, clarify that the petitioner is acting in a representative capacity on behalf of the claimant, clarify that an adult claimant with capacity and without a conservator must give express consent to the requested orders and provide an opportunity for such a claimant to give consent, update statutory references, simplify language, and make technical corrections throughout;

5. Revise form MC-351 to change the title to *Order Approving Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability,* add a finding that an adult claimant with capacity has consented to the order, clarify the terms of the order to deposit funds from the proceeds in a blocked account, update statutory references, simplify language, and make technical corrections throughout;

6. Revise form MC-355 to change the title to *Order to Deposit Funds in Blocked Account* to be consistent with forms MC-356, MC-357, and MC-358; specify that the blocked account must be opened in the legal name of the petitioner acting in the petitioner's representative capacity on behalf of the minor or person with a disability; and update statutory references, simplify language, and make technical corrections throughout;

7. Revise form MC-356 to change the title to *Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account* to reflect the dual purpose of the acknowledgment of receipt under rule 7.953(a), update statutory references, simplify language, and make technical corrections throughout;

8. Revise form MC-357 to change the title to *Petition to Withdraw Funds From Blocked Account,* modify the references to parents to make them gender-neutral, update statutory references, simplify language, and make technical corrections throughout; and

9. Revise form MC-358 to change the title to *Order Authorizing Withdrawal of Funds From Blocked Account,* modify the language to be consistent with the other forms in this form set, update statutory references, simplify language, and make technical corrections throughout.

The text of the amended rules and the revised forms are attached at pages 10–40.[1]

Relevant Previous Council Action

Effective January 1, 2002, the Judicial Council adopted rules 7.950–7.954 of the California Rules of Court[2] and forms MC-350, MC-351, MC-355, MC-356, MC-357, and MC-358 for mandatory use in proceedings to approve requests to compromise claims of minors and persons with disabilities and order funds from the proceeds of the compromise or a judgment deposited in blocked accounts. The rules provide detailed guidance for persons seeking approval of so-called minors' compromises and handling funds in blocked accounts. The forms implement a uniform, statewide process to petition for the settlement of claims of minors and persons with disabilities and for dealing with blocked accounts.[3]

Effective January 1, 2005, the Judicial Council revised forms MC-350 and MC-351 to reflect the amendment of sections 3600–3604 and 3610–3612 of the Probate Code[4] and the addition of section 3613 to the code by Assembly Bill 1851 (Stats. 2004, ch. 67). The statutory amendments replaced the term "incompetent person" with "person with a disability," defined that term to

[1] The amendment to rule 3.1384 was not circulated for comment. The committee recommends the adoption of the amendment without circulation for comment as a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy. Cal. Rules of Court, rule 10.22(d)(2).

[2] All subsequent references to rules are to the California Rules of Court unless otherwise specified.

[3] Judicial Council of Cal., Advisory Com. Rep., *Minors' Compromises and Blocked Accounts: New Rules and Mandatory Forms* (Oct. 10, 2001), p. 2.

[4] All subsequent statutory references are to the Probate Code unless otherwise specified.

include persons with severe physical disabilities specified by federal law, and required that an adult claimant with a disability who nevertheless had capacity to consent to orders issued under sections 3600–3602, 3610, and 3611 and did not have a conservator of the estate give express consent to orders issued under those sections.[5]

Effective January 1, 2010, the Judicial Council adopted rule 7.950.5 and form MC-350EX to provide an expedited process for judicial approval of uncontroversial, low-value compromises or settlements for minors or persons with disabilities.[6] At the same time, the council completely revised form MC-350 and approved form MC-350(A-13b(5)) for optional use.

Analysis/Rationale

Since the last substantial revision of the forms addressed in this proposal, trial courts, judicial officers, attorneys, other stakeholders, and staff have identified three areas requiring significant revision. In addition, review of the forms by committee members and staff has identified additional necessary updates and other revisions, including simplifying the titles of the forms, updating statutory references, replacing misleading terms and phrases with simpler language, and using terms consistently across the form set. The committee also recommends minor amendments to the rules of court to conform to the revisions to the forms, update references to rules, clarify language, and make technical corrections.

Full disclosure of information required to approve compromise

The recommended revisions focus on three substantive areas. The first set of revisions responds to concerns raised by the trial courts that petitioners routinely fail to disclose all the information needed by the court to determine the adequacy of the proposed settlement or disposition to cover the claimant's medical expenses, especially outstanding expenses and liens against the proceeds of the settlement or judgment held by medical service providers or government insurance programs such as Medi-Cal. When presented with incomplete petitions, the courts must continue hearings until the petitioner provides all of the required information.

To address these concerns, the committee recommends revising form MC-350 to add language to renumbered item 12 (current item 13), which addresses medical expenses, to notify the petitioner more explicitly that the petitioner must completely disclose the effect of the compromise or settlement on the statutory and contractual lien rights of all parties, public and private insurers, and medical service providers. The revisions also allow the court and the petitioner to ensure that the terms of the proposed compromise, settlement, or disposition of proceeds address all the financial interests at stake, thereby reducing delays, and protecting claimants from unexpected demands by Medi-Cal or medical service providers. In addition, to avoid confusion, the

[5] Judicial Council of Cal., Advisory Com. Rep., *Proposal to Revise Petition to Approve Compromise of Claim and Order Approving Compromise of Claim* (Aug. 9, 2004), pp. 1–2.

[6] Judicial Council of Cal., Advisory Com. Rep., *Civil and Probate Practice and Procedure: Compromise of Minors' Claims, Settlement of Actions Involving Minors and Persons With Disabilities, and Disposition of Judgments in Favor of Minors and Persons With Disabilities* (Aug. 31, 2009), p. 8.

committee recommends revising forms MC-350(A-13b(5)) and MC-350EX to use language consistent with the revisions to form MC-350.

Clarification of petitioner's representative status

Second, courts, attorneys, and financial institutions have indicated that the use of technical and inconsistent terminology in the forms sometimes leads to confusion about whether the petitioner is acting in a representative capacity and in precisely which capacity. Item 1 on forms MC-350, MC-350EX, and MC-351 simply identifies the petitioner by name. The petitioner's legal relationship to the minor or person with a disability is identified separately, in item 3 on forms MC-350 and MC 351 and item 4 on form MC-350EX. To clarify from the outset the representative capacity in which the petitioner is acting and promote consistency among the forms, the committee recommends combining the petitioner's name and representative capacity into a single item—item 1 on forms MC-350 and MC-350EX, and item 2 on form MC-351—and using the same set of relationships on each form.

Courts and stakeholders also advised the committee that petitioners face frequent challenges when they try to open an account and deposit funds with financial institutions as ordered by the court. The petitioner or attorney must then seek one or more clarifying orders from the court. This process reduces the balance of the settlement or judgment available to the claimant and delays the availability of that balance.

The challenges arise from two main sources. First, the petitioner may be acting in one of several different representative capacities. Consistent with this possibility, item 19 on form MC-350 and item 20 on form MC-350EX (the petition forms) allow the petitioner to request an order authorizing the petitioner, without naming the petitioner's specific representative capacity, to deposit funds in a bank account subject to withdrawal only on further order of the court (a "blocked account"). But items 7c(2)(a) and 8a on the order granting the petition, form MC-351, order the funds paid and the blocked account opened in the name of the petitioner *as trustee* for the beneficiary.

Banks and other institutions often interpret this language narrowly to preclude petitioners acting in other authorized representative capacities, such as guardian of a minor's estate, from opening the required accounts. The committee therefore recommends replacing the narrow, technical term "as trustee" on form MC-351 with the broader expression "in the petitioner's representative capacity." The committee also recommends indicating wherever appropriate that the petitioner is acting in a representative capacity.

Another challenge arises because, while the order on form MC-351 requires the blocked account opened in the name of the petitioner in a representative capacity, current item 3 on form MC-355 requires the blocked account to be in the name of the claimant or beneficiary. Banks routinely decline to open these accounts in the name of the petitioner, as intended, because of the tension between these orders. The committee therefore proposes revising item 3 on form MC-355 to direct the account to be opened in the name of the petitioner in the petitioner's representative capacity and adding check boxes to indicate the specific representative capacity.

Provision for consent of adult claimant with capacity and without conservator

In the process of revising the petitions, forms MC-350 and MC-350EX, the committee determined that the notice of the required consent to the requested order by an adult claimant who had capacity to consent to the order and who did not have a conservator of the estate, should be moved from its current location, in the description of the petitioner, to the description of the claimant and clarifying the significance of the claimant's capacity to consent and lack of a conservator.[7] The committee also recommends adding a new item 21 to each petition form, to give a qualifying claimant the opportunity to consent to the requested order, and a new item 6 to the order for the court to find that the claimant has consented if that consent is required.

Finally, the committee recommends deleting from the petition forms the implicit invitation for the minor or person with a disability to act as the petitioner. This item, 3e on form MC-350 and 4e on form MC-350EX, was added, effective January 1, 2005, as a further response to AB 1851's consent requirement.[8] The addition, however, assumed a capacity exceeds that required to consent to an order.[9] Furthermore, the committee is not aware of circumstances in which a claimant would also be a petitioner in the approval process governed by these forms. A claimant with capacity to act as a petitioner could opt out of that process. If a claimant with a disability and the requisite capacity should nevertheless petition for court approval of a compromise or settlement, the petitioner/claimant could indicate that by checking "Other" in item 1 on either petition form and specifying "self" in the adjacent field.

Policy implications

The recommended form revisions and rule amendments promote at least three Judicial Council policy objectives—modernizing Judicial Council forms, improving the quality of justice and service to the public, and promoting access to the courts—by ensuring that the rules and forms reflect accurate legal information as clearly as possible to allow for more efficient judicial review and approval of the out-of-court resolution of disputes involving minors and persons with disabilities. The increased accuracy and efficiency will both protect the rights and interests of minors and persons with disabilities and allow the prompt and secure distribution of the proceeds of settlements and judgments in their favor.

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[7] See Prob. Code, § 3613 (added by Assem. Bill 1851 (Stats. 2004, ch. 67)).

[8] Judicial Council of Cal., Advisory Com. Rep., *supra* note 5, at p. 2. It is telling that no corresponding item was added to form MC-351, the order for granting the revised petitions.

[9] Legal capacity to make decisions is not an all-or-nothing proposition. Under Probate Code section 812, the governing statute, a person's capacity to make a decision depends on the person's ability to understand and appreciate the risks, benefits, and other consequences of the specific decision. A person may, therefore, have capacity to make relatively simple decisions but lack capacity to make more complex ones. See, e.g., *Marriage of Greenway* (2013) 217 Cal.App.4th 628, 639 ("the determination of a person's mental capacity is fact specific, and the level of required mental capacity changes depending on the issue at hand"). In the matter at hand, whether to consent to a proposed order can be framed as a simple decision; acting as the petitioner in a judicial proceeding is far more complex, requiring multiple strategic decisions. A person may, therefore, have the capacity to make the former decision, but lack the capacity to make the latter decision.

Comments

This proposal circulated for comment as part of the spring 2020 invitation-to-comment cycle, from April 10 through June 9, 2020, to the standard mailing list for rules and forms proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, self-help center staff, legal services attorneys, and other legal professionals. Of the six commenters who responded, three agreed with the proposal, one agreed if modified, and two did not indicate a position but expressed general agreement.[10] The committee also received informal internal comments from the Civil and Small Claims Advisory Committee (CSCAC), as well as ongoing feedback from the committee's expert, Judge David Belz of the Superior Court of Orange County. The following comments prompted discussion by the committee.

The CSCAC suggested that the committee revise forms MC-350, MC-305EX, and MC-351 to provide for the possible confidentiality of the name of the petitioner. Section 372.5 to the Code of Civil Procedure authorizes the trial court to appoint a person as a guardian ad litem under a pseudonym if certain requirements are met.[11] The committee recognizes the importance of protecting personal privacy when circumstances warrant and recommends revising item 1 on forms MC-350 and MC-350EX to indicate that the petitioner may, if previously authorized to proceed under a pseudonym, enter the pseudonym on the form.[12] The committee also considered whether more revisions were needed to keep sensitive information about a minor or other person confidential to the extent required by law. The committee determined, however, that existing mechanisms—for example, *Request to Keep Minor's Information Confidential* (form CH-165) and the associated forms adopted under section 527.6(v) of the Code of Civil Procedure—sufficiently protect the privacy of vulnerable litigants.

The CSCAC also suggested that the petitions, forms MC-350 and MC-350EX, be revised to provide an opportunity for the petitioner to indicate affirmatively that there are no governmental liens on the proceeds of the settlement or judgment. The committee agrees and recommends adding item 12b(5)(a)(i) to form MC-350 and item 13f(1) to form MC-350EX with a check box to indicate that there are no remaining statutory or contractual liens on the proceeds.

The Orange County Bar Association also made several suggestions. The first was to clarify that items 2e and 2f on forms MC-350 and MC-350EX, addressing whether the claimant has the capacity to consent to the requested order or has a conservator, apply only to adult claimants. The committee agrees and, as discussed above, recommends moving these items and clarifying the instructions to address this issue.

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[10] A chart with the full text of the comments received and the committee's responses is attached at pages 41–48.

[11] Section 372.5 was added by Assembly Bill 2185 (Stats. 2018, ch. 817, § 1).

[12] Before filing a petition as a guardian ad litem under a pseudonym, a person must apply for appointment as guardian ad litem on *Application and Order for Appointment of Guardian ad Litem—Civil* (form CIV-010) and, at the same time, file an ex parte request for leave to appear under a pseudonym. (Code Civ. Proc., § 372.5(b).)

The bar association also suggested clarifying whether item 12a(1) on form MC-350 requested the petitioner to list total medical expenses before or after any reductions. The committee recommends revising item 12a(1) to mirror item 13a on form MC-350EX. The latter item requires the petitioner to provide more comprehensive information about medical expenses, including the total expenses before reduction, the amount of any reduction, and the expenses after reduction that will be paid or reimbursed by the proceeds of the settlement. The additional information should make clear to the court whether the proposed settlement would be sufficient to cover all medical expenses paid or owed.

The bar association also recommended specifying more clearly on form MC-351 that a settlement check or draft be made payable to the petitioner *in the petitioner's representative capacity.* The committee recommends adding that phrase to form MC-351 where appropriate.

Alternatives considered

The committee considered not revising the forms in this proposal, but determined that the costs and delays caused by the current forms' lack of clarity required revisions to improve access to the courts, protect the interests of minors and persons with disabilities, and allow prompt and secure distribution of the proceeds of settlements and judgments in favor of minors and persons with disabilities.

The committee also considered changing the letter and number designation of these forms from MC-350, etc., to reduce the number of forms in the "MC" (miscellaneous) category. Four commenters responded to the committee's request for comment on this question. Three commenters—the Superior Court of Orange County, the Superior Court of San Diego County, and the Orange County Bar Association—indicated that the current numbering should be retained. The fourth commenter—commenting on behalf of both the Superior Court of Los Angeles County and the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee—while agreeing with the proposal, did suggest that the forms be renumbered and placed in a separate category without indicating a reason to do so.

The committee does not recommend changing the letter and number designation of these forms. A change seems more likely to cause than resolve any confusion. The correspondence of the forms' letter designation, MC, to the initials of the colloquial expression for the proceedings in which they are used, "minor's compromise"; the applicability of these proceedings to a miscellany of underlying proceedings; and the use of the forms by self-represented litigants all weigh in favor of retaining their current designation. At the suggestion of the Superior Court of Orange County, the committee has directed staff to explore the possibility of listing the forms in a separate group on the public website without changing their designation.

In response to the committee's further request, one commenter, again commenting on behalf of both the Superior Court of Los Angeles County and the JRS, indicated that the forms needed further revision to account for the requirements for establishing a special needs trust but did not suggest any specific revisions. Three commenters—the Superior Court of Orange County, the

Superior Court of San Diego County, and the Orange County Bar Association—indicated that no further revisions were needed to address those requirements. Because no necessary revisions have been identified, the committee does not recommend any revisions now to address special needs trusts. If resources permit, the committee will explore the issue further and, if it identifies any needed revisions, will propose them in a future rules and forms cycle.

Fiscal and Operational Impacts

Although the revisions may require courts to input the new form titles into their case management systems, they should not require entry of any new data elements. As the three courts and the JRS noted in their comments, the revisions will require staff training. None of these commenters objected to the need for training, however, and two courts, the Superior Court of Orange County and the Superior Court of San Diego County, agreed that the recommended revisions would lead to overall cost savings. The substantive revisions to forms MC-350 and MC-350EX are intended to promote complete and accurate disclosure of all the information needed for approval in the original petition. This disclosure will reduce continuances and protect the interests of the minor or person with a disability. The substantive revisions to forms MC-351 and MC-355 will reduce the need for multiple court orders by clarifying to a financial institution that a parent or other person named on the orders may open a blocked account in their representative capacity and deposit funds belonging to a minor or person with a disability without a further court order.

Attachments and Links

1. Cal. Rules of Court, rules 3.1384, 7.101, 7.950, 7.950.5, 7.951, 7.952, and 7.955, at pages 10–13
2. Forms MC-350, MC-350(A-12b(5)), MC-350EX, MC-351, MC-355, MC-356, MC-357, and MC-358, at pages 14–40
3. Chart of comments, at pages 41–48

Rules 3.1384, 7.101, 7.950, 7.950.5, 7.951, 7.952, and 7.955 of the California Rules of Court are amended, effective January 1, 2021, to read:

Rule 3.1384. Petition for approval of ~~the~~ compromise of ~~a~~ claim of ~~a~~ minor or ~~a~~ person with a disability; order for deposit of funds; and petition for withdrawal

(a) Petition for approval of ~~the~~ compromise of ~~a~~ claim

A petition for court approval of a compromise or covenant not to sue under Code of Civil Procedure section 372 must comply with rules 7.950 or 7.950.5, 7.951, and 7.952.

(b) * * *

Rule 7.101. Use of Judicial Council forms

(a) * * *

(b) Alternative mandatory forms

The following forms have been adopted by the Judicial Council as alternative mandatory forms for use in probate proceedings or other proceedings governed by provisions of the Probate Code:

(1)–(2) * * *

(3) *Petition ~~to Approve~~ for Approval of Compromise of ~~Disputed~~ Claim or ~~Pending~~ Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350) and ~~*Expedited Petition to Approve Compromise of Disputed Claim or Pending Action*~~ *Petition for Expedited Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX).

(c) * * *

Rule 7.950. Petition for ~~court~~ approval of ~~the~~ compromise of~~, or a covenant on, a disputed claim; a compromise or settlement of a pending~~ claim or action~~;~~ or ~~the~~ disposition of ~~the~~ proceeds of ~~a~~ judgment for minor or person with a disability

A petition for court approval of a compromise of, or a covenant not to sue or enforce judgment on, a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or the disposition of

the proceeds of a judgment for a minor or person with a disability under ~~chapter 4 of part 8 of division 4 of the~~ Probate Code ~~(commencing with~~ sections 3500 and 3600~~–3613)~~ or Code of Civil Procedure section 372 must be verified by the petitioner and must contain a full disclosure of all information that has any bearing ~~up~~on the reasonableness of the compromise, covenant, settlement, or disposition. Except as provided in rule 7.950.5, the petition must be ~~prepared~~ submitted on a ~~fully~~ completed *Petition ~~to Approve~~ for Approval of Compromise of ~~Disputed~~ Claim or ~~Pending~~ Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350).

Rule 7.950.5. ~~Expedited~~ Petition for expedited ~~court~~ approval of ~~the~~ compromise of~~, or a covenant on, a disputed claim; a compromise or settlement of a pending~~ claim or action~~;~~ or ~~the~~ disposition of ~~the~~ proceeds of ~~a~~ judgment for minor or person with a disability

(a) Authorized use of ~~expedited~~ petition for expedited approval

~~Notwithstanding the provisions of rule 7.950,~~ If all the circumstances specified in paragraphs (1) through (9) of this rule exist, a petitioner for court approval of a compromise of, or a covenant not to sue or enforce judgment on, a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or the disposition of the proceeds of a judgment for a minor or person with a disability under ~~chapter 4 of part 8 of division 4 of the~~ Probate Code ~~(commencing with~~ sections 3500 and 3600~~–3613)~~ or Code of Civil Procedure section 372 may~~, in the following circumstances, satisfy the information requirements of that rule by fully completing the *Expedited*~~ satisfy the disclosure requirements of rule 7.950 by submitting the petition on a completed *Petition ~~to Approve~~ for Expedited Approval of Compromise of ~~Disputed~~ Claim or ~~Pending~~ Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX)~~:~~.

(1)–(7) * * *

(8) The judgment for the minor or ~~disabled~~ claimant with a disability (exclusive of interest and costs) or the total amount payable to the minor or ~~disabled~~ claimant with a disability and all other parties under the proposed compromise or settlement is $50,000 or less or, if greater:

(A) The total amount payable to the minor or ~~disabled~~ claimant with a disability represents payment of the individual-person policy limits of all liability insurance policies covering all proposed contributing parties; and

(B) All proposed contributing parties would be substantially unable to discharge an adverse judgment on the ~~minor's or disabled person's~~ claim from assets other than the proceeds of their liability insurance policies; and

(9) The court does not otherwise order~~;~~.

(b) Determination of ~~expedited~~ petition

~~An expedited~~ A petition for expedited approval must be determined by the court not more than 35 days after it is filed, unless a hearing is requested, required, or scheduled under (c), or the time for determination is extended for good cause by order of the court.

(c) Hearing on ~~expedited~~ petition

(1) The ~~expedited~~ petition for expedited approval must be determined by the court without a hearing unless:

(A) A hearing is requested by the petitioner at the time the ~~expedited~~ petition is filed~~;~~;

(B) An objection or other opposition to the petition is filed by an interested party~~;~~; or

(C) A hearing is scheduled by the court under (2) or (3).

(2) The court may, on its own motion, elect to schedule and conduct a hearing on ~~an expedited~~ a petition for expedited approval. The court must make its election to schedule the hearing and must give notice of its election and the date, time, and place of the hearing to the petitioner and all other interested parties not more than 25 days after the date the ~~expedited~~ petition is filed.

(3) If the court decides not to grant ~~an expedited~~ a petition for expedited approval in full as requested, it must schedule a hearing and give notice of its intended ruling and the date, time, and place of the hearing to the petitioner and all other interested parties within the time provided in (2).

Rule 7.951. Disclosure of ~~the~~ attorney's interest in ~~a~~ petition ~~to~~ for approval of compromise ~~a~~ of claim

If the petitioner has been represented or assisted by an attorney in preparing the petition ~~to~~ for approval of the compromise of the claim or in any other respect with regard to the claim, the petition must disclose the following information:

(1)–(6) * * *

Rule 7.952. Attendance at hearing on ~~the~~ petition ~~to~~ for approval of compromise ~~a~~ of claim

(a) Attendance of ~~the~~ petitioner and claimant

The person petitioning for approval of the ~~compromising~~ compromise of the claim on behalf of the minor or person with a disability and the minor or person with a disability must attend the hearing on the ~~compromise of the claim~~ petition unless the court for good cause dispenses with their personal appearance.

(b) Attendance of ~~the~~ physician and other witnesses

~~At the hearing,~~ The court may require the presence and testimony of witnesses, including the attending or examining physician, at the hearing.

Rule 7.955. Attorney's fees for services to ~~a~~ minor or ~~a~~ person with a disability

(a)–(d) * * *

Advisory Committee Comment

This rule requires the court to approve and allow attorney's fees in an amount that is reasonable under all the facts and circumstances, under Probate Code section 3601. The rule is declaratory of existing law concerning attorney's fees under a contingency fee agreement when the fees must be approved by the court. The facts and circumstances that the court may consider are discussed in a large body of decisional law under section 3601 and under other statutes that require the court to determine reasonable attorney's fees. The factors listed in rule 7.955(b) are modeled in part after those provided in rule ~~4-200~~ 1.5 of the Rules of Professional Conduct of the State Bar of California concerning an unconscionable attorney's fee, but the advisory committee does not intend to suggest or imply that an attorney's fee must be found to be unconscionable under rule ~~4-200~~ 1.5 to be determined to be unreasonable under this rule.

* * *

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO. :	
EMAIL ADDRESS:		
ATTORNEY FOR (*Name*):		

DRAFT
Not approved by the Judicial Council

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

CASE NAME:	CASE NUMBER:

PETITION FOR APPROVAL OF COMPROMISE OF CLAIM OR ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR PERSON WITH A DISABILITY

HEARING DATE:	
DEPT:	TIME:

NOTICE TO PETITIONER

Except as noted below, you must use this form to request court approval of (1) the compromise of a minor's disputed claim, (2) the compromise or settlement of a pending action or proceeding to which a minor or a person with a disability (including a conservatee) is a party, or (3) the disposition of the proceeds of a judgment awarded to a minor or a person with a disability. (See Code Civ. Proc., § 372; Prob. Code, §§ 3500, 3600–3613.)

Both you and the minor or person with a disability must attend the hearing on this petition unless the court dispenses with a personal appearance. The court may require the presence and testimony of witnesses, including the attending or examining physician, and the presentation of other evidence relating to the claim and the nature and extent of the injury, care, treatment, and hospitalization.

The court has authority to consider a request for expedited approval without a hearing of the compromise of certain claims or actions or the disposition of the proceeds of certain judgments. To determine whether your claim, action, or judgment qualifies, see Cal. Rules of Court, rule 7.950.5. If you want to request expedited consideration, you must use form MC-350EX.

1. **Petitioner** *(name or pseudonym*):*
   is the *(check all boxes that apply):* ☐ Parent ☐ Guardian ad litem* ☐ Guardian ☐ Conservator
   ☐ Other *(specify relationship):*
   of the claimant identified in item 2. *(*Petitioner may appear under a pseudonym only if appointed as guardian ad litem under that pseudonym. (See Code Civ. Proc., § 372.5.))*

2. **Claimant** *(name):*
   a. Address:
   b. Date of birth: c. Age: d. ☐ Minor or ☐ Person with a disability
   (If the claimant is an adult with a disability who (1) has capacity to consent to the order requested and (2) does not have a conservator of the estate, check e. and f. and ensure that the claimant personally reads and signs item 21. (Prob. Code, § 3613.))
   e. ☐ Has the capacity, within the meaning of Probate Code section 812, to consent to the requested order or judgment.
   f. ☐ Does not have a conservator of the estate.

3. **Claim** The claim of the minor or adult person with a disability *(check one):*
   a. ☐ Is not the subject of a pending action or proceeding. *(Complete items 4–23.)*
   b. ☐ Is the subject of a pending action or proceeding that will be compromised or settled without a trial. *(Complete items 4–23.)*
      Name of court:
      Case no.: Trial date:
   c. ☐ Is the subject of an action or proceeding in which a judgment has been or will be entered for the claimant against the defendants named below in the amount (excluding interest and costs) of *(specify total):* $ _____.
      Defendants *(names):*

      ☐ Additional defendants listed on Attachment 3.
      ☐ The judgment was filed on *(date):*
   (Attach a copy of the (proposed) judgment as Attachment 3c and complete items 12–23.)

Form Adopted for Alternative Mandatory Use
Instead of Form MC-350EX
Judicial Council of California
MC-350 [Rev. January 1, 2021]

Code of Civil Procedure, § 372;
Probate Code, §§ 3500, 3600–3613;
Cal. Rules of Court, rules 3.1384, 7.101, 7.950–7.952
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. **Incident or accident** The incident or accident occurred as follows:
   a. Date and time:
   b. Place:
   c. Persons involved *(names):*

   ☐ Continued on Attachment 4.

5. **Nature of incident or accident**
   The facts, events, and circumstances of the incident or accident are *(describe what happened):*

   ☐ Continued on Attachment 5.

6. **Injuries**
   The following injuries were sustained by the claimant as a result of the incident or accident *(describe):*

   ☐ Continued on Attachment 6.

7. **Treatment**
   The claimant received the following care and treatment for the injuries described in item 6 *(describe):*

   ☐ Continued on Attachment 7.

8. **Extent of injuries and recovery** *(An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's current condition, must be attached to this petition as Attachment 8. A new report is not necessary if a previous report accurately describes the claimant's current condition.)*
   a. ☐ The claimant has recovered completely from the effects of the injuries described in item 6, and there are no permanent injuries.
   b. ☐ The claimant has not recovered completely from the effects of the injuries described in item 6, and the following injuries from which the claimant has not recovered are temporary *(describe the remaining temporary injuries):*

      ☐ Continued on Attachment 8b.
   c. ☐ The claimant has not recovered completely from the effects of the injuries described in item 6, and the following injuries from which the claimant has not recovered are permanent *(describe the permanent injuries):*

      ☐ Continued on Attachment 8c.

CASE NAME:	CASE NUMBER:

9. ☐ **Petitioner has made a careful and diligent inquiry and investigation into the facts and circumstances of the incident or accident in which the claimant was injured; the responsibility for the incident or accident; and the nature, extent, and seriousness of the claimant's injuries. Petitioner understands that if the compromise proposed in this petition is approved by the court and consummated, the claimant will never be able to recover any more compensation from the settling defendants named below even if the claimant's injuries turn out to be more serious than they now appear.**

10. **Amount and terms of settlement**

To settle the claim in item 3a or 3b, the defendants named below have offered to pay the following amounts to the claimant:

a. The total amount offered by all defendants named below is *(specify):* $ _____

b. The defendants and amounts offered by each are as follows *(specify):*

Defendants *(names)*	Amounts
	$
	$
	$
	$
	$

☐ Defendants and amounts offered continued on Attachment 10b.

c. The terms of settlement are as follows *(if the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included):*

☐ Continued on Attachment 10c.

11. **Settlement payments to others**

a. ☐ No defendant named in item 10b has offered to pay money to any person or persons other than the claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.

b. ☐ To settle claims arising out of the same incident or accident that resulted in the claimant's injury, one or more defendants named in item 10b have also offered to pay money to a person or persons other than claimant.

(1) The total amount offered by all defendants to others is *(specify):* $

(2) Petitioner ☐ does not have ☐ has a claim against the recovery of the claimant (other than for reimbursement of fees or expenses paid by petitioner and listed under item 14).
(If you answered "has," explain in Attachment 11b(2) the circumstances and the effect your claim has on the proposed compromise of the claim described in this petition.)

(3) Petitioner ☐ is not ☐ is a plaintiff in the same action with the claimant.
(If you answered "is," explain in Attachment 11b(3) the circumstances and the effect your claim and its disposition has on the proposed compromise of the claim or action described in this petition.)

(4) ☐ Petitioner would receive money under the proposed settlement.

(5) The settlement payments are to be apportioned and distributed as follows:

Other plaintiffs or claimants *(names)*	Amounts
	$
	$
	$
	$

☐ Additional plaintiffs or claimants and amounts are listed on Attachment 11b(5).

(6) Reasons for the apportionment of the settlement payments between the claimant and each other plaintiff or claimant named above are specified in Attachment 11b(6).

CASE NAME:	CASE NUMBER:

12. **The claimant's medical expenses—including medical expenses paid by petitioner, Medicare, Medi-Cal, and private insurers—to be paid or reimbursed from proceeds of settlement or judgment**

a. **Totals**

(1) Total medical expenses before any reductions: $

(2) Total medical expenses paid (include payments by private insurance, Medi-Cal, or Medicare): ($)

(3) Total of negotiated, contractual, or statutory reductions, if any: ($)

(4) Total medical expenses to be paid or reimbursed from the proceeds: $

(5) Total amount of statutory or contractual liens, if any: $

b. Medical expenses were paid and are to be reimbursed from the proceeds as follows:

(1) ☐ Paid by petitioner in the amount of: $_____

(2) ☐ Paid by private health insurance or a self-funded plan under:

(a) ☐ An Employee Retirement Income Security Act (ERISA) insured plan.

(b) ☐ An ERISA self-funded plan.

(c) ☐ A Non-ERISA insured plan.

(d) ☐ A Non-ERISA self-funded plan.

(e) Amount paid by plan: $

(f) Amount of reimbursement to the plan from the proceeds of the settlement or judgment:

(i) ☐ No reimbursement is requested by the plan.

(ii) ☐ Reimbursement is to be made to the plan, and:

(A) ☐ There is a contractual reduction of: ($),

(B) ☐ There is a negotiated reduction of: ($),

(C) ☐ No reduction has been agreed to,

for a **total reimbursement** to the plan, in full satisfaction of its lien rights, in the amount of: $_____

(3) ☐ Paid by Medicare in the amount of: $

less the statutory reduction in the amount of: ($)

for a **total reimbursement** to Medicare in the amount of: $_____

(Attach a copy of the final Medicare demand letter or letter agreement as Attachment 12b(3).)

(4) ☐ Paid by Medi-Cal in the amount of: $

(a) ☐ Notice of this claim or action has been given to the Director of Health Care Services. (Welf. & Inst. Code, § 14124.73.) A copy of the notice and proof of delivery:

☐ is attached ☐ was filed in this case on *(date):* .

(b) ☐ Notice of this claim or action has **not** been given to the Director of Health Care Services. *(Explain why notice has not been given in Attachment 12b(4)(b).)*

(c) ☐ In full satisfaction of its lien rights, Medi-Cal has agreed to accept **reimbursement** in the amount of: $_____

(Attach a copy of the final Medi-Cal demand letter or letter agreement as Attachment 12b(4)(c).)

(d) ☐ Petitioner is entitled to a reduction of the Medi-Cal lien under Welfare and Institutions Code section 14124.76 and *(check one):*

(i) ☐ Is filing a motion seeking a reduction of the lien concurrently with this petition.

(ii) ☐ Requests that the court reserve jurisdiction over this issue.

The amount of the lien in dispute is: $

(5) (a) (i) ☐ There are no statutory or contractual liens for payment of claimant's medical expenses.

(ii) ☐ There are one or more statutory or contractual liens of medical service providers for payment of claimant's medical expenses. The total amount claimed under these liens is: $

In full satisfaction of their lien claims, the lienholders have agreed to accept the sum of: $_____

(Provide requested information for each lienholder and other specified medical service providers on next page.)

CASE NAME:	CASE NUMBER:

12. **Claimant's medical expenses** (continued)

b. (5) (b) The name of each medical service provider that furnished care and treatment to claimant and (1) has a lien for all or any part of the charges or (2) was paid (or will be paid from the proceeds) by petitioner, for which payment petitioner requests reimbursement; the amounts charged and paid; the amount of negotiated reductions of charges, if any; and the amount to be paid from the proceeds of the settlement or judgment to each provider are as follows:

(i) (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $_____

(ii) (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $_____

(iii) (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $_____

☐ Continued on Attachment 12b(5). *(Provide information about additional providers in the above format, including providers paid or to be paid by petitioner, for which payment reimbursement is requested in item 12b(1), above. You may use form MC-350(A-12b(5)) for this purpose.)*

13. **Claimant's attorney's fees and all other expenses (except for medical expenses), including expenses advanced by claimant's attorney or paid or incurred by petitioner, to be reimbursed from proceeds of settlement or judgment**

a. Total amount of attorney's fees for which court approval is requested: $_____
(If fees are requested, attach as Attachment 13a a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in rule 7.955(b) of the Cal. Rules of Court. Respond to item 17a(2) on page 7 and attach a copy of any written attorney fee agreement as Attachment 17a.)

b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid out of claimant's share of the proceeds of the settlement or judgment:

Items	Payees *(names)*	Amounts
		$
		$
		$
		$
		$
		$
		$
		$

☐ Continued on Attachment 13b. Total: $_____

CASE NAME:	CASE NUMBER:

14. Reimbursement of fees and expenses paid by petitioner

a. ☐ Petitioner has paid none of the fees or expenses listed in items 12 and 13 for which reimbursement is requested.

b. ☐ Petitioner has paid (or become obligated to pay) the following total amounts of the claimant's fees and expenses for which reimbursement is requested.

(1) ☐ Medical expenses listed in item 12: $

(2) ☐ Attorney's fees included in the total fee amount shown in item 13a: $

(3) ☐ Other expenses included in the total shown in item 13b: $

Total: $_____

(Attach proofs of the fees and expenses incurred and the payments made or obligations to pay incurred, e.g., bills or invoices, canceled checks, credit card statements, explanations of benefits from insurers, etc.)

15. Net balance of proceeds for the claimant

The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment of all requested fees and expenses is: $_____

16. SUMMARY

a. Gross amount of proceeds of settlement or judgment:		$
b. Medical expenses to be paid from proceeds of settlement or judgment:	$	
c. Attorney's fees to be paid from proceeds of settlement or judgment:	$	
d. Expenses (other than medical) to be paid from proceeds of settlement or judgment:	$_____	
e. Total fees and expenses to be paid from proceeds of settlement or judgment *(add (b), (c), and (d)):*		($_____)
f. Balance of proceeds of settlement or judgment available for claimant after payment of all fees and expenses *(subtract (e) from (a)):*		$_____

CASE NAME:	CASE NUMBER:

17. Information about attorney representing or assisting petitioner

a. (1) ☐ Petitioner has not been represented or assisted by an attorney in preparing this petition or in any other way with respect to the claim asserted. *(Skip the rest of item 17 and go to item 18.)*

(2) ☐ Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted. Petitioner and the attorney ☐ do not ☐ do have an agreement for services provided in connection with the claim giving rise to this petition.
(If you answered "do," attach a copy of the agreement as Attachment 17a, and complete items 17b–17f.)

b. The attorney who has represented or assisted petitioner is *(name):*

(1) State Bar number:
(2) Law firm:
(3) Address:

(4) Telephone number: (5) Email:

c. The attorney ☐ has not ☐ has received attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition. *(If you answered "has," identify the person who paid the fees or other compensation, the amounts paid, and the dates of payment):*

From whom *(names)*	Amounts	Dates
	$	
	$	
	$	
	$	
	$	

☐ Continued on Attachment 17c.

d. The attorney ☐ did not ☐ did become concerned with this matter, directly or indirectly, at the instance of a party against whom the claim is asserted or a party's insurance carrier. *(If you answered "did," explain the circumstances in Attachment 17d.)*

e. The attorney ☐ is not ☐ is representing or employed by any other party or any insurance carrier involved in the matter. *(If you answered "is," identify the party or carrier and explain the relationship in Attachment 17e.)*

f. The attorney ☐ does not ☐ does expect to receive attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition. *(If you answered "does," identify the person who will pay the fees or other compensation, the amounts to be paid, and the expected dates of payment):*

From whom *(names)*	Amounts	Expected dates
	$	
	$	
	$	
	$	
	$	

☐ Continued on Attachment 17f.

CASE NAME:	CASE NUMBER:

18. **Disposition of balance for claimant** *(check either a or b, then check each option requested and enter amount(s)):*

a. ☐ There **is** a guardianship of the estate of the minor or a conservatorship of the estate of the adult person with a disability filed in *(name of court):*
Case no.:

(1) ☐ Petitioner requests that $ of the proceeds in money or other property be paid or delivered to the guardian or the conservator of the estate. The money or other property is specified in Attachment 18a(1).

(2) ☐ Petitioner is the guardian or conservator of the estate of the minor or the adult person with a disability. Petitioner requests authority to deposit or invest $ of the money or other property to be paid or delivered under 18a(1) in insured accounts in one or more financial institutions in this state or with a trust company, subject to withdrawal only on authorization of the court. The money or other property and the name, branch, and address of each financial institution or trust company are specified in Attachment 18a(2).

(3) ☐ Petitioner proposes that all or a portion of the proceeds **not** become part of the guardianship or conservatorship estate. Petitioner requests authority to deposit or transfer these proceeds as follows *(check all that apply):*

(a) ☐ $ to be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only on authorization of the court. The name, branch, and address of each depository are specified in Attachment 18a(3)(a).

(b) ☐ $ to be invested in a single-premium deferred annuity subject to withdrawal only on authorization of the court. The terms and conditions of the annuity are specified in Attachment 18a(3)(b).

(c) ☐ $ to be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the property to be transferred are specified in Attachment 18a(3)(c).

(d) ☐ $ to be transferred to the trustee of a trust that is either created by or approved in the order approving the settlement or judgment for the minor. This trust is revocable when the minor reaches 18 years of age and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the property to be transferred are specified in Attachment 18a(3)(d).
☐ A copy of the (proposed) judgment is attached as Attachment 3c.

(e) ☐ $ to be transferred to the trustee of a special needs trust under Probate Code section 3604 for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the property to be transferred are specified in Attachment 18a(3)(e).

b. ☐ There is **no** guardianship or conservatorship of the estate of the claimant. Petitioner requests that the court order the disposition of the balance of the proceeds of the settlement or judgment as follows *(check each option requested):*

(1) ☐ A guardian of the estate of the minor or a conservator of the estate of the adult person with a disability be appointed and $ of money or other property or both be paid or delivered to the person so appointed. The money or other property are specified in Attachment 18b(1).

(2) ☐ $ be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only on authorization of the court. The name, branch, and address of each depository are specified in Attachment 18b(2).

(3) ☐ $ be invested in a single-premium deferred annuity, subject to withdrawal only on authorization of the court. The terms and conditions of the annuity are specified in Attachment 18b(3).

(4) ☐ $ be paid or transferred to the trustee of a special needs trust under Probate Code section 3604 for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the money or other property to be paid or transferred are specified in Attachment 18b(4).

(5) ☐ $ be paid or delivered to a parent of the minor, without bond, on the terms and under the conditions specified in Probate Code sections 3401–3402. The name and address of the parent and the money or other property to be delivered are specified in Attachment 18b(5). *(Value of minor's entire estate, including the money or property to be delivered, must not exceed $5,000.)*

(6) ☐ $ be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the money or other property to be transferred are specified in Attachment 18b(6).

CASE NAME:	CASE NUMBER:

18. **Disposition of balance of proceeds of settlement or judgment** (continued)

b. ☐ There is **no** guardianship or conservatorship of the estate of the claimant. Petitioner requests that the court order the disposition of the balance of the proceeds of the settlement or judgment as follows *(check each option requested):*

(7) ☐ $ be transferred to the trustee of a trust that is either created by or approved in the order approving the settlement or judgment for the minor. This trust is revocable when the minor reaches 18 years of age, and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the money or other property to be transferred are specified in Attachment 18b(7).
☐ A copy of the (proposed) judgment is attached as Attachment 3c.

(8) ☐ $ of money be held on any conditions the court determines are in the best interest of the minor or the adult person with a disability. The proposed conditions are specified on Attachment 18b(8). *(Amount must not exceed $20,000.)*

(9) ☐ $ of property other than money be held on the conditions that the court determines are in the best interest of the minor or the adult person with a disability. The proposed conditions and the property are specified in Attachment 18b(9).

(10) ☐ $ be deposited with the county treasurer of the County of *(name):*
The deposit is authorized under and subject to the conditions specified in Probate Code section 3611(h).

(11) ☐ $ be paid or delivered to the adult person with a disability. The money or other property is specified in Attachment 18b(11).

19. ☐ **Statutory liens for special needs trust**
Petitioner requests an order for payment of funds to a special needs trust *(explain how statutory liens under Probate Code section 3604, if any, will be satisfied):*

☐ Continued on Attachment 19.

20. ☐ **Additional orders**
Petitioner requests the following additional orders *(specify and explain):*

☐ Continued on Attachment 20.

CASE NAME:	CASE NUMBER:

21. ☐ I, the claimant named in item 2, consent to the order or judgment requested in this petition.
(Required if the claimant is an adult with a disability who has the capacity, under Probate Code section 812, to consent to the order or judgment and does not have a conservator of the estate. (See Prob. Code, § 3613.))

Date:

(TYPE OR PRINT NAME OF CLAIMANT) ▶ (SIGNATURE OF CLAIMANT)

22. Petitioner recommends approval of the proposed compromise, settlement, or disposition of judgment proceeds to the court as fair, reasonable, and in the best interest of the claimant. Petitioner requests that the court approve this compromise, settlement, or disposition and make any other orders that are just and reasonable.

23. Number of pages attached: _____

Date:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing information on this form and all attachments is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER) ▶ (SIGNATURE OF PETITIONER)

CASE NAME:	CASE NUMBER:

ADDITIONAL MEDICAL SERVICE PROVIDERS ATTACHMENT TO PETITION FOR APPROVAL OF COMPROMISE OF CLAIM OR ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT

If you are using form MC-350 to petition for court approval of the compromise of a claim or action or the disposition of the proceeds of a judgment for a minor or person with a disability, you must provide complete information, in item 12b(5) of form MC-350, about any medical service providers that (1) have liens for payment of charges for medical services provided to the minor or person with a disability or (2) you paid (or will pay from the proceeds), for which payment you request reimbursement from the proceeds of the compromise or judgment. If you don't have enough room on form MC-350, you may use one or more copies of this form to provide the required information about additional medical service providers.

Attachment 12b(5) to form MC-350

12\. b. (5) (b) Each medical service provider that furnished care and treatment to claimant and (1) has a lien for all or any part of the charges or (2) was paid (or will be paid from the proceeds) by petitioner, for which payment petitioner requests reimbursement; the amounts charged and paid; the amount of negotiated reductions of charges, if any; and the amount to be paid from the proceeds of the settlement or judgment to each provider are as follows:

___(A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $________________

___(A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $________________

___(A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $________________

___(A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): ($)
(E) Negotiated reduction, if any: ($)
(F) Amount to be paid from proceeds of settlement or judgment: $________________

Page _____ **of** _____ attached pages

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*Name*):		**DRAFT** **Not approved by the Judicial Council** **v12 072020 cs**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		CASE NUMBER:
PETITION FOR EXPEDITED APPROVAL OF COMPROMISE OF CLAIM OR ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR PERSON WITH A DISABILITY		☐ No hearing date is requested. ☐ HEARING DATE: DEPT.: TIME:

NOTICE TO PETITIONER

You must use this form to request expedited court approval of a qualifying (1) compromise of a minor's disputed claim, (2) compromise of a pending action or proceeding in which a minor or a person with a disability (including a conservatee) is a party, or (3) disposition of the proceeds of a judgment for a minor or person with a disability. (See Code Civ. Proc., § 372; Prob. Code, §§ 3500, 3600–3613.) You may request expedited approval ***only if*** (1) you are represented by an attorney; (2) the statements in items 3a, 3b, 3c, 3d, 3e, 3f, and either 3g(1) or 3g(2), below, are true and accurate; and (3) the court does not otherwise order.

If your compromise or judgment qualifies and you choose to use this form, the court may consider and act on your petition without a hearing. If your compromise or judgment qualifies for expedited consideration but you choose not to use this form or your compromise or judgment does not qualify for expedited consideration, you must use *Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350), and the court will schedule a hearing.

1. **Petitioner** *(name or pseudonym*):*
   is the *(check all boxes that apply):* ☐ Parent ☐ Guardian ad litem* ☐ Guardian ☐ Conservator
   ☐ Other *(specify relationship):*
   of the claimant identified in item 2. *(*Petitioner may appear under a pseudonym only if appointed as guardian ad litem under that pseudonym. (See Code Civ. Proc., § 372.5.))*
2. **Claimant** *(name):*
   a. Address:
   b. Date of birth: c. Age: d. ☐ Minor or ☐ Person with a disability
   (If the claimant is an adult with a disability who (1) has capacity to consent to the order requested and (2) does not have a conservator of the estate, check e. and f. and ensure that the claimant personally reads and signs item 21. (Prob. Code, § 3613.))
   e. ☐ Has the capacity, within the meaning of Probate Code section 812, to consent to the requested order.
   f. ☐ Does not have a conservator of the estate.
3. **Qualification for Expedited Approval**
   a. The claimant's claim or action is **not** for damages for the death of a person caused by the wrongful act or neglect of another.
   b. No portion of the net proceeds of the judgment or settlement in favor of the claimant is to be placed in a trust.
   c. There are no unresolved disputes concerning liens to be satisfied from the proceeds of the judgment or settlement.
   d. Petitioner's attorney did not become involved with this matter, directly or indirectly, at the request of a party against whom the claim is asserted or a party's insurance carrier.
   e. Petitioner's attorney is not representing, employed by, or associated with a defendant in this matter or an insurance carrier.
   f. All defendants that have appeared in a pending action on the claim are participating in the proposed compromise **or** the court has made a final determination that all settling parties entered into the settlement in good faith.
   g. (1) ☐ The judgment described in item 4c (exclusive of interest and costs) or the total settlement described in items 11 and 12 payable to the claimant and all other persons named in item 12 is in the amount of $50,000 or less; or
      (2) ☐ The settlement described in item 11 represents payment of the single-person policy limits of all liability insurance policies covering the defendants named in that item. The investigation described in Attachment 3 shows that all of those defendants are judgment-proof outside of their insurance coverage. *(Describe investigation and results in Attachment 3.)*

Form Adopted for Alternative Mandatory Use
Instead of Form MC-350
Judicial Council of California
MC-350EX [Rev. January 1, 2021]

Code of Civil Procedure, § 372;
Probate Code, §§ 3500, 3600–3613;
Cal. Rules of Court, rules 3.1384, 7.101, 7.950, 7.950.5, 7.951
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. **Claim** The claim of the minor or adult person with a disability:
   a. ☐ Is not the subject of a pending action or proceeding. *(Complete items 5–23.)*
   b. ☐ Is the subject of a pending action or proceeding that will be compromised without a trial. *(Complete items 5–23.)*
      Name of court:
      Case no.: Trial date:
   c. ☐ Is the subject of an action or proceeding in which a judgment has been or will be entered for the claimant against the defendants named below in the amount (exclusive of interest and costs) of *(specify):* $

      Defendants *(names:*

      ☐ Additional defendants listed on Attachment 4. ☐ The judgment was filed on *(date):*
      (Attach a copy of the (proposed) judgment as Attachment 4c and complete items 13–23.)

5. **Incident or accident** The incident or accident occurred as follows:
   a. Date: Time:
   b. Place:
   c. Persons involved *(names):*

   ☐ Additional persons listed on Attachment 5.

6. **Nature of incident or accident**
   The facts, events, and circumstances of the incident or accident are *(describe what happened):*

   ☐ Continued on Attachment 6.

7. **Injuries**
   The following injuries were sustained by the claimant as a result of the incident or accident *(describe):*

   ☐ Continued on Attachment 7.

8. **Treatment**
   The claimant received the following care and treatment for the injuries described in item 7 *(describe):*

   ☐ Continued on Attachment 8.

CASE NAME:	CASE NUMBER:

9. **Extent of injuries and recovery** *(An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's current condition, must be attached to this petition as Attachment 9. A new report is not necessary if a previous report accurately describes the claimant's current condition.)*
   a. ☐ The claimant has recovered completely from the effects of the injuries described in item 7, and there are no permanent injuries.
   b. ☐ The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are temporary *(describe the remaining temporary injuries):*

      ☐ Continued on Attachment 9b.
   c. ☐ The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are permanent *(describe the permanent injuries):*

      ☐ Continued on Attachment 9c.

10. ☐ **Petitioner has made a careful and diligent inquiry and investigation into the facts and circumstances of the incident or accident in which the claimant was injured; the responsibility for the incident or accident; and the nature, extent, and seriousness of the claimant's injuries. Petitioner understands that if the compromise proposed in this petition is approved by the court and consummated, the claimant will never be able to recover any more compensation from the settling defendants named below even if the claimant's injuries turn out to be more serious than they now appear.**

11. **Amount and terms of settlement**
   To settle the claim in 4a or 4b, the defendants named below have offered to pay the following amounts to the claimant:
   a. The total amount offered by all defendants named below is *(specify):* $
   b. The defendants and amounts offered by each are as follows *(specify):*

Defendants *(names)*	Amounts
	$
	$
	$
	$

      ☐ Additional defendants and amounts offered are listed on Attachment 11b.
   c. The terms of settlement are described on Attachment 11c. *(If the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included.)*

12. **Settlement payments to others**
   a. ☐ No defendant named in item 11b has offered to pay money to any person or persons other than the claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.
   b. ☐ One or more of the defendants named in item 11b have also offered to pay money to a person or persons other than claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.
      (1) The total amount offered by all defendants to others is *(specify):* $
      (2) ☐ Petitioner would receive money under the proposed settlement.
      (3) The settlement payments are to be apportioned and distributed as follows:

Other plaintiffs or claimants *(names)*	Amounts
	$
	$
	$
	$

      ☐ Additional plaintiffs or claimants and amounts are listed on Attachment 12.
      (4) ☐ The settlement payments are apportioned between the claimant and each other plaintiff or claimant named above on a pro rata basis, based upon the special damages claimed by each. The special damages claimed by each other plaintiff or claimant are specified on Attachment 12.
      (5) ☐ Reasons for the apportionment of the settlement payments between the claimant and each other plaintiff or claimant named above are specified on Attachment 12.

CASE NAME:	CASE NUMBER:

13. **Claimant's *medical expenses*—including expenses paid by petitioner, Medicare, Medi-Cal, and private insurers—that are to be paid or reimbursed from the proceeds of the settlement or judgment**

a. **Totals**

(1) Total medical expenses before any reductions: $

(2) Total medical expenses paid (include payments by private insurance, Medi-Cal, or Medicare): ($)

(3) Total of negotiated, contractual, or statutory reductions, if any: ($)

(4) Total amount of medical expenses to be paid or reimbursed from proceeds: $

(5) Total amount of statutory or contractual liens, if any: $

(Identify each medical expense payer and the amount each paid, and explain any differences between items 13a(1), (4), and (5) in Attachment 13a.)

b. (1) ☐ None of the claimant's medical expenses have been paid by Medicare.

(2) ☐ Medicare paid some or all of claimant's medical expenses. In full satisfaction of its lien rights, Medicare will be reimbursed in the amount of: $

(Attach a copy of the final Medicare demand letter or letter agreement as Attachment 13b(2).)

c. (1) ☐ None of the claimant's medical expenses have been paid by Medi-Cal.

(2) ☐ Medi-Cal paid some or all of claimant's medical expenses.

(a) Notice of this claim or action has been given to the Director of Health Care Services. (Welf. & Inst. Code, § 14124.73.) A copy of the notice and proof of delivery ☐ is attached ☐ was filed in this matter on *(date):*

(b) In full satisfaction of its lien rights, Medi-Cal has agreed to accept reimbursement in the amount of: $

(Attach a copy of the final Medi-Cal demand letter or letter agreement as Attachment 13c(2).)

d. ☐ The claimant's health plan is requesting reimbursement for medical expenses paid under the plan. In full satisfaction of the plan's lien rights, it will be reimbursed in the amount of: $

(Attach statements from the plan showing expense payments and requesting reimbursement.)

e. ☐ Petitioner has paid claimant's medical expenses to be reimbursed in the amount of: $

(See instructions for item 15.)

f. (1) ☐ There are no statutory or contractual liens for payment of the claimant's medical expenses.

(2) ☐ There are one or more liens from medical service providers for payment of the claimant's medical expenses. In full satisfaction of their lien claims, the lienholders have agreed to accept the sum of: $

g. *(Select (1) or (2) below.)*

(1) ☐ Latest statements from all medical service providers are attached as Attachment 13g.

(2) ☐ All medical expenses have been paid by private insurance, Medicare, or Medi-Cal.

14. **Claimant's attorney's fees and all other expenses (except medical expenses), including fees or expenses paid by petitioner and claimant's attorney, to be paid or reimbursed from proceeds of settlement or judgment**

a. Total amount of attorney's fees for which court approval is requested: $

(If fees are requested, attach as Attachment 14a a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in rule 7.955(b) of the Cal. Rules of Court. Include a copy of any written attorney fee agreement in Attachment 14a.)

b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid or reimbursed out of claimant's share of the proceeds of the settlement or judgment:

Items	Payees *(names)*	Amounts
		$
		$
		$
		$
		$
		$
		$
		$

☐ Continued on Attachment 14b. **Total:** $

c. ☐ Costs of suit attributable to more than one settling plaintiff are **not** apportioned between them on a pro rata basis based on their gross settlement amounts. The apportionment of these costs is described and explained in Attachment 14c.

CASE NAME:	CASE NUMBER:

15. Reimbursement of fees and expenses paid by petitioner

a. ☐ Petitioner has paid none of the fees or expenses listed in items 13 and 14 for which reimbursement is requested.

b. ☐ Petitioner has paid the following total amounts of the claimant's fees and expenses for which reimbursement is requested.

(1) ☐ Medical expenses listed in item 13: $

(2) ☐ Attorney's fees included in the total fee amount shown in item 14a: $

(3) ☐ Other expenses included in the total shown in item 14b: $

(Attach proofs of the fees and expenses incurred and payments made, e.g., bills or invoices, canceled checks, credit card statements, explanations of benefits from insurers, etc.)

Total: $_____

16. Net balance of proceeds remaining for claimant

The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment or reimbursement of all requested fees and expenses is *(specify):* $_____

---

17. Summary

a. Gross amount of proceeds of settlement or judgment for claimant:		$
b. Medical expenses to be paid from proceeds of settlement or judgment:	$	
c. Attorney's fees to be paid from proceeds of settlement or judgment:	$	
d. Expenses (other than medical) to be paid from proceeds of settlement or judgment:	$	
e. Total fees and expenses to be paid from proceeds of settlement or judgment *(add (b), (c), and (d)):*		($)
f. Balance of proceeds of settlement or judgment available for claimant after payment of all fees and expenses *(subtract (e) from (a)):*		$_____

---

18. Information about attorney representing or assisting petitioner

a. The attorney ☐ is not ☐ is representing or employed by another party involved in this matter.
(If you answered "is," identify the other party and explain the relationship in Attachment 18a. If the other party is a defendant, you must use form MC-350 for your petition and are not eligible for expedited consideration by the court. See item 3e on page 1 and Cal. Rules of Court, rule 7.950.5(a)(6).)

b. The attorney ☐ has neither received nor expects to receive ☐ has received or expects to receive attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "has received or expects to receive," identify the person who paid or will pay the fees or other compensation, the amounts paid or to be paid, and the dates of payment or expected payment):*

From Whom Paid or Expected *(name)*	Date Paid or Expected	Amount Paid or Expected
		$
		$
		$
		$
		$
		$
		$

☐ Continued on Attachment 18b. **Total:** $_____

CASE NAME:	CASE NUMBER:

19. **Disposition of balance to claimant** *(check either a or b, then check each option requested and enter amount(s)):*

a. ☐ There **is** a guardianship of the estate of the minor or a conservatorship of the estate of the adult person with a disability filed in *(name of court):*
Case no.:

(1) ☐ Petitioner requests that $ of the proceeds in money or other property be paid or delivered to the guardian of the estate of the minor or the conservator of the estate of the conservatee. The money or other property is specified in Attachment 19a(1).

(2) ☐ Petitioner is the guardian or conservator of the estate of the minor or the adult person with a disability. Petitioner requests authority to deposit or invest $ of the money or other property to be paid or delivered under 19a(1) in one or more insured accounts with financial institutions in this state or with a trust company, subject to withdrawal only on authorization of the court. The money or other property and the name, branch, and address of each financial institution or trust company are specified in Attachment 19a(2).

(3) ☐ Petitioner proposes that all or a portion of the proceeds **not** become part of the guardianship or conservatorship estate. Petitioner requests authority to deposit or transfer these proceeds as follows *(check all that apply):*

(a) ☐ $ to be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only on authorization of the court. The name, branch, and address of each depository are specified in Attachment 19a(3)(a).

(b) ☐ $ to be invested in a single-premium deferred annuity, subject to withdrawal only on authorization of the court. The terms and conditions of the annuity are specified in Attachment 19a(3)(b).

(c) ☐ $ to be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the property to be transferred are specified in Attachment 19a(3)(c).

b. ☐ There is **no** guardianship of the estate of the minor or conservatorship of the estate of the adult person with a disability. Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows *(check all that apply):*

(1) ☐ A guardian of the estate of the minor or a conservator of the estate of the adult person with a disability be appointed and $ of money and other property be paid or delivered to the person so appointed. The money or other property are specified in Attachment 19b(1).

(2) ☐ $ of money be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only on authorization of the court. The name, branch, and address of each depository are specified in Attachment 19b(2).

(3) ☐ $ of money be invested in a single-premium deferred annuity, subject to withdrawal only on authorization of the court. The terms and conditions of the annuity are specified in Attachment 19b(3).

(4) ☐ $ be paid or delivered to a parent of the minor on the terms and under the conditions specified in Probate Code sections 3401–3402, without bond. The name and address of the parent and the money or other property to be delivered are specified in Attachment 19b(4). *(Value of minor's entire estate, including the money or property to be delivered, must not exceed $5,000.)*

(5) ☐ $ be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the money or other property to be transferred are specified in Attachment 19b(5).

(6) ☐ $ of money be held on the conditions that the court determines to be in the best interest of the minor or adult person with a disability. The proposed conditions are specified on Attachment 19b(6). *(Value must not exceed $20,000.)*

(7) ☐ $ of property other than money be held on the conditions that the court determines to be in the best interest of the minor or adult person with a disability. The proposed conditions and the property are specified in Attachment 19b(7).

(8) ☐ $ be deposited with the county treasurer of the County of *(name):*
The deposit is authorized under and subject to the conditions specified in Probate Code section 3611(h).

(9) ☐ $ be paid or transferred to the adult person with a disability. The money or other property is specified in Attachment 19b(9).

CASE NAME:	CASE NUMBER:

20. ☐ **Additional orders**

Petitioner requests the following additional orders *(specify and explain):*

☐ Continued on Attachment 20.

21. ☐ I, the claimant named in item 2, consent to the order or judgment requested in this petition.
(Required if the claimant is an adult with a disability who has the capacity, under Probate Code section 812, to consent to the order or judgment and does not have a conservator of the estate. (See Prob. Code, § 3613.))

Date:

(TYPE OR PRINT NAME OF CLAIMANT) ▶ (SIGNATURE OF CLAIMANT)

22. Petitioner recommends the proposed compromise, settlement, or disposition of judgment proceeds for the claimant to the court as being fair, reasonable, and in the best interest of the claimant. Petitioner requests that the court approve this compromise, settlement, or disposition and make any other orders that are just and reasonable.

23. Number of pages attached: _____

Date:

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

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 OF PETITIONER) ▶ (SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*Name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		

DRAFT
Not approved by the Judicial Council
v11 072120

ORDER APPROVING COMPROMISE OF CLAIM OR ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR PERSON WITH A DISABILITY

CASE NUMBER:	
HEARING DATE, IF ANY:	DEPT.:

1. **Hearing**
   a. ☐ No hearing was held. The matter is eligible for expedited approval under rule 7.950.5 of the California Rules of Court.
   b. ☐ A hearing was held: Date: Time: Dept.:
   c. Judicial officer:

2. **Petitioner** *(name or pseudonym*):*
   is the *(check all relationships or representative capacities that apply):* ☐ parent ☐ guardian ad litem* ☐ guardian ☐ conservator ☐ other *(specify):*
   of the claimant named in item 3. Petitioner has requested approval of the compromise or settlement of a disputed claim or pending action or the disposition of the proceeds of a judgment for a minor or a person with a disability.
   *(*Petitioner was appointed guardian ad litem under a pseudonym. (See Code Civ. Proc., § 372.5.))*

3. **Claimant** *(name):*
   a. ☐ is a minor.
   b. ☐ is a "person with a disability" within the meaning of Probate Code section 3603 who is:
      (1) ☐ An adult. Claimant's date of birth is *(specify):*
      (2) ☐ A minor described in Probate Code section 3603(b)(3).

4. **Defendant**
   The claim or action to be compromised or settled is asserted, or the judgment is entered, against *(name of settling or judgment defendant or defendants (the "payer")):*

THE COURT FINDS

5. ☐ Notice has been given as required by law.

6. a. ☐ The claimant is an adult who has the capacity to consent to this order within the meaning of Probate Code section 812 and does not have a conservator of the estate. The claimant has given express consent to this order.
   b. ☐ The claimant's consent to this order is not required because the claimant is a minor, a conservatee, or a person who lacks the capacity to consent to the order within the meaning of Probate Code section 812.

Form Adopted for Mandatory Use
Judicial Council of California
MC-351 [Rev. January 1, 2021]

Code of Civil Procedure, § 372;
Probate Code, §§ 3500, 3600–3613;
Cal. Rules of Court, rules 3.1384, 7.953
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

THE COURT ORDERS

6. The petition is granted and the proposed compromise or settlement, or the proposed disposition of the proceeds of the judgment, is approved. The gross amount or value of the settlement or judgment in favor of claimant is: $.

7. ☐ Until further order of the court, jurisdiction is reserved to determine a claim for a reduction of a Medi-Cal lien under Welfare and Institutions Code section 14124.76. The amount shown payable to the Department of Health Care Services in item 8a(4) of this order is the full amount of the lien claimed by the department but is subject to reduction on further order of the court upon determination of the claim for reduction.

8. The payer must disburse the proceeds of the settlement or judgment approved by this order in the following manner:

a. **Payment of fees and expenses**

Fees and expenses shall be paid by one or more checks or drafts drawn payable to the order of the petitioner and the petitioner's attorney, if any, or directly to third parties entitled to receive payment identified in this order for the following items of expense or damage, which are hereby authorized to be paid out of the proceeds of the settlement or judgment:

(1) ☐ Attorney's fees in the total amount of: $ payable to *(specify):*

(2) ☐ Reimbursement for medical and all other expenses paid by the petitioner or the petitioner's attorney in the total amount of: $

(3) ☐ Medical, hospital, ambulance, nursing, and other similar expenses payable directly to providers as follows, in the total amount of: $

(a) Payee *(name):*
(i) address:

(ii) Amount: $

(b) Payee *(name):*
(i) address:

(ii) Amount: $

☐ Continued on Attachment 8a(3). *(Provide information about additional payees in the above format.)*

(4) ☐ Other authorized disbursements payable directly to third parties in the total amount of: $
(Describe and state the amount of each item and provide the name and address of each payee):

☐ Continued on Attachment 8a(4).

(5) ☐ Total allowance for fees and expenses from the settlement or judgment: $

CASE NAME:	CASE NUMBER:

8. b. **Balance for claimant**

The balance of the settlement or judgment available for claimant after payment of all allowed fees and expenses is: $

The balance shall be disbursed as follows:

(1) ☐ By one or more checks or drafts in the total amount of *(specify):* $ drawn payable to the order of the petitioner in the petitioner's representative capacity. Each check or draft must bear an endorsement on the face or reverse that it is for deposit in one or more interest-bearing, federally insured accounts in the name of the petitioner in the petitioner's representative capacity. No withdrawals may be made from these accounts ("blocked accounts") except as provided in the *Order to Deposit Funds in Blocked Account* (form MC-355) signed at the same time as this order.

(2) ☐ By the following method(s) *(describe each method, including the amount to be disbursed by each):*

☐ Continued on Attachment 8b(2).

(3) ☐ If money is to be paid to a special needs trust under Probate Code section 3604, all statutory liens in favor of the state Department of Health Care Services, the state Department of State Hospitals, the state Department of Developmental Services, and any city and county in California must first be satisfied by the following method *(specify):*

☐ Continued on Attachment 8b(3).

9. ☐ **Further orders of the court concerning blocked accounts**

The court makes the following additional orders concerning any part of the balance ordered to be deposited in a blocked account under item 8b(1):

a. Within 48 hours of receipt of a check or draft described in item 8b(1), the petitioner and the petitioner's attorney, if any, must deposit the check or draft in the name of petitioner in the petitioner's representative capacity in one or more blocked accounts at *(specify name, branch, and address of each depository, and the amount of each account):*

☐ Continued on Attachment 9a.

CASE NAME:	CASE NUMBER:

9. b. The petitioner and the petitioner's attorney, if any, must deliver to each depository at the time of deposit three copies of the *Order to Deposit Funds in Blocked Account* (form MC-355), which is signed at the same time as this order, and three copies of the *Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account* (form MC-356). The petitioner or the petitioner's attorney must file a copy of the receipt with this court within 15 days of the deposit. The sole responsibilities of the petitioner and the petitioner's attorney, if any, are to place the balance in a blocked account or accounts and to file a copy of the receipt on time.

c. The balance of the proceeds of the settlement or judgment deposited in a blocked account or accounts under item 8b(1) may be withdrawn only as follows (*check (1) or (2)):*

(1) ☐ No withdrawals of principal or interest may be made from the blocked account or accounts without a further written order under this case name and number, signed by a judicial officer, and file-stamped by this court. The money on deposit is not subject to escheat.

(2) ☐ The blocked account or accounts belong to a minor, who was born on *(date):*
No withdrawals of principal or interest may be made from the blocked account or accounts without a further written order under this case name and number, signed by a judicial officer, and file-stamped by this court, until the minor reaches 18 years of age. When the minor reaches 18 years of age, the depository, without further order of this court, is authorized and directed to pay by check or draft directly to the former minor, on proper demand, all funds, including interest, deposited under this order. The money on deposit is not subject to escheat.

10. ☐ **Authorization to execute settlement documents**

The petitioner is authorized to execute settlement documents as follows *(check only one):*

a. ☐ On receipt of the full amount of the settlement sum approved by this order and the deposit of funds, the petitioner is authorized and directed to execute and deliver to the payer (1) a full, complete, and final release and discharge of any and all claims and demands of the claimant by reason of the accident or incident described in the petition and the resultant injuries to the claimant and (2) a properly executed dismissal with prejudice.

b. ☐ The petitioner is authorized and directed to execute any and all documents reasonably necessary to carry out the terms of the settlement.

c. ☐ The petitioner is authorized and directed to *(specify):*

☐ Continued on Attachment 10c.

11. Bond is ☐ ordered and fixed in the amount of: $ ☐ not required.

12. A copy of this order must be served on the payer immediately.

13. ☐ **Additional orders**
The court makes the following additional orders *(specify):*

☐ Continued on Attachment 13.

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*Name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council** **v7 071420 cs**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER TO DEPOSIT FUNDS IN BLOCKED ACCOUNT	CASE NUMBER:

1. The petition of *(name):* , acting as *(specify representative capacity):* of the person named in item 2, to deposit funds in one or more blocked accounts came on for hearing on *(date):* at *(time):* in Dept.: .

THE COURT ORDERS

2. Funds that belong to *(name):* must be deposited in one or more interest-bearing, federally insured blocked accounts.

3. Each account must be opened in the legal name of the petitioner as ☐ parent ☐ guardian ☐ conservator ☐ other *(specify relationship):* of the person named in 2.

4. The total amount authorized for deposit, including any accrued interest, is: $

5. Withdrawals *(check a or b):*

   a. ☐ No withdrawal of principal or interest may be made from the blocked account or accounts without a written order under this case name and number signed by a judicial officer and file-stamped by this court. The money on deposit is not subject to escheat.

   b. ☐ The funds in the blocked account or accounts belong to a minor, who was born on *(date):* . No withdrawal of principal or interest may be made from the blocked account or accounts without a written order under this case name and number signed by a judicial officer and file-stamped by this court until the minor reaches 18 years of age. When the minor reaches 18 years of age, the depository, without further order of this court, is authorized and directed to pay by check or draft directly to the former minor, on proper demand, all funds, including interest, deposited under this order. The money on deposit is not subject to escheat.

6. The petitioner and the petitioner's attorney, if any, must (1) deliver a copy of this order to each depository in which funds are deposited under this order and (2) file with this court an acknowledgment from each depository of receipt of this order and the funds within 15 days of deposit.

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
MC-355 [Rev. January 1, 2021]

Code of Civil Procedure, § 372;
Probate Code, §§ 3500, 3600–3613;
Cal. Rules of Court, rules 3.1384, 7.953
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*Name*):		**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
ACKNOWLEDGMENT OF RECEIPT OF ORDER AND FUNDS FOR DEPOSIT IN BLOCKED ACCOUNT		CASE NUMBER:

(Attach a copy of Order to Deposit Funds in Blocked Account *(form MC-355) to this receipt.)*

1. I acknowledge receipt of the *Order to Deposit Funds in Blocked Account* (form MC-355), a copy of which is attached to this form, and of the funds specified in item 7, below.
2. The account described below, in which funds have been deposited under the court's order, is an interest-bearing, federally insured blocked account.
3. Name and title on account:
4. Name of depository:
   a. Branch:
   b. Address:
5. Account number:
6. Date account opened:
7. Amount of initial deposit: $
8. Current balance: $

I certify that the foregoing information is true and correct, that I am authorized to execute this acknowledgment of receipt on behalf of the depository named in 4, and that no withdrawal of principal or interest from this account will be permitted without a signed, file-stamped order under this case name and number from the court named above.

Date:

(TYPE OR PRINT NAME)

(AUTHORIZED SIGNATURE)

Title:

Form Adopted for Mandatory Use
Judicial Council of California
MC-356 [Rev. January 1, 2021]

Code of Civil Procedure, § 372;
Probate Code, §§ 3500, 3600–3613;
Cal. Rules of Court, rules 3.1384, 7.953
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
EMAIL ADDRESS:		
ATTORNEY FOR (*Name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		
PETITION TO WITHDRAW FUNDS FROM BLOCKED ACCOUNT ☐ **EX PARTE**		CASE NUMBER:

1. Petitioner *(name):*
   requests an order authorizing the withdrawal of funds belonging to the person identified in item 2.

2. The person whose funds are to be withdrawn *(name):* is
   a. ☐ a minor.
   b. ☐ a conservatee.
   c. ☐ a beneficiary.
   d. ☐ other *(specify):*

3. Additional information about the person named in item 2:
   a. Date of birth:
   b. Address:
   c. Telephone number:
   d. Email address:
   e. Current school *(name and address):*
   f. Current employer *(name and address):*

4. If the person identified in item 2 is a minor, the minor's parents are:
   a. ☐ *(Name, address, phone number, and email):*
   b. ☐ *(Name, address, phone number, and email):*

5. Petitioner brings this petition as the ☐ parent ☐ guardian ☐ conservator ☐ Other *(specify relationship):* of the person named in item 2.

6. Account status
   a. Name and title on account:
   b. Depository *(name):*
      (1) Branch *(name):*
      (2) Address:
   c. Account number:
   d. Current balance: $

Form Adopted for Mandatory Use
Judicial Council of California
MC-357 [Rev. January 1, 2021]

Cal. Rules of Court, rules 3.1384, 7.954
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

6. e. Previous withdrawals from this account *(select one):*
   (1) ☐ None.
   (2) ☐ As follows:
      (a) Amount: $
      (b) Date:
      (c) Purpose of withdrawal:

   ☐ Additional previous withdrawals from this account are detailed in Attachment 6 *(for each additional previous withdrawal, give the information required by item 6e(2)).*

   f. ☐ Additional accounts from which petitioner seeks to withdraw funds are described in Attachment 6 *(for each additional account, give all the information required by item 6a–6e).*

7. Amount to be disbursed under this petition:
   a. ☐ Balance of account or accounts described in item 6.
   b. ☐ Other *(specify total amount to be disbursed):* $

8. Reasons for disbursement of funds:
   a. ☐ Minor has reached 18 years of age, and this is a final distribution.
   b. ☐ Other *(describe):*

9. Person(s) to whom funds will be paid:
   a. Payee *(name):*
      (1) Address:
      (2) Amount: $
      (3) Purpose of payment:
   b. Payee *(name):*
      (1) Address:
      (2) Amount: $
      (3) Purpose of payment:
   c. Payee *(name):*
      (1) Address:
      (2) Amount: $
      (3) Purpose of payment:
   d. Payee *(name):*
      (1) Address:
      (2) Amount: $
      (3) Purpose of payment:

   ☐ Additional payees and amounts to be distributed are listed on Attachment 9.

10. Number of pages attached: _____

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 PETITIONER)

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*Name*):		**DRAFT** **Not approved by** **the Judicial Council** **v8 072120 cs**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
ORDER AUTHORIZING WITHDRAWAL OF FUNDS FROM BLOCKED ACCOUNT		CASE NUMBER:

1. The petition of *(name):* to withdraw funds
   a. ☐ was heard ex parte.
   b. ☐ came on regularly for hearing in this court on *(date):*

THE COURT ORDERS

2. Petitioner is authorized to withdraw, and the depository is ordered, on presentation of a file-stamped copy of this order, to permit the petitioner to withdraw, funds in the total amount of: $.

3. The funds are held in the following account:
   a. Name and title on account:
   b. Depository *(name):*
      (1) Branch *(name):*
      (2) *Address:*
   c. Account number:

4. The funds are to be distributed by the depository, remittance payable as follows:
   a. Payee *(name):*
      (1) Address:
      (2) Amount: $
   b. Payee *(name):*
      (1) Address:
      (2) Amount: $
   c. Payee *(name):*
      (1) Address:
      (2) Amount: $

   ☐ Additional payees and amounts to be distributed are listed on Attachment 4.

5. ☐ The court further orders:

6. Number of pages attached: _____

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

	Commenter	Position	Comment	Committee Response
1.	Miss Laray [no other name given] Corona	A	*The commenter's son passed away. She seems to have spent considerable time in the wrong court, possibly because of one of the rules in this proposal or possibly because of rule 5.4, which requires local rules and forms regarding family law actions and proceedings to comply with the Family Rules (division 1 of title 5 of the California Rules of Court). She supports this proposal.	The committee regrets the commenter's loss and appreciates her comment. No further response required.
2.	Orange County Bar Association by Scott B. Garner, President Newport Beach	AM	The Judicial Council forms related to the approval of a minor's compromise ubiquitously references a "disputed" claim. This term is unnecessary and could create confusion for the party filing necessary papers. Oftentimes, for example, claims are resolved without any dispute from either the party receiving funds or the payor of funds. This is especially so in 1st-party underinsured and uninsured motorist claims. Suggestion to Form MC-350: ● 2(a) should be for the person's name and 2(b) should be for the person's address; renumbering to follow ● 2(e) and 2(f) are not necessary for minors and thus should be noted as optional ● 8(a)–8(c) has spacing issues	The committee appreciates the bar association's comments. The committee does not recommend removing the term "disputed" from the forms, which implement the requirements of Probate Code sections 3500 and 3600–3613. The relevant language in sections 3500(a) and 3600(a) limits the application of those requirements to court approval of the compromise of a minor's "disputed claim." The committee does not recommend the suggested change. The distinction in item 2 on form MC-350 between the claimant's name and address is sufficiently clear. No reports of confusion have been received since the form's adoption, effective January 1, 2002. The committee agrees that 2e and 2f apply only to adult claimants and has modified the form to clarify that limited application. The committee prefers to leave extra space after

	Commenter	Position	Comment	Committee Response
				8b and 8c to allow the petitioner to provide the information required for the court to determine whether to approve the settlement.
			● 12a(1) should be combined with 12a(2), or clarification should be provided whether the total medical expenses is the total medical expenses owed before or after any reduction.	The committee agrees with the comment and has revised its recommendation to specify that the total expenses after any reductions should be listed in item 12a(1).
			Suggestion to Form MC-350EX ● 2(e) and 2(f) are not necessary for minors and thus should be noted as optional	The committee agrees that 2e and 2f apply only to adult claimants and has modified the form to clarify that limited application.
			Suggestion to Form MC-351 ● 6 and 7 could use clarification on how the settlement check should be made payable such as "e.g. John Smith, in his representative capacity as father of minor, Jane Doe"	The committee agrees with the suggested change to item 6 and has modified its recommendation accordingly. Item 7 cross-references item 6, and the modification to item 6 also applies to item 7.
			Specific Comments Does the proposal appropriately address the stated purpose? *Yes, the proposal is helpful to a certain extent but in need of further clarification in areas.*	The committee agrees and has clarified its recommendation in several respects, including those mentioned by the commenter.
			Should the forms be renumbered to move them from the MC form set and place them in a separate form set by themselves or with other forms? *This does not seem necessary.*	The committee agrees and has left the numbering of the forms unchanged.

	Commenter	Position	Comment	Committee Response
			Are further revisions needed to ensure compliance with the legal requirements for establishing, administering, and accessing special needs trusts on behalf of claimants with disabilities? *It does not appear so.*	No response required.
3.	Superior Court of Los Angeles County by Bryan Borys	A	The proposal asks whether the forms should be renumbered. They should. They should be moved out of the miscellaneous set and be moved in a separate form set related strictly to minor's compromises. The proposal asks whether further revisions are needed. Yes. Later revisions should be made to address specific requirements as to Special Needs Trusts that are created as a part of the compromise.	The committee appreciates the court's comment. The committee prefers to retain the current numbers to avoid confusion of the part of self-represented litigants. The committee will explore whether the forms can be identified as a separate form set without changing their numbers. The committee will review the requirements for the establishment of special needs trusts and, if any necessary revisions are identified, will recommend those revisions in a future rules and forms cycle.
4.	Superior Court of Orange County Training and Analyst Group	NI	**General Comments** The proposal provides much needed clarification on minor's compromise matters, especially for the self-represented. It will improve access to the courts, protect the interests of minors and persons with disabilities, and enable prompt and secure distribution of the proceeds of settlements and judgments in favor of minors and persons with disabilities. **Specific Comments** 1. Does the proposal appropriately address the stated purpose? *Yes*	The committee appreciates the court's comments. No further response required. No response required.

	Commenter	Position	Comment	Committee Response
			2. Should the forms be renumbered to move them from the MC form set and place them in a separate form set by themselves or with other forms? *Similar to Probate—Decedents Estates, consider implementing a separate category on the court public website Probate—Minor's Compromise, but leave the MC designation on the form.*	The committee considered renumbering the forms, but concluded that renumbering them would promote more confusion than clarity. The committee will explore whether the forms can be identified as a separate set on the website without changing their numbers.
			3. Are further revisions needed to ensure compliance with the legal requirements for establishing, administering, and accessing special needs trusts on behalf of claimants with disabilities? *No*	No response required.
			4. Would the proposal result in costs or savings to the court? If so, please what costs or savings would be associated with implementing the proposal? *Yes. The clarifications concerning account establishment and the capacity of the petitioners will help those seeking assistance have a clearer understanding of how to proceed. Fewer hearings will result from reduced errors and issues with forms that banking institutions would not previously accept. For example, the revisions to forms MC-351 and MC-355 will facilitate depositing funds into blocked accounts without having to come back to court for an order. The reduced number of hearings will*	The committee is pleased that the revisions will provide some cost savings. No further response required.

	Commenter	Position	Comment	Committee Response
			provide cost savings in court staff time including legal processing specialists, courtroom clerks, court reporters and probate examiners. 5. 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? *Case processing specialists, probate examiners, courtroom clerks, and judicial officers will need to be informed. Training will need to be provided to case processing, courtroom, and probate examiners on the filing and application of the new forms. The new forms changes will have the biggest impact on probate examiners, depending on what their current process is for reviewing and developing probate notes. With the form number changes and additional information, probate examiners may need to update their own processes. Expected hours of training development, updating processes and staff training could be up to 16 hours.* 6. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes* 7. How well would this proposal work in courts	The committee appreciates the court's explanation of the training costs imposed by changing the form numbers, and has left the form numbers unchanged. No response required.

	Commenter	Position	Comment	Committee Response
			of different sizes? *This proposal will work in all court sizes but will possibly have a more positive effect in bigger courts.*	No response required.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	NI	Does the proposal appropriately address the stated purpose? *Yes.* Should the forms be renumbered to move them from the MC form set and place them in a separate form set by themselves or with other forms? *No, the forms should remain MC forms for the reason cited in the invitation (e.g. initials "MC" correspond to minor's compromise and forms used by self-represented litigants).* Are further revisions needed to ensure compliance with the legal requirements for establishing, administering, and accessing special needs trusts on behalf of claimants with disabilities? *No.* Would the proposal provide cost savings? If so, please quantify. *Yes, to the extent that the revised forms would reduce the number of hearings continued due to incomplete information being provided by the petitioner and additional hearings seeking clarifying orders to establish a bank account for the minor/person with disability.*	The committee appreciates the court's comments. No response required. The committee agrees and does not recommend changing the form numbers. The committee will explore whether the forms can be identified as a separate form set without changing their numbers. No further response required. The committee is pleased that the revisions will provide some cost savings. No further response required.

	Commenter	Position	Comment	Committee Response
			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? *Revising internal procedures, adding forms to case management system, and training business office and courtroom staff.* Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff.* How well would this proposal work in courts of different sizes? *It appears that the proposal will work for courts of various sizes.*	No response required. The committee understands that Judicial Council policy and practice is to provide all new and revised forms to the courts at least 30 days before their effective date. No response required.
6.	Trial Court Presiding Judges Advisory Committee Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposal should be implemented because the amended forms will better assist the court and litigants in processing claims involving minor's compromises. The JRS also notes the following impact to court operations: Results in additional training, which requires the commitment of staff time and court resources.	The committee appreciates the JRS's comments. The committee recognizes that the proposal will require staff training, but does not believe or intend that the training will be unusually onerous. No further response required.

	Commenter	Position	Comment	Committee Response
			Request for Specific Comments: Should the forms be renumbered to move them from the MC form set and place them in a separate form set by themselves or with other forms? *Yes. They should be moved out of the miscellaneous set and be moved in a separate form set related strictly to minor's compromises.* Are further revisions needed to ensure compliance with the legal requirements for establishing, administering, and accessing special needs trusts on behalf of claimants with disabilities? *Yes. Later revisions should be made to address specific requirements as to Special Needs Trusts that are created as a part of the compromise.*	The committee prefers to retain the current numbers to avoid confusion of the part of self-represented litigants. The committee will explore whether the forms can be identified as a separate form set without changing their numbers. The committee will review the requirements for the establishment of special needs trusts and, if any necessary revisions are identified, will recommend those revisions in a future rules and forms cycle.

Item number: 29

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: 8/20/2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Elder or Dependent Adult Abuse Prevention Forms. Revise forms EA-100, EA-120, and EA-130

Committee or other entity submitting the proposal:
Civil and Small Claims

Staff contact (name, phone and e-mail): Kristi Morioka, 916-643-7056, kristi.morioka@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 10/28/2019
Project description from annual agenda: Assembly Bill 1396 provides that when issuing a protective order after notice and hearing to prohibit certain types of abuse against an elder or dependent adult, the court may also issue an order requiring the restrained party to participate in counseling or anger management courses. The bill provides that the council is to revise or adopt forms to implements this new provision if appropriate.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-064
For business meeting on September 24–25, 2020

Title
Protective Orders: Elder or Dependent Adult Abuse Prevention Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms EA-100, EA-120, and EA-130

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 14, 2020

Contact
Kristi Morioka, Attorney
916-643-7056
kristi.morioka@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising three mandatory elder or dependent adult abuse prevention forms to implement Assembly Bill 1396 (Obernolte; Stats. 2019, ch. 628), which provides that a court, when issuing an order for elder or dependent adult abuse prevention, may, if appropriate, also issue an order requiring the restrained party to attend clinical counseling or anger management courses.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Revise *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100);

2. Revise *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-120); and

3. Revise *Elder or Dependent Adult Abuse Restraining Order After Hearing* (CLETS-EAR or EAF) (form EA-130) to add the new orders that a judge may consider under Assembly Bill 1396.

The revised forms are attached at pages 8–26.

Relevant Previous Council Action

The Elder or Dependent Adult Abuse forms revised in this proposal, forms EA-100, EA-120, and EA-130, were adopted for mandatory use effective on January 1, 2012 and have been revised several times since then. The forms were last revised effective January 1, 2018 and prior to that in 2016. The prior revisions are not relevant to the current proposal.

Analysis/Rationale

Elder or dependent adult abuse is a significant problem for a large portion of the population in California. In 2009, the California Senate Office of Oversight and Outcomes reported that 13 percent of all complaints to the California Office of the State Long-Term Care Ombudsman involved abuse, gross neglect, or exploitation—over twice the national rate of 5 percent.[1] A bill to create a civil action for elder or dependent adult abuse prevention was passed in 1992 (Sen. Bill 679 (Mello); Stats. 1991, ch. 774). The author of AB 1396, Assembly Member Jay Obernolte (R-Hesperia), states that elder or dependent adult abuse prevention cases and domestic violence prevention cases are similar "in that almost 60% of elder and dependent adult abuse and neglect incidents, the perpetrator is a family member. However, in domestic violence cases more tools are available to prevent reoccurrence of the abuse."[2]

The goal of AB 1396 is to help prevent ongoing elder and dependent adult abuse by giving judges the ability to order the restrained person to attend clinical counseling or to enroll in anger management courses.[3]

Different prevention tool provided in domestic violence restraining order cases

In domestic violence restraining order (DVRO) cases, a judge may order that the restrained person complete a certified 52-week batterer intervention program (BIP) that has been approved by the probation department.[4] BIPs were created to address the unique challenges of DVRO cases. Courts can order a restrained person to attend a BIP in a civil DVRO case and that person is required, as a condition of probation, to complete a BIP if convicted of domestic violence in

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[1] California Senate Office of Oversight and Outcomes, *California's Elder Abuse Investigators: Ombudsmen Shackled by Conflicting Laws and Duties* (Nov. 3, 2009), p. 7, at http://www.canhr.org/reports/2009/OmbudsmanReportSenateCA20091030.pdf.

[2] Jay Obernolte, *Fact Sheet Assembly Bill 1396—Elder Abuse Prevention Programs* (no date), p. 1.

[3] *Id.* at p. 1.

[4] Fam. Code, § 6343.

criminal court. Until recently, the required length of certified programs was at least 52 weeks. Currently, there are six counties piloting alternative lengths of programming.[5]

AB 1396 does not include BIPs as a treatment option. Anger management courses generally do not address coercive behaviors and power dynamics as BIPs do. Instead, the focus is on preventing loss of control. AB 1396 also authorizes the court to order the restrained party to participate in clinical counseling, which *could* address mental health issues or substance abuse if they exist. As discussed in the comment chart, the Superior Court of San Diego County reports that some anger management courses in that county have substance abuse portions built into the curriculum.

Proposed form revisions

Request for Elder or Dependent Adult Abuse Restraining Orders (form EA-100) would be revised to add item 14a, which allows the protected person to request that the restrained party be ordered to attend clinical counseling or anger management courses. The statute requires specific provider types to deliver the clinical counseling or anger management courses, which are listed in this item. In response to public comments, the form would also be revised to add item 14b to allow the petitioner to explain why they are requesting an order for the restrained party to attend clinical counseling or an anger management course. Also added in response to public comments is an instruction that this item would only be applicable in cases of alleged physical abuse and not in cases with only alleged financial abuse. The form would be reorganized to move the description of abuse from item 10 to item 8 to draw attention to important information that should be closer to the beginning of the form. The items would be renumbered accordingly.

Response to Request for Elder or Dependent Adult Abuse Restraining Orders (form EA-120) would be revised to add an item with check boxes (item 7) for the respondent to indicate whether they agree or disagree with the orders requested by the protected person on form EA-100 or to agree to other orders. This item is modeled after existing items on form EA-120. This form would also be revised to include the same instruction as in EA-100—that this option is only applicable in cases of alleged physical abuse and not in cases with only alleged financial abuse. The items would be renumbered accordingly.

Elder or Dependent Adult Abuse Restraining Order After Hearing (CLETS-EAR or EAF) (form EA-130) would be revised to include an option (item 9) for the judge to order clinical counseling or an anger management course and a required date of scheduling or enrollment, or a default of 30 days if there is no date specified. In addition, there is an option to allow a judge to order a person to submit proof of completion of clinical counseling or an anger management course or to appear for a hearing on a specified date. The items would also be renumbered and references to the renumbered items revised accordingly.

[5] Assembly Bill 372 (Stats. 2018, ch. 290) authorized the creation of alternative pilot programs.

Policy implications

The policy implications of this proposal arise from the legislation. The committee recommends revising the forms to include requests for orders for clinical counseling or an anger management course. The legislation requires revising the forms to include these items so that every petitioner has the opportunity to make this request.

Comments

The proposal circulated for public comment from April 10 to June 9, 2020, as part of the regular spring comment cycle. The committee received responses from eight commenters. One commenter, the Executive Committee of the Trusts and Estates Section of the California Lawyers Association (TEXCOM), agreed with the proposal. Three commenters, including one court, a court commissioner, and the head court record system clerk in the Los Angeles County Sheriff's Department, agreed with the proposal, if modified. The Orange County Bar Association (OCBA) did not agree with the entire proposal.[6] Three commenters did not indicate a position on the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 27–38. The main comments and the committee's responses to these comments are discussed below.

Request for specific comments

The invitation to comment (ITC) asked the following specific questions about new item 14 on *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100):

1. Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management?
2. Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course?

Question 1—Include option for petitioner to request either clinical counseling or anger management. The responses to the first question were divided evenly between the six commenters, with three agreeing that the form should be revised to split the item into a request for clinical counseling and a request for anger management courses, and three disagreeing. The OCBA and two groups from the Superior Court of Orange County—the Family Law Division and the Training and Analyst Group (TAG)—wanted the item to be divided into separate requests. Three entities, the Superior Courts of San Diego and Riverside Counties and TEXCOM, said that the item should not be split into separate options. TEXCOM explained that a layperson should not be expected to know the difference between the two services and that adding a question for the petitioner to explain why they made the request would allow the judge to determine the best course of action.

There is an understanding among the commenters that clinical counseling and anger management address different problems and one or the other may be more appropriate given the situation. In

[6] Specifically, the OCBA agreed with the changes on EA-120, agreed if modified with the revisions on EA-130, and disagreed with the proposed revisions on EA-100.

addition, it is likely that courses differ by county. The committee determined that each individual court may be best suited to know the remedies that are available locally to address the situation described in the petition, and therefore did not include an option for the petitioner to request an order for either clinical counseling or anger management, but instead left them together as a single request for either.

Question 2—Include a question asking why the petitioner wants to request anger management on form EA-100. Allowing the petitioner to explain why they are requesting an order that the restrained person attend clinical counseling or anger management courses would be accomplished by adding a question and blank response lines to new item 14 on the Request for Elder or Dependent Adult Abuse Restraining Orders (form EA-100). Five of the six commenters who responded to this question said that they wanted the question and response lines added. The commenter who did not want to add the question, the Superior Court of Riverside County, responded that the form should mimic the BIP items on the DVRO forms, and victims should not have to justify "why correction to the potential perpetrator [is] necessary." The Superior Court of Orange County, Training and Analyst Group, explained that adding this item would provide the petitioner the opportunity to explain their request and to provide notice to the respondent of the reasons for the request so that the respondent can specifically address them on the response form and be better prepared for the hearing. The Superior Court of Orange County, Family Law Division, stated that it would be better to have an explanation in the same place as the request; otherwise, the petitioner might explain in item 21 ("Other information").

The Superior Court of San Diego County commented that adding this question may assist the court in determining which of the two remedies is more appropriate. Prior to circulation for comment, the committee was concerned that adding this question and explanation lines might be problematic because parties might inadvertently include sensitive health information about the other party. They also said that most judges would inquire at a hearing about this issue before issuing the order, so asking for the information on the form is unnecessary. However, given the number of commenters who wanted this item, and the fact that each court operates differently and may not inquire about the same things at a hearing, the committee chose to make this revision.

Instruction added to new item. The OCBA suggests adding an instruction on forms EA-100, EA-120, and EA-130 that the remedies are only available in cases of physical abuse or deprivation of care as described in Welfare and Institutions Code section 15610.07(a)(1) and (2). The committee agreed with this proposed revision and added an information icon and new language to item 14 of form EA-100 and item 7 of form EA-120 that reads, "This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse." The committee did not add this language to the order (form EA-130) because judges understand the order's applicability and thus it would have been unnecessarily directive; in addition, there are no other instructions of this kind on this form.

Other comments. For the proposed new item on form EA-100 that would add an option to request clinical counseling or an anger management course, the Family Law Division of the

Superior Court of Orange County commented that the form should be revised by replacing "or" with "and/or" to allow the petitioner to request both types of relief concurrently. The committee determined that the statute does not allow for this option because it specifies "mandatory clinical counseling *or* anger management courses"[7] (emphasis added).

The OCBA suggested adding a reference to the specific code section for this new option (clinical counseling and anger management courses) on each of the forms. However, the code section is already listed on the first page of all the forms, so no changes are needed.

Form EA-130, as sent out for public comment, would require the respondent to schedule an appointment for counseling or enroll in an anger management course by a specific date, or within 30 days if not specified. The legislation does not provide a specific enforcement mechanism, but the court has inherent authority to enforce its orders.[8] If the judge wants to follow up on the completion of clinical counseling or the anger management course, the judge can require written proof of completion, and a court hearing, scheduled on form EA-130. The OCBA suggests adding a time limit within which the respondent is required to file proof of scheduling an appointment or enrolling in an anger management course; however, this would add an additional layer of enforcement for the court to follow up on. The committee did not choose to add this additional layer of enforcement to the court's workload.

Grammatical and graphic edits were made to the forms as appropriate.

Alternatives considered

The committee considered revising two information sheets, *Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?* (form EA-100-INFO) and *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders*? (form EA-120-INFO), to add information about the new types of orders, but determined that it is not necessary at this time, as the information sheets will remain accurate without these revisions.

Fiscal and Operational Impacts

The courts who responded to the ITC reported that some amount of training would be needed to implement the revised forms, including training counter staff and courtroom clerks. All three of the responding courts reported that they would have to establish new calendaring procedures, but that the cost and operational impacts from this proposal would be manageable. The Superior Court of Orange County, Family Law Division and TAG, and the Superior Court of San Diego County, agreed that three months from Judicial Council approval of this proposal until its effective date provides sufficient time for implementation. But the Superior Court of Riverside County said that three months would not be a sufficient amount of time given the court's

[7] Assembly Bill 1396 (Obernolte; Stats. 2019, ch. 628).

[8] California courts have "fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them." In addition, "courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.)

prioritization of COVID-19 mitigation efforts. AB 1396, however, requires the forms to be effective January 1, 2021.

Attachments and Links

1. Forms EA-100, EA-120, and EA-130, at pages 8–26
2. Chart of comments, at pages 27–38
3. Attachment A: Jay Obernolte, *Fact Sheet Assembly Bill 1396—Elder Abuse Prevention Programs* (no date), at page 39
4. Link A: Assem. Bill 1396 (Obernolte; Stats. 2019, ch. 628), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1396

EA-100 Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

7/1/2020 DRAFT

Read *Can an Elder or Dependent Adult Abuse Restraining Order Help Me?* (form EA-100-INFO) before completing this form. Also fill out *Confidential CLETS Information* (form CLETS-001) with as much information as you know.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Elder or Dependent Adult in Need of Protection

Full Name: _____

Sex: ☐ M ☐ F Age: _____

2 Person From Whom Protection Is Sought

Full Name: _____

Address *(if known):* _____

City: _____ State: ____ Zip: _____

3 Person Requesting Order

Who is asking the court for protection? *(Check a, b, or c):*

a. ☐ The elder or dependent adult named in 1.

b. ☐ Name: _____

conservator of the ☐ person ☐ estate ☐ person and estate of the person named in 1, appointed by *(name of court):* _____

Case No.:

c. ☐ Other *(name)* _____

(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 3c—Information About Person Requesting Protective Order" for a title. You may use form MC-025, Attachment.*)*

4 Contact Information

Contact information for the person asking the court for protection

a. Your Lawyer *(if you have one for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. The person in 1 does not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

This is not a Court Order.

Case Number:

5 Description of Protected Person

The person named in 1 *(check a or b):*

a. ☐ Is age 65 or older and a resident of California.

b. ☐ Is a resident of California and an adult under age 65. This person has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. *(Briefly describe limitations on the attached sheet of paper or form MC-025. Write "Attachment 5b—Description of Protected Person" for a title.)*

6 Additional Protected Persons

a. Are you asking for protection for any other family or household members or for the conservator of the elder or dependent adult listed in 1? ☐ Yes ☐ No *(If yes, list them):*

Full Name	Sex	Age	Lives with you?	How are they related to you?
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are more persons. Attach a sheet of paper and write "Attachment 6a—Additional Protected Persons" for a title. You may use form MC-025, Attachment.*

b. Why do these people need protection? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 6b—Why Others Need Protection" for a title.*

7 Relationship of Parties

How does the person in 1 know the person in 2 ? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 7—Relationship of Parties" for a title.*

This is not a Court Order.

Case Number:

8 Description of Abuse

a. Abuse means either:

(1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or

(2) The withholding by a caretaker of goods or services that are necessary to avoid physical harm or mental suffering.

b. Tell the court about the last time the person in (2) abused the person in (1).

(1) When did it happen? *(Provide date or estimated date):* _____

(2) Who else was there?

_____

(3) Describe what happened below.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(3)—Describe Abuse" for a title.*

_____

_____

_____

_____

(4) Was the abuse **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?

☐ Yes, only financial abuse. ☐ No, the abuse included other forms of abuse described above.

(5) Did the person in (2) use or threaten to use a gun or any other weapon?

☐ Yes ☐ No *(If yes, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(5)—Use of Weapons" for a title.*

_____

_____

_____

_____

(6) Was the person in (1) harmed or injured as a result of the acts of abuse described above?

☐ Yes ☐ No *(If yes, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(6)—Harm or Injury" for a title.*

_____

_____

_____

_____

(7) Did the police come? ☐ Yes ☐ No

If yes, did they give the person in (1) or the person in (2) an Emergency Protective Order? ☐ Yes ☐ No

If yes, the order protects *(check all that apply):*

☐ the person in (1) ☐ the person in (2) ☐ the persons in (6).

(Attach a copy of the order if you have one.)

This is not a Court Order.

8 c. Is the person in (2) a care custodian who deprived the person in (1) of (kept from him or her, did not allow him or her to have or receive, or did not provide him or her with) goods or services that the person needed to avoid physical harm or mental suffering? ☐ Yes ☐ No
(If yes, describe below what the person was deprived of and how that affected him or her):

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8c—Deprivation by Care Custodian" for a title.*

d. Has the person in (2) abused the person in (1) at other times?
☐ Yes ☐ No *(If yes, describe prior incidents and provide dates below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8d—Previous Abuse" for a title.*

9 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The person in (2) lives in this county.
b. ☐ The person in (1) was abused by the person in (2) in this county.
c. ☐ Other *(specify):*

10 Other Court Cases

a. Has the person in (1) or any of the persons named in (6) been involved in another court case with the person in (2)? ☐ No ☐ Yes *(If yes, specify the kind of each case and indicate where and when each was filed):*

	Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1)	☐ Elder or Dependent Adult Abuse			
(2)	☐ Civil Harassment			
(3)	☐ Domestic Violence			
(4)	☐ Divorce, Nullity, Legal Separation			
(5)	☐ Paternity, Parentage, Child Custody			
(6)	☐ Eviction			
(7)	☐ Guardianship			
(8)	☐ Workplace Violence			
(9)	☐ Small Claims			
(10)	☐ Criminal			
(11)	☐ Other *(specify):*			

b. Are there now any protective or restraining orders in effect relating to the person in (1) or any of the persons named in (6) and the person in (2)? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

This is not a Court Order.

Check the orders you want. ☑

11 ☐ Personal Conduct Orders

I ask the court to order the person in (2) **not** to do any of the following things to the person in (1) or to any person to be protected listed in (6):

a. ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.

b. ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

c. ☐ Other (*specify):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 11c—Other Personal Conduct Orders" for a title.*

_____

_____

_____

The person in (2) will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.

12 ☐ Stay-Away Orders

a. I ask the court to order the person in (2) to stay at least _____ yards away from *(check all that apply):*

(1) ☐ The elder or dependent adult in (1) .

(2) ☐ The persons in (6).

(3) ☐ The home of the elder or dependent adult.

(4) ☐ The job or workplace of the elder or dependent adult.

(5) ☐ The vehicle of the elder or dependent adult.

(6) ☐ Other *(specify):* _____

_____

_____

b. If the court orders the person in (2) to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? ☐ Yes ☐ No *(If no, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 12b—Stay-Away Orders" for a title.*

_____

_____

_____

_____

This is not a Court Order.

Case Number:

13 ☐ Move-Out Order

I ask the court to order the person in (2) to move out from and not return to the residence at *(address):*

The person in (1) will suffer physical or emotional harm if the person in (2) does not leave the residence. The person in (2) is not named in the title or lease of the residence, either alone or with others beside the person in (1).

☐ I ask for this move-out order right away to last until the hearing, because:

a. The person in (2) assaulted or threatened the person in (1) ; and

b. The person in (1) has the right to live at the above residence. *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 13b—My Right to Residence" for a title.*

14 ☐ Order for Counseling or Anger Management Courses

This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse.

a. Request the person in item (2) be ordered by the court to attend clinical counseling or anger management courses provided by a professional (a counselor, psychologist, psychiatrist, therapist, clinical social worker, or mental or behavioral health professional licensed in the state of California to provide counseling or anger management courses).

b. Explain why you are requesting an order that the person in item (2) attend clinical counseling or anger management courses.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 14b— Counseling or Anger Management" for a title.*

15 Guns or Other Firearms and Ammunition

Does the person in (2) own or possess any guns or other firearms? ☐ Yes ☐ No ☐ I don't know

Unless the abuse is only financial, if the judge grants a protective order, the person in (2) will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a gun, other firearm, and ammunition while the protective order is in effect. The person in (2) will also be ordered to turn in to law enforcement, or sell to or store with a gun dealer, any guns or firearms within his or her immediate possession or control.

This is not a Court Order.

Case Number:

16 ☐ Temporary Restraining Order

I request that a Temporary Restraining Order (TRO) be issued against the person in (2) to last until the hearing. I am presenting form EA-110, *Temporary Restraining Order,* for the court's signature together with this *Request*.

Has the person in (2) been told that you were going to go to court to seek a TRO against them?

☐ Yes ☐ No *(If you answered no, explain why below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 16—Temporary Restraining Order" for a title.*

17 ☐ Request to Give Less Than Five Days' Notice of Hearing

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Read form EA-200-INFO, What Is "Proof of Personal Service"?, to learn about serving legal papers. *Form EA-200,* Proof of Personal Service*, may be used to show the court that the papers have been served.)*

If you want there to be less than five days between service and the hearing, explain why:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 17—Request to Give Less Than Five Days' Notice" for a title.*

18 ☐ Lawyer's Fees and Costs

I ask the court to order payment of my ☐ lawyer's fees ☐ court costs.

The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or form MC-025 and write "Attachment 18—Lawyer's Fees and Costs" for a title.*

19 ☐ Possession and Protection of Animals

I ask the court to order the following:

a. ☐ That the person in (1) be given the sole possession, care, and control of the animals listed below, which they own, possess, lease, keep, or hold, or which reside in their household.
(Identify animals by, e.g., type, breed, name, color, sex.)

This is not a Court Order.

Case Number:

19 ☐ Possession and Protection of Animals continued

I request sole possession of the animals because *(specify good cause for granting order)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 19a—Possession of Animals" for a title.*

b. ☐ That the person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

20 No Fee to Serve Orders

If you want the sheriff or marshal to serve (notify) the person in (2) about the orders for free, ask the court clerk what you need to do.

21 ☐ Additional Orders Requested

I ask the court to make the following additional orders *(specify)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 21—Additional Orders Requested" for a title.*

22

Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Signature of person filling out this request*

This is not a Court Order.

EA-120

Response to Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

7/1/2020 DRAFT

Use this form to respond to the *Request* (form EA-100)

- Read *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?* (form EA-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person requesting protection in (1) by mail with a copy of this form and any attached pages. *(Use form EA-250,* Proof of Service of Response by Mail.*)*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Elder or Dependent Adult Seeking Protection

Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (form EA-100).)*

_____

(2) Person From Whom Protection Is Sought

a. Your Name: _____

Your Lawyer *(if you have one for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Present your response and any opposition at the hearing. Write your hearing date, time, and place from form EA-109, item (3), here:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

If you were served with a Temporary Restraining Order, you must obey it until the hearing. At the hearing, the court may make orders against you that last for up to five years.

(3) ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (13) on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item (13) on page 4):*

_____

_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (13) on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item (13) on page 4):*

_____

_____

5 ☐ Move-Out Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 13 on page 4):*

6 ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item 6 of form EA-100 may be protected by the order requested.

b. ☐ I do not agree that the persons listed in item 6 of form EA-100 may be protected by the order requested.

7 ☐ Order for Counseling or Anger Management Courses

This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse.

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 13 on page 4):*

8 Guns or Other Firearms and Ammunition

If you were served with form EA-110, *Temporary Restraining Order,* you cannot own or possess any guns, other firearms, or ammunition. (See item 8 of form EA-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with form EA-110. You must file a receipt with the court. You may use form EA-800, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.

a. ☐ I do not own or control any guns, firearms, magazines or ammunition.

b. ☐ I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(Explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 8b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.

A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

Case Number:

9 ☐ Possession and Protection of Animals

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*
c. ☐ I agree to the following orders *(specify below or in item 13 on page 4):*

10 ☐ Other Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*
c. ☐ I agree to the following orders *(specify below or in item 13 on page 4):*

11 ☐ Denial

I did not do anything described in item 10 of form EA-100. *(Skip to 13.)*

12 ☐ Justification or Excuse

If I did some or all of the things that the person in 1 has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 12–Justification or Excuse" as a title. You may use form MC-025,* Attachment.

Case Number:

13 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each order requested that you do not agree with.

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 13—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

14 ☐ Lawyer's Fees and Costs

a. ☐ I ask the court to order payment of my ☐ lawyer's fees ☐ court costs. The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper and write "Attachment 14—Lawyer's Fees and Costs" for a title. You may use form MC-025,* Attachment.

b. ☐ I ask the court to deny the request of the person asking for protection named in (1) that I pay his or her lawyer's fees and costs.

15 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

EA-130 Elder or Dependent Adult Abuse Restraining Order After Hearing

Clerk stamps date here when form is filed.

7/6/2020 DRAFT

Person in (1) must complete items (1), (2), and (3) only.

(1) Elder or Dependent Adult Seeking Protection

a. Full Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (form EA-100).)*

Full Name: _____

Lawyer for person named above *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the elder or dependent adult named in (1), the following family or household members or conservator of the elder or dependent adult named in (1) are protected by the orders indicated below:

Full Name	Sex	Age	Lives with you?	Relation to Protected Person
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form MC-025,* Attachment.

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

Case Number:

5 Hearing

a. There was a hearing on *(date):* _____ *at (time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:
(1) ☐ The elder or dependent adult in need of protection
(2) ☐ The lawyer for the elder or dependent adult *(name):* _____
(3) ☐ The person in (1) asking for protection (if not the elder or dependent adult)
(4) ☐ The lawyer for the person in (1) asking for protection *(name):* _____
(5) ☐ The person in (2)
(6) ☐ The lawyer for the person in (2) *(name):* _____
☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in (2):

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. You must **not** do the following things to the elder or dependent adult named in (1)
☐ and to the other protected persons listed in (3):
(1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.
(4) ☐ Other *(specify):*
☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

7 ☐ Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*
(1) ☐ The elder or dependent adult in (1).
(2) ☐ Each person in (3).
(3) ☐ The home of the elder or dependent adult.
(4) ☐ The job or workplace of the elder or dependent adult.
(5) ☐ The vehicle of the elder or dependent adult.
(6) ☐ Other *(specify):*
_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

This is a Court Order.

Case Number:

8 ☐ Move-Out Order

You must immediately move out from and not return to *(address):*

_____

_____

and must take only the personal clothing and belongings you need.

9 ☐ Order for Counseling or Anger Management

a. The person in item 2 is ordered to attend:
☐ clinical counseling for _____ *(specify number)* sessions; or
☐ an anger management course
provided by a professional (a counselor, psychologist, psychiatrist, therapist, clinical social worker, or mental or behavioral health professional licensed in the state of California to provide counseling or anger management courses).

b. The person in item 2 must schedule clinical counseling or enroll in an anger management course by *(date)*: _____, or if no date is listed, within 30 days after this order is made. The person in item 2 is ordered to file written proof of scheduling or enrollment with the court.

c. ☐ Written proof of completion of the ordered number of clinical counseling sessions or written proof of completion of the court-ordered anger management course must be filed with the court by _____ *(date)* or the person in item 2 must appear for a court date on _____ *(date)* at _____ *(time)* in _____ Dept./Room.

10 ☐ No Guns or Other Firearms and Ammunition

This Order must be granted unless the abuse is financial only.

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:
- Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
- File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use form EA-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm):* _____

_____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

This is a Court Order.

11 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

12 ☐ Possession and Protection of Animals

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.
(Identify animals by, e.g., type, breed, name, color, sex.)

_____
_____
_____

b. ☐ The person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

13 ☐ Lawyer's Fees and Costs

You must pay to the person in (1) the following amounts for ☐ lawyer's fees ☐ costs:

Item	Amount	Item	Amount
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____

☐ Additional amounts are attached at the end of this Order on Attachment 13.

14 ☐ Other Orders *(specify):*

_____
_____
_____
_____
_____
_____
_____
_____

☐ Additional orders are attached at the end of this Order on Attachment 14.

This is a Court Order.

Case Number:

To the Person in (1):

15 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, you or your lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 15.

16 Service of Order on Restrained Person

a. ☐ The person in (2) personally attended the hearing. No other proof of service is needed.

b. ☐ The person in (1) was at the hearing. The person in (2) was not.

(1) ☐ Proof of service of form EA-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in form EA-110 except for the end date. The person in (2) must be served with this Order. Service may be by mail.

(2) ☐ Proof of service of form EA-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are different from the orders in form EA-110. Someone—but not anyone in (1) or (3)—must personally serve a copy of this Order on the person in (2).

17 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, they will do so for free.

18 Number of pages attached to this Order, if any: _____

Date: _____

▶ _____

Judicial Officer

This is a Court Order.

Warning and Notice to the Restrained Person in 2:

You Cannot Have Guns or Firearms

If the court grants the orders in item 10 on page 3 (unless item 10d is checked), you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item 10. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Order

This order *starts* on the date next to the judge's signature on page 5. The order *ends* on the expiration date in item 4 on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Case Number:

Instructions for Law Enforcement

Conflicting Orders—Priority of Enforcement

If more than one restraining order has been issued, the orders must be enforced in the following order of precedence: *(See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)*

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Elder or Dependent Adult Abuse Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

SPR20-064

Protective Orders: Elder or Dependent Adult Abuse Prevention Forms

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Responses
1.	Los Angeles County Sheriff's Department By Marie Hazlett, Head Court Record System Clerk	AM	Since the form is being revised. I suggest that the firearm provisions #10 and #11 be combined. #11 verbiage, "does not" or "does" involve solely financial is confusing and very often the wrong box is marked. #10 could have a box for "Granted" and a box for "Not Granted (case involves solely financial abuse)." This would make it clearer when and why the firearms provisions are not granted.	Thank you for your comment. This comment is outside of the scope of this proposal, but the committee may consider this in the future.
2.	Orange County Bar Association By Scott B. Garner, President	N	**EA-100 Request for Elder or Dependent Adult Abuse Restraining Orders** At new item 14, within the parenthetical phrase describing the requisite professional, it is suggested that the word "state," used in connection with "California," be capitalized. Request for Specific Comments • Does the proposal appropriately address the stated purpose? No. The proposed modifications to forms EA-100, EA-120, and EA-130 all reflect changes to the law brought about by AB 1396. These changes were codified in Wel. & Inst. Code section 15657.03(z), yet nowhere on any of the subject forms is the authority for these two new approaches, i.e., clinical counseling and anger management courses, referenced. It would seem helpful to the court, attorneys, and parties to have the code section setting forth these optional approaches specifically referenced on each of the subject forms.	The committee appreciates the comments from the Orange County Bar Association. The committee choose not to accept this suggestion because the phrase should be "in the state of California" (i.e., lowercase) when referring to the geographic location rather than the political entity. No response required. This information is included on each form in the bottom left corner of the first page.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Responses
			Additionally, it is suggested that forms EA-100 and EA-120 and, perhaps, EA-130, contain a statement that these two optional approaches are available only in instances of alleged physical abuse, etc., or deprivation of care, etc., as fully described in Wel. & Inst. Code section 15610.07(a)(1) and (2), respectively, and not available for instances of alleged financial abuse. Making this distinction clear would seem helpful for the court, attorneys, and parties, in that financial abuse is a ground for obtaining other remedies on, and by the use of, the subject forms. • Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management? Yes (see comments below). • Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course? Yes (see comments below).	The committee agrees with this suggestion and has incorporated it on forms EA-100 and EA-120. The committee concluded it was not necessary to include on form EA-130 because judges understand the order's applicability and thus it would have been unnecessarily directive. **Committee response to Specific Question #1.** The committee appreciates the responses to this specific question. The committee did not divide clinical counseling and anger management into two separate options. The comments were divided equally between those who wanted the question split into two options and those who did not. The committee determined that each individual court may be best suited to know the remedies that are available locally to address the situation described in the petition, and therefore did not include an option for the petitioner to request an order for either clinical counseling or anger management, but instead left them together as a single request. **Committee response to Specific Question #2.** In response to the public comments, the committee modified the form to add a question,

	Commenter	Position	Comment	Committee Responses
			Item 14 should include an option whereby the petitioner requests clinical counseling or an anger management course and make clear to the petitioner that there is a choice to be made between the two, per the statute. Further, because the two approaches are distinct and address distinct issues, the petitioner should be required to provide reasons which form the basis for the particular request. Accordingly, there should be lines provided where these reasons are to be set forth. It is believed necessary that item 14 contain the options and attendant reasoning so that the respondent would have sufficient and effective notice of the allegations and specific court order sought against them in order to make an informed response to item 7 of form EA-120, and to provide focused and relevant information on their behalf at item 13 of form EA-120. The Committee's concern as to whether a petitioner might understand the distinction between clinical counseling and anger management is noted, however, it is believed the differences could be, and should be, explained and described in both form EA-100-INFO and form EA-120-INFO. Further, it is suggested that forms EA-100-INFO and EA-120-INFO contain a description and explanation of a batterer intervention program which is available only by way of a domestic violence restraining order sought by request in the family law court. In that a spouse, significant other, or domestic partner may act in a manner which potentially subjects them to restraining orders for both domestic violence and elder abuse, the Information Sheets should detail why and how one applies for each. Including these	item 14b, that allows the petitioner to provide reasons why they are requesting clinical counseling or management courses and lines for the petitioner to fill in with their reasoning. This is for the judge to be able to gather information and use their knowledge of local resources to determine the appropriate remedy. This request, to modify the EA INFO sheets, is outside the scope of this proposal. The committee may address this in the future.

	Commenter	Position	Comment	Committee Responses
			explanations of counseling, course, and program would illustrate their differences, the understanding of which is critical to anyone, particularly the self-represented, in making a choice responsive to the need.	
			It is understood that there is reluctance to modify forms EA-100-INFO and EA-120-INFO at this time, based on the Committee's assertion that the forms are slated for revision sometime in 2021, and that the forms are not yet obsolete. It is believed that the Information Sheets should be revised now in that they are, in fact, obsolete as they contain no information or explanation as to these two new approaches which have been available since January 1, 2020. Waiting to revise forms which do not contain information vital to critical decisions works a disservice to the parties, often self-represented, and poses actual risk to those who are to be protected by these orders.	See above.
			EA-120 Response to Request for Elder or Dependent Adult Abuse Restraining Orders	
			The Orange County Bar Association agrees [with the proposal for this form].	No response needed.
			EA-130 Elder or Dependent Adult Abuse Restraining Order After Hearing	
			At new item 9a., within the parenthetical phrase describing the requisite professional, it is suggested that the word "state," used in connection with "California," be capitalized.	The committee choose not to accept this suggestion because the phrase should be "in the state of California" (i.e., lowercase) when

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Protective Orders: Elder or Dependent Adult Abuse Prevention Forms

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Responses
			At new item 9b., though the order requires scheduling or enrollment within 30 days at most, there is no time limit stated as to when the respondent is to file the required proof of such scheduling or enrollment. Accordingly, it is suggested that the phrase, "within _____ days of scheduling or enrollment," be added at the end of the last line of the item's text.	referring to the geographic location rather than the political entity. After discussion the committee chose not to adopt this suggestion at this time because it imposes a responsibility on the court that is not required by statute.
3.	Philip A. Pimentel Court Commissioner Superior Court of Tuolumne County	AM	I would believe that the changes to the EA forms are made due to the large number of cases where the Elder person does not want to end all contact with the Restrained person, they merely want the Restrained person to get help. If the changes made are for this purpose, then why not also add that the court may require the Restrained person to enroll in and complete Substance and/or Alcohol Abuse programs as well. These issues are also common to the EA cases. thank you.	The committee appreciates the feedback and comment. This suggestion is outside of the requirements for form changes required by AB 1396 (Obernolte; Stats. 2019, ch. 628) and outside the scope of this proposal.
4.	Superior Court of Orange County, Family Law Division		EA-100 – Request for Elder or Dependent Adult Abuse Restraining Orders • Other than the comments made on the following questions, there no other issues to these modified forms. EA-120 – Response to Request for Elder or Dependent Adult Abuse Restraining Orders • No comments.	The committee appreciates the comments from the court. No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Protective Orders: Elder or Dependent Adult Abuse Prevention Forms

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	Commenter	Position	Comment	Committee Responses
			□ EA-130 – Elder or Dependent Adult Abuse Restraining Order After Hearing • #9 – Consider removing the word "or" in order to have the option to order both clinical counseling and anger management.	The committee chose not to adopt this suggestion because they thought it was appropriate to track the language of the statute.
			□ Does the proposal appropriately address the stated purpose? • Yes, it does.	No response required.
			□ Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management? • The form should give the petitioner the option to request either Clinical Counseling or Anger Management but also the option to say "and" or "or" giving them the option to request both types concurrently.	See above.
			□ Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course? • That might be a good idea because the petitioner might use the lines in #21 to state his reasons.	See response to specific question #1 under commenter #2 above.
			□ 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	

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	Commenter	Position	Comment	Committee Responses
			management systems, or modifying case management systems? • Counter staff and staff working e-Filing would need to be trained as they will receive the forms initially. Courtroom staff would need to be aware of the new order that are being requested. It does not appear that any docket codes would need to be modified. □ Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? • Yes, 3 months would be sufficient time for implementation. □ How well would this proposal work in courts of different sizes? • This shouldn't be an issue for different size courts. These types of order are already being given in domestic violence cases.	The committee appreciates the level of detail in this response. No additional response is required. No response required. No response required.
5.	Superior Court of Orange County, Training and Analyst Group (TAG) Team TAG@occourts.org		General Comments: Consider referencing CRC, rule 1.300 that requires services ordered include language access services be available in the language spoken by limited English proficient court users. Also, consider including a reference to fee waiver requests, as appropriate. 1. Does the proposal appropriately address the stated purpose? Yes 2. Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management? Yes.	The committee appreciates these comments. These additions may be considered by the committee in the future. No response required. See response to specific question #1 under commenter #2 above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Protective Orders: Elder or Dependent Adult Abuse Prevention Forms

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	Commenter	Position	Comment	Committee Responses
			3. Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course? Yes. This will provide the court context for the request. And since these documents are served on the respondent, the respondent can be better prepared for the hearing. Also, item 7 of the EA-120 affords the respondent the opportunity to specify the reasons for disagreeing with the proposed order. Therefore, the petitioner should be afforded the opportunity to specify the reasons why the order is being requested.	See response to specific question #2 under commenter #2 above.
			4. 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? Legal Processing Specialists will need training on reviewing the forms for completeness. Courtroom Clerks will also need to be trained on processing and completing the forms, specifically the EA-130. New docket codes will be required, and clerks will need to be trained on how to use the docket codes, depending on what scenarios need to be captured. Training will take about 8-10 hours. Procedures/resources updates will also take about 8-10 hours.	The committee appreciates this information.
			5. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Responses
			6. How well would this proposal work in courts of different sizes? The proposal would work in courts of all size depending on resource availability. Larger courts may have access to more community-based resources than smaller courts; however, the volume of elder abuse cases is higher in larger counties, which may present case management challenges versus courts of smaller size.	No response required.
6.	Superior Court of Riverside County By Susan Ryan	AM	Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management? No. The item should just reflect anger management courses similar to that of batters' intervention program. Clinical counseling is too broad and not specific as to the area necessary for counseling. Anger management courses already have some substance abuse portions built in and the court already has established providers. • Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course? No. It should mimic that of the domestic violence batters' intervention program and not require the victim to justify why correction to the potential perpetrator is necessary.	The committee appreciates the comments from the Superior Court of Riverside County. See response to specific question #1 under commenter #2 above. See response to specific question #2 under commenter #2 above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Responses
			• 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? Costs for self-help would be minimal. We would need to work with Judicial Council to ensure any modifications needed to our program. Cost for the court would vary. Costs would include training operational staff to handout and inform the public of the court approved anger management classes as well as time to file in completions or additional court supervision when a party does not complete the classes. What are the consequences when a party does not complete the anger management courses in a timely manner? • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No, given the court's prioritization of COVID Mitigation efforts.	The committee appreciates this information. The statute does not address this issue. The court has inherent powers to enforce the orders that they make, including the ability to order a return hearing to determine status of competition, as is listed on form EA-130. The committee appreciates the feedback, unfortunately, the statute requires these form revisions to be effective January 1, 2021.
7.	Superior Court of San Diego County By Mike Roddy Court Executive Officer		Does the proposal appropriately address the stated purpose? Yes. Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management? No, item 14 is sufficient.	The committee appreciates the comments from the court. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Responses
			Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course? Yes, this may assist the court in determining which of the two is more appropriate.	This response has been adopted, see answer to specific question #2 above under commenter #2.
			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? Updating procedures, revising packets, training staff, and establishing a calendar to address status of completion.	No response required.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the forms are provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update procedures, configure local packets, and order printed stock.	No response required.
			How well would this proposal work in courts of different sizes? It appears that the proposal will work for courts of various sizes.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Responses
8.	The Executive Committee of the Trusts and Estates Section of the California Lawyers Association (TEXCOM)	A	The Executive Committee of the Trusts and Estates Section of the California Lawyers Association (TEXCOM) agrees with this proposal. TEXCOM responds as follows to the Request for Specific Comments: • Should form EA-100, new item 14, include an option for the petitioner to request either clinical counseling or anger management? TEXCOM recommends that proposed new item 14 not be revised further to include an option for the petitioner to request either (1) clinical counseling or (2) anger management. The determination as to the appropriateness of which option should be selected is better left to the court. A lay person should not be required to make a judgment call between clinical counseling and anger management. • Should form EA-100, new item 14, include lines asking for the reasons why the petitioner is requesting clinical counseling or an anger management course? Although TEXCOM believes the form should not be revised to include an option for the petitioner to request either (1) clinical counseling or (2) anger management, TEXCOM believes the form should include lines asking for the reasons a petitioner has requested an order for counseling or anger management courses, if item 14 as currently proposed is checked.	The committee appreciates the comments and feedback from the TEXCOM members. See response to specific question #1 under commenter #2 above. See response to specific question #2 under commenter #2 above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

FACT SHEET

JAY OBERNOLTE
Assemblyman, 33rd District

Assembly Bill 1396 – Elder Abuse Prevention Programs

SUMMARY

AB 1396 would help to prevent ongoing elder abuse by giving judges the option of ordering a restrained party to attend an elder abuse prevention program following the issuance of an Elder Abuse Restraining Order.

BACKGROUND

Elder abuse is a significant problem faced by a large portion of the elderly population both nationally and within California. The National Council on Aging reports that approximately 1 in 10 Americans aged 60+ have experienced some form of elder abuse, and that statistic does not include the substantial number of cases which go unreported. One study estimates that only 1 in 14 cases of abuse are reported to authorities. [1]

This is particularly a problem in California, where the United States Census Bureau projects that the elderly population will have doubled by 2025 to 6.4 million – a larger growth rate than any other state. Our elder population also has a higher rate of reported elder abuse than any other state. In fact, in 2009 the California Senate Office of Oversight and Outcomes reported that 13% of all complaints to the California Office of the State Long Term Care Ombudsman involved abuse, gross neglect, or exploitation, which is over twice the national average. [2]

Elder abuse is similar to domestic violence in that in almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. However, in domestic violence cases more tools are available to prevent recurrence of the abuse. In California a domestic violence conviction results in a minimum sentence of three years of probation. As a condition of this probation an offender must complete a Batterers' Intervention Program.

A Batterers' Intervention Program is a combination of education and counseling that specifically focuses on the cause of abuse, the effects abuse has on a victim, and changes that must take place to prevent repeat violent offenses.

PROBLEM

Judges in California do not have a similar tool in place concerning cases of elder abuse, which increases the potential for violent behavior to continue. As there are many similarities between domestic violence and elder abuse, this type of program would be very beneficial in preventing future cases of elder abuse.

SOLUTION

AB 1396 gives judges the option of ordering the restrained party in an Elder Abuse Restraining Order to attend court approved anger management or clinical counseling similar to requirements currently mandated in cases of domestic violence, therefore providing judges another tool to help prevent ongoing elder abuse.

SUPPORT

Conference of California Bar Association (Sponsor)

CONTACT

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Scott.Terrell@asm.ca.gov

[1] https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/
[2] https://oag.ca.gov/bmfea/elder

Item number: 30

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 19-20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Request for Disability Accommodations

Committee or other entity submitting the proposal:
Advisory Committee on Providing Access and Fairness

Staff contact (name, phone and e-mail): Diana Glick, 916-643-7012, diana.glick@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Approved by E&P May 15, 2019
Project description from annual agenda:
Project Title: Form MC-410: Request for Accommodations by Persons with Disabilities Priority 2(b)

Project Summary: Redesign Judicial Council form MC-410 to make it more user-friendly and in plain language. This will make it easier for court-users to understand the form and correctly complete it. This will also make it easier to translate the form into multiple languages.

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

20-160
For business meeting on: September 24–25, 2020

Title
Rules and Forms: Request for Disability Accommodations

Rules, Forms, Standards, or Statutes Affected
Approve form MC-410-INFO; revise form MC-410

Recommended by
Advisory Committee on Providing Access and Fairness
Hon. Kevin C. Brazile, Cochair
Hon. Luis A. Lavin, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 10, 2020

Contact
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Linda McCulloh, 415-865-7746
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Executive Summary

The Advisory Committee on Providing Access and Fairness recommends the revision of the form used to request accommodation for disability, and the adoption of a new information sheet to explain the process to request an accommodation. The redesigned form will provide a clearer path for court users with disabilities to make requests and understand the court's response to their request, while the information sheet will facilitate use of the form.

Recommendation

The Advisory Committee on Providing Access and Fairness (Committee) recommends the following, each with an effective date of January 1, 2021:

1. Approve *How to Request a Disability Accommodation for Court* (form MC-410-INFO); and

2. Revise *Disability Accommodation Request* (form MC-410).

The recommended new and revised forms are attached at pages 7-11.

Relevant Previous Council Action

The Judicial Council initially set forth the process for requesting an accommodation for disability in rule 989.3 of the California Rules of Court and developed the *Request for Accommodations by Persons with Disabilities and Response* (form MC-410), both of which were effective on January 1, 1996. The rule was amended in 2006, amended and renumbered as rule 1.100 in 2007, and amended again in 2010 and 2017.

Analysis/Rationale

This proposal recommends the redesign of form MC-410, used to request accommodation for disability, and the adoption of a new information sheet, form MC-410-INFO, to accompany and explain the process to request an accommodation.

This proposal applies the principles of plain language, readability and usability to the MC-410 form to improve the process of requesting accommodations for court users with disabilities and the ADA Coordinators tasked with receiving and fulfilling requests.

Section 508 of the federal Rehabilitation Act of 1973 sets forth requirements for digital access that federal agencies must follow in order to ensure access to online resources by those who are blind or have vision loss. One such requirement is the enabling of digital content for use with screen readers, which provide an auditory version of displayed written information. Other requirements address screen displays, the use of colors, and limits on flashing images.

The State of California has developed accessibility standards for state-controlled websites that include compliance with:

- Section 508 of the Rehabilitation Act of 1973[1];
- Web Content Accessibility Guidelines 2.0 (WCAG 2.0) at the AA conformance level;[2] and
- Best practices recommended by the California Department of Rehabilitation.[3]

This proposal includes a full audit of the accessibility functions of the MC-410 and recommends that the form be enabled for screen reader use before it is published on the California Courts website.

[1] 29 U.S.C. § 794d, available at: *https://www.law.cornell.edu/uscode/text/29/794d*.

[2] The World Wide Web Consortium (W3C) provides information about conformance levels at *www.w3.org/TR/UNDERSTANDING-WCAG20/conformance.html*.

[3] More information about the state government's process for developing web accessibility standards can be found at *https://webstandards.ca.gov/accessibility/*.

Form MC-410

Form MC-410 is proposed to be revised as follows:

- Plain language editing to text throughout and reformatting to conform to plain language format for Judicial Council forms;
- Change the title of the form to *Disability Accommodation Request*;
- Remove statement across the top of the form in capital letters reading "APPLICANT'S INFORMATION TO BE KEPT CONFIDENTIAL," and add the standard "CONFIDENTIAL" statement, in accordance with plain language format;
- Remove the following items:
  - Judge (in the caption);
  - Type of proceeding (item 1);
  - Proceedings to be covered (item 2); and
  - Special requests or anticipated problems (item 6);
- Change field for "Case Title" to "Case Name/Type (if you know it)", to enable litigants to provide a case name if they know it and enable jurors and witnesses who may not know the name of the case in which they are participating to provide a general case type;
- Change field for "Case Number" to "Case Number (if you know it)";
- Add calendar icon and language explaining the importance of making the request at least five court business days before the accommodation is needed;
- Add name and contact information as optional fields for someone who the filer gives permission to the court to contact for additional information or questions about the request;
- Add a warning with an icon at the top of page 2 asking applicants to notify the court if the date or time of their court event changes; and
- Reorganize the response options for the request to be either "GRANTED" or "DENIED IN WHOLE OR IN PART" with text fields for the court to explain the actions taken.

These changes have been extensively tested by both court staff and users of the form and adhere to current best practices for plain language, usability, and readability in legal content and forms.

User testing: ADA Coordinators

Court ADA Coordinators were asked to provide their feedback on the revisions to this form through (1) a statewide webinar in August 2019, (2) a small focus group that met several times in fall 2019 to review drafts, and (3) by email in February 2020. The current proposed language was specifically designed to meet the needs of ADA Coordinators who regularly fill out or receive this form to process requests for accommodation.

User testing: court users with disabilities
During December 2019, revised form MC-410 was tested by the Center for Accessible Technology. The interface was tested for plain language, readability, and usability by users with disabilities and by experts in web accessibility features. A number of changes in wording, flow, and organization were made based on the results of testing. The Center for Accessible Technology also performed some remediation work on the form to enable accessibility features and, once the revised substantive content of the form is approved, the committee will ensure that it is in compliance with WCAG 2.0 at the AA conformance level before posting to the California Courts website.

Form MC-410-INFO
The new information sheet developed to accompany form MC-410 is titled *How to Request a Disability Accommodation for Court*. The form begins with a brief introduction and an explicit statement that it is meant to help the applicant use form MC-410 to request an accommodation.

The form describes the process for requesting an accommodation under rule 1.100, including that the use of form MC-410 is not required and that there are other ways to make the request.

Based on ADA Coordinator feedback, the information sheet also contains a caution to litigants filing electronically that they must not electronically file the MC-410.

After this introduction, the rest of page 1 and page 2 of the information sheet carefully tracks each item on page 1 of form MC-410 and provides an explanation of what is expected to be included in each field, including the court name and address, applicant contact information, and information on the accommodation requested and the disability or limitation supporting the need for the accommodation.

Page 3 of the information sheet also mirrors the structure of the court's response provided on form MC-410 and explains the meaning of a "grant" or "denial" of the request. There is also a reference to the link to information about a possible reconsideration of the court's decision and a link to a webpage to help litigants find their court's website and ADA Coordinator if they need additional assistance.

Policy implications
The Judicial Branch's Strategic Plan includes Goal 1. Access, Fairness, and Diversity, Goal III. Modernization of Management and Administration, Goal IV. Quality of Justice and Service to the Public, and Goal VI. Branchwide Infrastructure for Service Excellence. This proposal satisfies objectives in each of these goals. The redesign of the form to make it more readable and usable, the development of an information sheet with instructions for the form and process, and the application of accessibility features to ensure that the form may be read by screen readers will increase the access of court users with disabilities to the court and enhance the ability of court staff to provide the highest level of customer service to all court users.

Comments

The proposal was circulated for public comment from April 10, 2020, to June 9, 2020. A total of 20 comments were received from courts, disability advocates, justice partners, private attorneys, social services agencies, and the California Commission on Access to Justice. Four commenters expressed full agreement with the proposal, one agreed with specified modifications, and the remainder of the commenters declined to indicate a position. Several commenters suggested simplified language that was accepted by the committee. The superior courts that submitted comments provided helpful information regarding the operational impacts on courts of the revised form.

The substantive comments and feedback fell into the following major categories:

Ability to approve a request for an "indefinite" period of time

Several commenters, including one ADA Coordinator, requested the return of the option to approve an accommodation for an "indefinite" period of time, as it currently appears on the MC-410. The option was removed during the precomment revision process because several courts indicated that it was problematic from a court operations perspective. They indicated that the ADA Coordinator was not always notified of every proceeding in the case and was also left unaware of continuances and rescheduling issues. Those ADA Coordinators believed it could be harmful to include that option on the form, because of the possibility that important communication about additional or changed hearing dates would be neglected. However, California Rules of Court, rule 1.100(h) states that: "The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance." It is within the discretion of ADA Coordinators whether or not to approve the accommodation request using the "indefinitely" option, given their understanding of the unique circumstances and operational needs of their court. Therefore, the committee restored this option to the revised version of the form.

Concerns about confidentiality and logistics when a "helper" is involved

Several commenters took issue with the optional questions on the MC-410 designed to collect information about a person who may have helped the court user fill out the form. These questions were originally designed to capture information about court staff for internal purposes (in some courts, judicial officers may want to reach out to the ADA Coordinator who authorized the accommodation); however, the commenters made clear that many times court users with disabilities get help with this form from friends, relatives, and sometimes their attorneys and other advocates. In addition, there are situations in which a court user may want to have questions from the court directed to another person because of communication or other language challenges. Courts expressed concerns about violating confidentiality requirements by contacting a person listed here without the express consent of the court user. One commenter was concerned about creating the impression that a person listed would definitely be contacted, when that is not always the case. The section was revised to clarify that a court user can optionally list a person here whom they wish for the court to contact, if there are questions about the request.

Concerns regarding the language of rule 1.100 of the California Rules of Court
Form MC-410 is intended to implement the process set forth in California Rules of Court, rule 1.100. The purpose of the current proposal is to edit form MC-410 for plain language, and redesign it to include visual elements and additional white space to increase readability; and increase the font size and enable screen reader accessibility to comply with Web Content Accessibility Guidelines 2.0. Several commenters recommended changes that would alter the substantive content of both the rule and the form, including (1) making the five-day deadline to submit requests a best practice, instead of mandatory; and (2) providing additional information on the interactive approach described in the Americans with Disabilities Act. Because of the narrow scope of this proposal, the committee declines to recommend substantive changes of this nature to the form or the rule.

Comments regarding how this form is submitted to the courts
Several commenters shared ideas and recommendations on alternative means of collecting and processing these requests, including via email, and requested consistent statewide messaging on submitting requests to the courts. These ideas were considered to be outside the scope of the current proposal. In addition, each county court is able to develop and implement its own process for receiving requests, making it difficult to provide accurate information on how to work with each individual court (and in some cases, each individual courthouse) to request an accommodation.

The chart of comments and committee responses is attached at pages 12-55.

Alternatives considered
A redesign of the form is not statutorily required, although it is important to ensure compliance with WCAG 2.0 with respect to web accessibility of documents and content available on the internet, particularly with regard to documentation that is explicitly intended for use by court users with disabilities. The addition of an information sheet to accompany the request form is also not statutorily required but is intended to facilitate the use of form MC-410.

Fiscal and Operational Impacts

This proposal will not result in the need for additional training for court personnel because there have been no substantive changes to the process or the form itself. To the contrary, it is anticipated that this streamlined and redesigned version of the form with accessibility features will make it easier for form users to request accommodations and for form consumers in the courts to process the request and make an appropriate response. Courts that maintain paper versions of the forms will incur the costs of replacing old forms with the revised forms.

Attachments and Links

1. Forms MC-410 and MC-410-INFO, at pages 7-11
2. Chart of comments, at pages 12-55
3. Link A: Cal. Rules of Court, rule 1.100, *www.courts.ca.gov/cms/rules/index.cfm?title=one&linkid=rule1_100*

MC-410 Disability Accommodation Request

CONFIDENTIAL

Clerk receives and date stamps here.

DRAFT
Not Approved by the Judicial Council

If you have a disability and need an accommodation while you are at court, you can use this form to make your request. For more information, see form MC-410-INFO.

Make this request at least **5 days** (when the court is open) before you need the accommodation.

Court Name and Address:

1 Your information

Name: _____

Address: _____

_____

Phone: _____

Email: _____

Case Number (if you know it):

2 How are you involved in the case?

☐ Juror ☐ Party ☐ Witness ☐ Lawyer

☐ Other (explain): _____

Case Name/Type (if you know it):

3 When and where do you need the accommodation? [date(s), time(s), and court location] _____

_____

4 What accommodation do you need at the court?

_____

_____

5 Why do you need this accommodation to assist you in court?

_____

_____

☐ More information on this request is attached.

Date: _____

_____
Type or print name

▶ _____
Signature

(**Optional**) If a court employee, caregiver or other person helped fill out this form and is **willing to provide more information if needed**, provide contact information below:

Name: _____ Email: _____ Phone: _____

Name: _____ | Case Number (if you know it): _____

Court fills out below

(Optional)

Important! If your case is delayed or dismissed after you make this request and you do not need the accommodation for the date you specified under 3, please contact the court at:

Phone: _____ Email: _____

☐ Your request is **GRANTED.** The court will provide the accommodation(s) requested.

☐ Your request is **DENIED IN WHOLE OR IN PART.** The denied portion of your request:

- ☐ Does not meet the requirements of Cal. Rules of Court, rule 1.100.
- ☐ Creates an undue financial or administrative burden for the court.
- ☐ Changes the basic nature of the court's service, program, or activity.

Explain the reasons supporting the box(es) checked above:

_____

_____

☐ **Instead**, the court will provide the following accommodation(s):

_____

_____

The court will provide the accommodation(s):

☐ For the date(s) and time(s) requested ☐ Indefinitely

☐ On date(s): _____

☐ More information on this decision is attached.

Date: _____

_____ _____

Type or print name Signature

The court responded in person, by phone, or mail/email on: _____

Note: You may be able to ask for a review of this decision. Cal. Rules of Court, rule 1.100(g) explains how to do this.

Disability Accommodation Request

MC-410-INFO How to Request a Disability Accommodation for Court

This information sheet is for form MC-410 (Disability Accommodation Request).

The purpose of this information sheet is to help you:

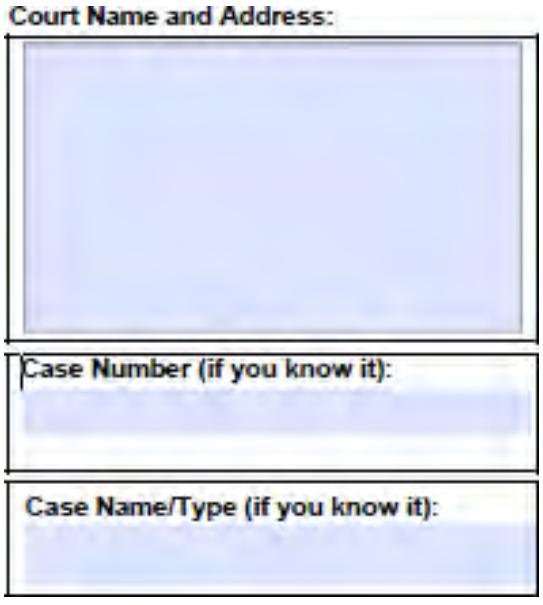
- Ask the court for an accommodation on page 1 of form MC-410.
- Understand the court's response on page 2.

If you have a disability or limitation and need an accommodation while you are at court, one way to ask for an accommodation is to fill out form MC-410 and give it to the ADA Coordinator or designated person (this could be a court clerk, a jury commissioner, or another person). Other ways to ask for an accommodation are to call the court or go in person to ask the ADA Coordinator or designated person.

Please note: If you are submitting papers to the court electronically, through electronic filing, you **must not** include form MC-410 with your filing. Form MC-410 is a confidential form that is not part of the case file. The form must be given to the ADA Coordinator or designated person in your court.

Make this request at least **5 days** (when the court is open) before you need the accommodation.
If this is not possible, you can still make a request.

Page 1 of form MC-410 asks for the information the court needs to understand and make a decision about your request.



Court Name and Address:

Write the name and address of your court. If you do not know the court address, ask the ADA Coordinator or court staff for help.

Case Number (if you know it):

If you have a case number, write it here.

Case Name/Type (if you know it):

If you know the name of your case, write it here.

Example: Guardianship of Jane Doe

1 Your information

Write your name, address, telephone number, and email address where the court can reach you in the near future.

2 How are you involved in the case?

Check the box that describes who you are: a juror, party, witness, or lawyer. If you are someone else, mark "Other" and explain on the line.

3 When and where do you need the accommodation?

Tell the court the dates and times when you will need the accommodation in court and where in the courthouse you will be.

4 What accommodation do you need at the court?

Write down the accommodation you are requesting.

Example: ASL Interpreter

For more examples of accommodations the court can provide, see Disability Accommodations in California Courts.

5 Why do you need this accommodation to assist you in court?

Explain to the court what you cannot do and how the accommodation you are requesting will help you participate in court.

Example: I am hard of hearing and can't hear like everybody else. I need an assistive listening device to hear what is going on in court.

There is a check box under this question that you can check if you attach additional information about your request to the form.

Signatures

- Write today's date, type or print your name, and sign on the signature line next to the arrow.
- If someone helped you fill out the form, such as a court employee or a friend, caregiver, or relative, you can provide their name, phone number, and email address where the court can reach them if there are any questions about the request. This is optional.

The court will respond to your request by telling you in person, calling you on the phone, or mailing or emailing you a response.

Page 2 of form MC-410 is where the court responds to your request.

> **Important!** If your case is delayed or dismissed after you make your request, please contact the court at the phone number or email address provided.

- The court will check one of two boxes. Either:

  ✓ Your Request is **GRANTED**

  -OR-

  ✓ Your Request is **DENIED IN WHOLE OR IN PART**

  If your request is denied in whole or in part, the court will tell you **why** it is being denied. If the court offers you a different accommodation, it will tell you **what accommodation** will be provided.

- If the court will provide an accommodation, it will tell you **when** the accommodation will be provided: either the dates and times you requested, different dates and times, or indefinitely.

- If the court provides additional information about the decision, it will check that box and attach the information to the form.

- Underneath the court's signature line, the court enters a date telling you **when** the court responded to the request. The court may respond by telling you in person, calling you on the phone, or by mailing or emailing you a response.

- At the bottom of the page, there is a link to information about how to ask for a review of the court's decision.

Need More Help?

- See Disability Accommodations in California Courts.
- Visit your court's website to find the ADA Coordinator.
  - For help finding your court: www.courts.ca.gov/find-my-court.htm.

S20-27
Rules and Forms: Request for Disability Accommodations (approve form MC-410-INFO, revise form MC-410)
All comments are verbatim unless indicated by an asterisk (*)

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	Tiffany L. Hickey, Staff Attorney, Housing Rights Program Asian Americans Advancing Justice—Asian Law Caucus	N/A	Asian Americans Advancing Justice – Asian Law Caucus (AAAJ-ALC) submits this letter in response to the Judicial Council's invitation to comment on the revision of the Disability Accommodation Request (form MC-410) and the approval of a new information sheet titled How to Request a Disability Accommodation for Court (form MC-410-INFO) to accompany the request form. Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian Pacific American communities. We focus on housing rights, immigration and immigrants' rights, labor and employment issues, student advocacy (ASPIRE), civil rights and hate violence, national security, and criminal justice reform. As a founding affiliate of Asian Americans Advancing Justice, we also help to set national policies in affirmative action, voting rights, Census, and language rights. Our housing advocacy focuses on gateway communities for new immigrants, such as San Francisco Chinatown, where large numbers of tenants and seniors are in danger of displacement due to gentrification and other economic pressures. Our clients are low-income, often live with disabilities, and have limited English proficiency. We defend tenants with disabilities in unlawful detainer actions, where reasonable accommodations are critical in providing equal access to the court. Particularly in the context of a global health crisis where many of our clients are at higher risk for severe illness, accommodations for people with disabilities mean that they do not have to choose between defending their home and the risk of becoming severely ill. Furthermore, most unlawful detainer litigants are self-represented, which makes true meaningful access to courts, court procedures and court documents, including requests for	

List of All Commenters, Overall Positions on the Proposal, and General Comments				
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			disability accommodations, even more crucial. **I. Comments on MC-410 Form: Disability Accommodation Request** First, we commend the Judicial Council Advisory Committee's efforts to ensure that the revised MC-410 form complies with the Web Content Accessibility Guidelines. Editing for plain language, increasing font size, and adding additional white space for increased readability are helpful steps towards accessibility and we support these proposed revisions. Below are comments related to some of the other proposed changes to the MC-410 form. **A. The 5-day Deadline to Submit the Proposed MC-410 Form Should Only Be an Encouraged Timeframe.** The proposed MC-410 form tells parties to "Make this request at least 5 days (when court is open) before you need the accommodation." This appears to be in conflict with the accompanying MC-410-INFO form, which includes the qualifier, "*if possible*." The apparent hard deadline on the form would discourage litigants, particularly those who are unrepresented, from submitting the form less than 5 days prior to the needed accommodation and exercising their rights to equal access at all. Title II of the Americans with Disabilities Act (ADA), which governs the programs, services, and activities of state and local governments, including courts, and its corresponding regulations do not require that a reasonable modification request be made at or by a particular time. California Rules of Court 1.100(c) seems to be inconsistent with the law, requiring requests for accommodations as far in advance as possible but no less than five court days prior to the needed accommodation implementation.	The Committee appreciates this feedback. The Committee appreciates this comment and acknowledges that there are occasions on which making a request 5 days before a court proceeding is impossible. In those cases, in accordance with California Rules of Court, rule 1.100(c)(3), the court has the discretion to waive the 5-day requirement. The purpose of the "If possible" language was to avoid discouraging those court users who have been scheduled for an emergency hearing or other proceeding on a short timeline, from availing themselves of the process to request an accommodation that will enable them full participation in their court matter. However, because the rule of court is clear that requests must be made five days in advance, and, in the interest of consistency, the Committee has

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			The 5-day deadline is particularly difficult for tenants facing eviction because unlawful detainers are "summary" proceedings that move on a much shorter timeline for motions, discovery, and trial. A tenant often receives notice of a hearing in their case 5 calendar days prior, making it impossible to request an accommodation 5 court-days in advance. Strict application of the CRC's 5 court-day requirement would not give people with disabilities sufficient time to make the request and the discretionary waiver is not enough to ensure that these litigants are given equal access to the courts. Providing necessary accommodations to people with disabilities certainly outweighs any slight burden to the court caused by shorter notice of a request or a possible delay in court proceedings. Therefore, we suggest modifying the 5-day language on the MC-410 form to make it consistent with the language on the MC-410-INFO form and federal law, and make it clear that the courts must reschedule a hearing if necessary to provide an accommodation for a person with disabilities. **B. Courts Should be Required to Explain the Reason for Denial of a Reasonable Accommodation Request.** On page three (3) of its Invitation to Comment, the Council states that one of the proposed revisions to the form is, "Includ[ing] space for the court to *optionally* explain the reason for denial or to include information about partial denials (emphasis added)." Explaining the reason for denial should be mandatory to comply with established disability laws and prevent needless appeals. The Americans with Disabilities Act and its implementing regulations require a public entity to provide a written statement of reasons for a reasonable accommodation denial:	reworded both sections to read as follows: "Make this request at least **5 days** (when the court is open) before you need the accommodation." On the MC-410-INFO, the following statement has been added: "If this is not possible, you can still make a request." The Committee has revised this section to clarify the responsibility for providing an explanation for denial and for indicating any partial or different accommodations that will be provided.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
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			"In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion." 28 C.F.R. § 35.150(a)(3). Therefore, the Council should clarify that court must provide specific reasons for denying the accommodation on page 2 of the revised MC-410 form rather than the option of two check boxes. The proposed form simply includes two check boxes and an optional space to explain why a request was denied but neither the form nor the Committee's explanation require courts to include an explanation. Not only does this violate the Americans with Disabilities Act, but this also creates the potential for confusion for the disabled participant. Without information regarding the reasons for denial of an accommodation request or how the request was an undue burden or fundamental alteration, there will be no clear record for later review pursuant to the procedure provided in CRC 1.100(g) or a petition for writ of mandate. A written decision explaining the reasons for the denial will help the requester understand why their request was denied, establish on review whether the denial was proper, and ensure that disabled people are afforded the equal access to all aspects of the courts. Therefore, we request that the MC-410 form be amended to	

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			clarify that the courts must provide the reasons for denial in the additional space provided, in accordance with the Americans with Disabilities Act. **C. The MC-410 Form and Order Do Not Contemplate the Interactive Process** In addition to requiring courts to provide an explanation for denying an accommodation request, the form should include an option for "More Information Needed from the Requester." Public entities also have an obligation to engage in the interactive process when someone with a disability requests a reasonable accommodation. The "ADA imposes an obligation to investigate whether a requested accommodation is reasonable… [and] create[s] a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary." The proposed Order only allows for the request to be granted or denied and further provides a check box for the court to potentially unilaterally decide an alternate accommodation. However there is no indication of a proper interactive process as required by law. This conversation is vital in ensuring that disabled individuals are afforded equal access to the courts and are provided with an accommodation that meets their unique needs. Therefore, we suggest including an option on the order that includes the interactive process so both the courts and individuals with disabilities are aware of this requirement and able to participate in determining appropriate accommodations. We further request that the Council include information and explanation of this legal obligation in the MC-410-INFO form and for the sake of brevity will not duplicate that request in section II. **D. Concerns About Optional Collection of Information of**	The Committee appreciates this comment but believes that introducing these substantive changes to the form would be outside the scope of this proposal.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
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			Third Parties The Judicial Council requested specific comments regarding the collection of third party information of a person who may have helped a court user fill out the MC-410 form. There was no reason or explanation as to why the Council would like to collect this information and without further explanation, we have concerns about how this information will be used. However, many people with disabilities rely on family or other caregivers to navigate the world, particularly a system as confusing as the courts. We think that a space for the option of an alternate or additional contact would be helpful for both the courts and the requester. For example, in cases where I, as an attorney, request an accommodation on behalf of a client, it would be helpful for the court to contact me directly to discuss any questions about the request. This would likely make the reasonable accommodation process more efficient and allow me to submit any additional information or documentation quickly rather than my client explaining to me what the court needs. Therefore, we request that this section be amended to allow for an alternate or additional contact regarding the accommodation request. **E. The Judicial Council Should Not Remove "Indefinite Period" As An Option For The Duration Of The Accommodation.** One of the proposed revisions to the MC-410 form is to remove "Indefinite period" as an option for the duration of the accommodation, limiting the duration of the accommodation to specific dates and times. This will cause potential problems for individuals with disabilities if their case is continued or delayed and the accommodation does not extend to their new hearing or trial date. Moreover, this arbitrary limit will likely be difficult	The Committee appreciates this comment and has revised this section to account for both confidentiality and logistical concerns.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			for a person with disabilities to articulate, particularly when most persons requesting an accommodation are doing so based on a permanent and unchanging condition. Therefore, to ensure that people with disabilities are given necessary accommodations throughout their case, we request that the Council keep "indefinite period" as an option. If the Council is concerned that "indefinite period" is too vague, we alternatively suggest the addition of an option for the accommodation to continue through the end of the case. **II. Comments on MC-410-INFO Form: How to Request a Disability Accommodation for Court** We commend the Judicial Council's work to include an instruction form explaining the process to request a reasonable accommodation and are including some suggestions below. **A. The MC-410-INFO Form Should Include Additional Information Regarding How to Submit a Reasonable Accommodation Request.** The MC-410-INFO form states that other ways to ask for an accommodation include calling the court or going in person to ask the ADA Coordinator or designated person for an accommodation. We think it is helpful to provide alternate options for people with disabilities to make a request and further suggest that the Council provide more specific contact information such as a phone number and email for the ADA Coordinator or other designated court individual within the MC-410-INFO form. A person with disabilities who may already have difficulty with going to the courthouse in person (or who is unable to go during a health crisis like our current one) would likely also have great difficulty with locating this contact	The Committee appreciates this comment and has restored this option to the form. The Committee appreciates this feedback.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			information on their own. Including this contact information is especially important because the MC-410-INFO form advises litigants that the MC-410 form cannot be filed electronically and must be submitted to the ADA Coordinator or designated person. Without information on how to contact this person, it will be very difficult for a person with disabilities to submit their request, particularly if the courts are closed or the requester is at higher risk of severe illness due to COVID-19. We therefore request that the Council provide this contact information, which would make the process more efficient for both the disabled individual and the court, assist in the interactive process, and increase overall access to those who need it most. **B. The MC-410-INFO Form Should Include More Examples of Reasonable Accommodations That The Court Can Provide.** In Paragraph 4 of the MC-410-INFO form, the Judicial Council provides "ASL Interpreter" as the sole example of an accommodation. We think it is very helpful to provide examples of accommodations that the court can provide and that additional examples would make this informational form even more helpful, particularly to unrepresented litigants. There are a wide range of disabilities that can and must be accommodated by the courts. For example, the court can accommodate someone by continuing trial or hearing dates where a party cannot attend because of their disabilities.5 Without such an accommodation, a party's inability to attend their trial date could result in an adverse ruling, and in the context of an unlawful detainer, the loss of their home. We therefore request that the Council include various examples of ways that the court can accommodate disabilities in the MC-410-INFO form. Thank you for your consideration of our comments.	The Committee appreciates this comment but believes that the development of alternative methods for submission of the form, and messaging about local processes are outside the scope of this proposal. The Committee appreciates this comment. Instead of adding more examples to the form, the Committee has added a link to an existing brochure, which provides greater detail on potential accommodations that can be requested. The brochure is available at: https://www.courts.ca.gov/documents/Disability-Accommodations-in-California-Courts.pdf

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
2.	Judge Mark A. Juhas, Chair California Commission on Access to Justice	N/A	1. Include a requirement that courts explain the reason for denial of a reasonable accommodation request and an opportunity for an interactive process. One of the proposed revisions to the MC-410 form is including space for the court to optionally explain the reason for the denial of the accommodation. The regulations implementing the ADA, however, require "a written statement of the reasons for reaching that conclusion." 28 C.F.R. § 35.150(a)(3). In addition, providing a written statement may assist parties and courts with the review procedure provided in CRC 1.100(g). The MC-410-INFO form should also include information about the interactive process. When a person with a disability requests a reasonable accommodation, public entities, including courts, have an obligation to engage in the interactive process. The "ADA imposes an obligation to investigate whether a requested accommodation is reasonable… [and] create[s] a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary." *Duvall v. County of Kitsap*, 260 F.3d 1124, 1137-1138 (9th Cir. 2001). Accordingly, we propose including language in the MC-410-INFO form that explains the interactive process. We also encourage courts to use the interactive process when determining which alternative accommodations to provide. 2. The Judicial Council proposes to remove the "indefinite period" as an option for the duration of the accommodation in the Form MC-410. We suggest keeping "indefinite period" as an option, or in the alternative, creating an option indicating that the accommodation will remain through the end of the case.	The Committee appreciates this comment and has included the instruction "Explain the reasons supporting the box(es) checked above:" in this section as a guide to courts that some explanation is needed if there is a denial. The Committee appreciates this comment but believes that introducing these substantive changes to the form would be outside the scope of the proposal. The Committee appreciates this comment and has restored this option to the form.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Keeping an indefinite period or allowing the accommodation through the end of the case will avoid the necessity of making multiple requests for the accommodation and thus make the process less burdensome for the court and individuals needing accommodations. 3. Provide clear information about alternative ways to submit a request for accommodation. Because persons with disabilities can face barriers in going to courthouses in person or filling out the court forms, we appreciate the Judicial Council providing alternate options to better assist persons with disabilities. This will be particularly helpful during the current COVID pandemic when it may not be safe for individuals with disabilities or health impairments to go to the courthouse. We suggest that the Judicial Council provide a phone number and email contact information for the ADA Coordinator or other designated court individual within the MC-410-INFO form. We appreciate the caution against including form MC-410 with their electronic filing and support the Council's recommendation that it should be given to the ADA Coordinator or designated person in the court. However, as drafted, it does not instruct individuals on alternative ways to submit this form. The Access Commission suggests that the form include information about how the individual can remotely submit the form, either via e-mail or other confidential electronic means. 4. The Access Commission believes it would be helpful if the MC-410-INFO form included examples of a variety of reasonable accommodations that the court can provide. In Paragraph 4 of the MC-410-INFO form, the Judicial Council provides "ASL Interpreter" as an example of an accommodation that can be requested. Training materials developed by ADA Coordinators, however, often include a robust discussion of the	The Committee appreciates this comment but believes that the development of alternative methods for submission of the form, and messaging about local processes are outside the scope of this proposal. The Committee appreciates this comment. Instead of adding more examples to the form, the Committee has added a link to an existing brochure, which provides greater detail on

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			kinds of accommodations that can be approved, including removal of physical barriers and use of a service animal or emotional support animal in court. As part of the MC-410-INFO form, people should know about the variety of accommodations that can be provided. This could be achieved either by listing additional accommodations in the information form or by providing a link to publicly available materials that discuss examples of accommodations.	potential accommodations that can be requested. The brochure is available at: https://www.courts.ca.gov/documents/Disability-Accommodations-in-California-Courts.pdf
3.	Elizabeth C. Wied, Attorney III California Department of Child Support Services	N/A	The California Department of Child Support Services (department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the form changes and new information sheet with potential impacts to the department and its stakeholders follows. The department applauds the undertaking to revise the Disability Accommodation Request (form MC-410) and the development of the accompanying information sheet titled How to Request a Disability Accommodation for Court (form MC-410-INFO). The plain language, usability, and readability will successfully encourage access to the judicial system for many, including child support program participants. The Committee requested comments regarding concerns about the optional collection of information about a person who may have helped a court user fill out the form, and the department addresses this correspondence to that request. As an initial matter, requests for collection of personal information should always be accompanied with a reason for the collection. It is especially true with optional information that an individual be provided with rationale sufficient to make an informed decision. The new information sheet indicates that the reason for the	The Committee appreciates this feedback. The Committee appreciates this feedback and information and has revised this section of the form to account for confidentiality concerns.

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			collection of information regarding assistance in completing the form is to enable the Court to communicate about an applicant's medical condition and request for disability accommodation with a third party. Not only does this create privacy implications, the information sheet appears to imply that a court user that had assistance completing the form is unable to personally communicate their requested needs. If communication with a third party that assisted the court user complete the form is the reason for collecting the information, the Department recommends that the form contain an affirmative acknowledgment and authorization that the communication can occur. Further, the department recommends that rather than being a bullet point under the "signatures" section, since the assistant's signature is not required, a more complete reason for the collection be itemized as point number 6. These modifications would address privacy and access concerns. Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed form changes and new information sheet.	
4.	Ronald Ladage, Child Support Directors Association	N/A	The Child Support Directors Association Judicial Council Forms Committee (Committee) has reviewed the proposal identified above. The Committee's feedback is set forth below. **<u>SPR20-27 Rules and Forms: Request for Disability Accommodations</u>** The Committee generally agrees with the proposed changes to Form MC-410 and the new Form MC-410 INFO. We believe the proposals appropriately address its stated purpose; however, the Committee recommends modifying the language on the forms as follows:	The Committee appreciates this feedback.

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			MC-410: Page 1 of 2: • Second paragraph from the top of the page, change "(when court is open)" to "(not including weekends and holidays)".	The Committee appreciates this feedback but opted to retain the language referring to "when court is open" in order to more accurately and plainly describe "court days".
			• In "2." in the middle of the page, change "Lawyer" to "Attorney". • In "Optional" section at the bottom of the page add a check box after the word "you" and add language after the check box "Agree"; and add a check box and add language after the second check box "Do Not Agree" prior to the word "this".	The Committee appreciates this feedback, but has opted to use plain language terms whenever possible. The Committee appreciates this feedback and is revising the language of this section.
			Page 2 of 2 • At the top of the page in the "(Optional)" box, change "Sometimes a" to "If your" and change ". If" to "and". • In the middle of the page, third check box, remove "IN WHOLE OR IN PART" from "Your Request is DENIED IN WHOLE OR IN PART. Your request:" and move this check box, the 3 subsequent check boxes, and "Reasons supporting the box(es) checked above:" to just before the check box "More information on this decision is attached." Change "Reasons supporting the box(es) checked above" to "Explanation". • Add language "Your Request is PARTIALLY GRANTED." before "The court WILL PROVIDE the following accommodations" and remove "accommodations". Change hierarchy of the check box to match "Your request is GRANTED . . .". • At the bottom of the page, check boxes were added before "in person", "by phone", and "by mail/email".	The Committee appreciates this comment and made the suggested changes. The Committee appreciates this comment and has revised this section of the form. The Committee appreciates the suggestion, but declines to make this change as it is not necessary to identify which medium was used to

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			(See attached MC-410 draft example) **MC-410-INFO:** Page 1 of 3: • Middle of page 1 change "(when court is open)" to "(not including weekends and holidays)". Page 2 of 3: • In "2." change "lawyer" to "attorney". • In "4." add "American Sign Language" and parentheses around ASL. • Sentence before "Signatures" section change "plan" to "need". • Under the section starting with "Signatures" on the second bullet point, add "You can agree or not agree to" between the words "Address." and "allow" and add "to answer questions about your request, if needed."	communicate with the court user. The Committee appreciates this comment and has opted to retain "when the court is open" as a plain language definition of a "court day" or a "court business day." The Committee appreciates this comment but is opting for plain language terms as much as possible. The Committee appreciates this suggestion, but in this section is trying to convey examples of accommodations that may be requested and believes that this wording would be sufficient to notify the court of the request. Both those filling out the form and those receiving it will be readily familiar with the term ASL and likely don't need for it to be written out. The Committee appreciates this suggestion and has reworded the sentence to read: "There is a check box under this question that you can check if you attach additional information about your request to the form." The Committee appreciates this comment and has revised the language of this section of the MC-410 and the description of it on the MC-410-INFO.

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			Page 3 of 3 • After "-OR-" in "Your Request is DENIED IN WHOLE OR IN PART" change "DENIED IN WHOLE OR IN PART" to "PARTIALLY GRANTED" • In the following sentence change "denied in whole or in part" to "partially granted" and "why it is being denied. If the court offers you a different accommodation, it will tell you" to "if a different accommodation will be offered,". Add "in the line below" after "provided" at the end of the sentence. • On a separate line and add another "-OR-". • On a separate line add a check mark and language "Your Request is DENIED" • On a separate line following "Your Request is DENIED" add "If your request is denied, the court will tell you **why** it is being denied." (See attached MC-410 draft example) The Committee believes these changes will make it easier for the user to understand their choices when completing form MC-410.	The Committee appreciates this suggestion and has revisited the wording of this section on both forms.
5.	Heidi Joya, Attorney Disability Rights California, Legal Advocacy Unit **Other Signatories (alphabetical by organization name)** Eric Post, Director of	N/A	Disability Rights California (DRC), the protection and advocacy system for the State of California, submits this letter in response to the Judicial Council's invitation to comment on the revision of the Disability Accommodation Request (form MC-410) and the approval of a new information sheet titled How to Request a Disability Accommodation for Court (form MC-410-INFO) to accompany the request form. Disability Rights California, the largest disability rights group in the country, represents Californians with disabilities in matters	

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	Appeals Unit and Senior Tenants Rights Attorney BASTA, Inc. Cynthia Chagolla, Directing Attorney of Homelessness Prevention Project Bet Tzedek Legal Services Sydney Pickern, Staff Attorney Disability Rights Education and Defense Fund (DREDF) Judi Johnson, Housing Coordinator Disability Services and Legal Center Caroline Peattie, Executive Director Fair Housing Advocates of Northern California Pablo Zatarain, Executive Director Fair Housing Napa Valley Taylor Campion, Senior Managing Attorney Family Violence Appellate Project Maighna Jain, Senior Staff Attorney Family Violence Law Center		that further their rights and access to justice. In that broad spectrum of work, DRC represents tenants in securing safe and affordable housing. Our housing advocacy includes promoting affordable, accessible, and equitable housing developments, protecting tenants' rights, and preventing homelessness and displacement of marginalized communities. This includes defending many tenants with disabilities in unlawful detainer actions. Reasonable accommodations are crucial in the housing context generally but especially in unlawful detainer litigation because the lack of equal and meaningful access to courts could make the difference between a person's ability to keep their housing or ending up homeless. Furthermore, most unlawful detainer litigants are self-represented, which makes proper access to courts, court procedures, and court documents, including requests for disability accommodations, even more crucial. **I. Comments on MC-410 Form: Disability Accommodation Request** As an initial comment, we appreciate the Judicial Council Advisory Committee's work to ensure that the revised MC-410 form complies with the Web Content Accessibility Guidelines. Redesigning the form by editing for plain language, increasing font size, and adding additional white space to increase readability is an important first step towards ensuring accessibility. As such, we support these proposed revisions. We also offer some additional comments below regarding other proposed changes to the MC-410 form.	The Committee appreciates this feedback.

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	Dianne Prado, Executive Director Housing Equality & Advocacy Resource Team (HEART L.A.) Robert J. Reed, Director of Tenant Defense Project Inner City Law Center Ugochi Anaebere-Nicholson, Directing Attorney Public Law Center		**A. Suggestions for Further Accessibility of the MC-410 Form** Although we agree with the proposed revisions mentioned above, we also suggest that courthouses provide fillable versions of the form that can be directly submitted through the court's website to the ADA Coordinator. This option would be in addition to people's abilities to submit the form via email, fax, in person, or by post. We also suggest that courthouses provide the MC-410 form and MC-410-INFO form in additional languages. **B. The 5-day Deadline to Submit the Proposed MC-410 Form Should Not Be a Mandatory Deadline but Rather An Encouraged Timeframe.** Currently, the proposed MC-410 form tells parties to "Make this request at least 5 days (when court is open) before you need the accommodation." In its current construction, this statement conveys a hard requirement rather than the suggested or strongly encouraged phrasing provided in the accompanying MC-410-INFO form, which includes the phrase, "*if possible*." We are concerned that without any qualifying language, parties might incorrectly assume that a "late" request would be futile and feel discouraged from requesting a reasonable accommodation past the five (5) court day deadline. We request that the Judicial Council amend this statement on the MC-410 form to include the same qualifying language that is in the MC-410-INFO form. Title II of the Americans with Disabilities Act (ADA), which	The Committee appreciates this comment and agrees that an online fillable interface with direct submission to a court's ADA Coordinator is an excellent idea, although out of scope for the current proposal to redesign the MC-410. In addition, the Committee would note that the genesis of the redesign proposal was a desire to translate the form into the top 8-10 languages in the state. The committee decided that a first step would be to revise the form for plain language, readability, and usability before moving to translation. The Committee appreciates this comment and acknowledges that there are occasions on which making a request 5 days before a court proceeding is impossible. In those cases, in accordance with California Rules of Court, rule 1.100(c)(3), the court has the discretion to waive the 5-day requirement. The purpose of the "If possible" language was to avoid discouraging those court users who have been scheduled for an emergency hearing or other proceeding on a short timeline, from availing themselves of the process to request

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			governs the programs, services, and activities of state and local governments, including courts, and its corresponding regulations, do not require that a reasonable modification request be made at or by a particular time. Notwithstanding, California Rules of Court 1.100(c) provides that requests for accommodations must be made as far in advance as possible, "[a]nd in any event must be made no fewer than five court days before the requested implementation date." Making clear that the 5-day deadline is not jurisdictional would help address this inconsistency between the federal law and the Rules of Court. Moreover, the 5-day deadline can often be impractical or difficult to meet for people with disabilities, especially those that are in pro per, and who may need additional time and help obtaining information on reasonable accommodations, contacting the courts' ADA coordinators, and ultimately making the request. This process can be especially difficult in unlawful detainers because they are "summary" proceedings with a much shorter timeline and quicker discovery, motion, and trial deadlines than regular civil cases. Thus, a strict application of the CRC's five court-day requirement does not give people with disabilities sufficient time to make the request before they need the accommodation. Although CRC 1.100(c) states that courts may use their discretion and waive this requirement, it is our understanding and experience that judges have been enforcing the 5-day deadline strictly. The strict application of the court rule coupled with the mandatory language on the MC-410 form can preclude necessary accommodations. Providing necessary accommodations far outweighs any inconvenience to the court caused by shorter notice of requests or delays in court proceedings. In addition, modifying the 5-day language on the MC-410 form will encourage more people with disabilities to seek necessary reasonable accommodations, and encourage	an accommodation that will enable them full participation in their court matter. However, because the rule of court is clear that requests must be made five days in advance, and, in the interest of consistency, the Committee has reworded both sections to read as follows: "Make this request at least **5 days** (when the court is open) before you need the accommodation." On the MC-410-INFO, the following statement has been added: "If this is not possible, you can still make a request."

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			judges to exercise their discretion more often in favor of granting them. **C. It Should Be Mandatory for Courts to Explain the Reason for Denial of a Reasonable Accommodation Request.** On page three (3) of its Invitation to Comment, the Council explains that one of the proposed revisions to the form is, "Includ[ing] space for the court to *optionally* explain the reason for denial or to include information about partial denials (emphasis added)." Explaining the reason for denial should not be optional, as the Invitation to Comment states, but should be mandatory. The Americans with Disabilities Act and its implementing regulations require a public entity to provide a written statement of reasons for a reasonable accommodation denial: "In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion." 28 C.F.R. § 35.150(a)(3). The second page of the revised MC-410 form, wherein the court provides its order or decision on the requested accommodation, should make clear that courts are required to provide the specific reason(s) supporting a denial of the accommodation. Currently,	The Committee appreciates these comments and has revised this section of the form.

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			the form contains two boxes that can be checked, indicating that a request was denied because it is either an undue burden or a change in the basic nature of the court's services, programs, or activities. While it does provide additional space where courts can provide reasons supporting its basis of undue burden or fundamental alteration, it is unclear from the form itself that courts are required to state these reasons. Furthermore, and as previously mentioned, the Judicial Council's Invitation to Comment states that this is optional. If courts are not required to state their reasons for denials, the returned order will not provide sufficient information regarding the reasons for denial of an accommodation request or how the request was an undue burden or fundamental alteration. This can cause complications in the review and appeals process. Providing a written statement of the reasons supporting a denial will assist parties and courts with the review procedure provided in CRC 1.100(g). A written decision regarding the denial may help ensure that petitions for writ of mandate that challenge denials are filed only for meritorious cases. It also establishes an adequate record for the court reviewing the petition. Not having a full record of the reason for denials impedes on parties' ability to properly appeal said decision and seek relief. Conversely, a written statement could deter parties from filing unmeritorious petitions if a reasonable explanation for the denial is given to the party. For these reasons, the MC-410 form should make clear that the courts are required to provide the reasons supporting a denial in the additional space provided in the form, in accordance with the Americans with Disabilities Amendments Act of 2008. **D. Concerns Regarding Collection of Information of Third Parties**	

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			The Judicial Council asked for specific comments regarding any concerns about the optional collection of information of persons who may have helped a court user fill out the MC-410 form. We note that the Judicial Council did not offer a reason or explanation for collecting this information, but perhaps additional information could be helpful in assessing any concerns. Rather than including the optional section referenced above, we recommend changing this to include a space that gives parties the option of listing a person other than the accommodation petitioner as the main contact for the request. For example, in circumstances where an attorney has assisted a client in filling out and submitting this form, it may be helpful for the court to discuss the request with the attorney directly. This could help expedite the reasonable accommodation process. Further, this type of third-party contact information could help persons with disabilities who rely on assistance from caregivers or family members to communicate. **E. The Judicial Council Should Keep "Indefinite Period" As An Option For The Duration Of The Accommodation.** In the "Form MC-410" section of the Judicial Council's Invitation to Comment letter, the Council explains that one of the proposed revisions to the form is to remove "Indefinite period" as an option for the duration of the accommodation. The request form and order in its current state limit the duration of the accommodation to specific dates and times. Such a limit can cause potential problems for individuals with disabilities if their court proceedings get continued or delayed because the accommodations would not be applicable to any new court dates	The Committee appreciates this comment and has revised this section of the form. The Committee appreciates this comment and has revised this section of the form. The Committee appreciates this comment and has

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			outside of those previously specified in the form. In an effort to ensure that people with disabilities have access to their accommodations throughout the entirety of their case, we suggest keeping "indefinite period" as an option, or in the alternative, create an option indicating that the accommodation will remain through the end of the case. **II. Comments on MC-410-INFO Form: How to Request a Disability Accommodation for Court** We appreciate the Judicial Council's efforts to include an accompanying form explaining the process to request a reasonable accommodation and have some suggestions on additional information that could be included. **A. The MC-410-INFO Form Should Include Information About the Interactive Process.** When a person with a disability requests a reasonable accommodation, public entities have an obligation to engage in the interactive process. The "ADA imposes an obligation to investigate whether a requested accommodation is reasonable… [and] create[s] a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary." As such, we propose including language in the MC-410-INFO form that explains the interactive process. We also encourage courts to use the interactive process when determining which alternative accommodations to provide. As it stands, the Order denying a requested accommodation provides an option for the court to unilaterally provide an alternate accommodation, without a proper interactive process. Obtaining information from the	restored this option to the form. The Committee appreciates this feedback. The Committee appreciates this comment but believes that making the requested changes would be outside the scope of this proposal.

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			person making the request is critical towards ensuring that the alternative accommodation will meet that person's disability-related needs. For example, upon denying the specific accommodation requested, the ADA coordinator could contact the party or a designated third party to discuss alternative accommodations and whether those are viable options. **B. The MC-410-INFO Form Should Include Additional Information Regarding How to Submit a Reasonable Accommodation Request.** The MC-410-INFO form states that other ways to request an accommodation are by calling the court or going in person to ask the ADA Coordinator or another designated individual for an accommodation. Because persons with disabilities can face barriers in going to courthouses in person or filling out the court forms, we appreciate the Judicial Council providing these alternate options to better assist persons with disabilities. However, we suggest that the Judicial Council provide a phone number and email contact information for the ADA Coordinator or other designated court individual within the MC-410-INFO form. This can be helpful in expediting requests, facilitating the interactive process, and providing better access. In at least one case, an in pro per tenant with a severe mental health disability spent more than a week attempting to contact the ADA Coordinator in her court. As a result, she filed her unlawful detainer answer late, and her landlord obtained a default judgment against her. Fortunately, she obtained our assistance and the default was set aside. Not all are so lucky. Providing direct contact information could make it easier for parties to submit their accommodation requests. Additionally, providing contact information that makes the ADA Coordinator or another	The Committee appreciates this comment and understands the concerns regarding physical access to the courts. Because this is a statewide form, and each court handles their disability accommodation request process in slightly different ways, it is challenging to come up with instructions on statewide forms that cover all possible scenarios. Since the beginning of the COVID-19 crisis, many courts have posted updates to their services on their local court

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			designated person easier to reach is important considering the COVID-19 crisis. People with disabilities are at a higher risk of severe illness from COVID-19 and may need to stay home as much as possible to avoid exposure to the virus, even as states and counties start to reopen. Having access to this contact information would allow people with disabilities to submit accommodation requests without personally going to courthouses and risking their health. The MC-410-INFO form also cautions litigants against including form MC-410 with their electronic filing and states that it must be given to the ADA Coordinator or designated person in the court. However, it does not instruct individuals on how to alternatively submit this form. While we agree with the Council's concerns with electronic filing and confidentiality, we request that alternative methods of submitting the form be provided, so that individuals can remotely submit the forms, either via e-mail or other confidential electronic means. **C. The MC-410-INFO Form Should Include Examples of a Variety of Reasonable Accommodations That The Court Can Provide.** In Paragraph 4 of the MC-410-INFO form, the Judicial Council provides "ASL Interpreter" as an example of an accommodation that can be requested. Although this is a common example of an accommodation, a wide range of disabilities can, and should be, accommodated by the courts. For example, the court can accommodate some people with mental health disabilities by allowing them to bring their emotional support animal to court. The stressors of filing documents or being inside a courthouse can often aggravate a person's mental health disabilities, but an emotional support animal can help manage those symptoms. We	websites and several have begun offering more telephone and remote assistance, given the challenges to all of accessing the courthouse. The Committee appreciates this comment but believes that the development of alternative methods for submission of the form, and messaging about local processes are outside the scope of this proposal. The Committee appreciates this comment. Instead of adding more examples to the form, the

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			also suggest including trial and hearing date continuances as examples of possible accommodations. Providing continuances may be necessary in situations where parties cannot attend or participate in their court appearances because of their disabilities. Without this type of accommodation, a party's inability to attend their trial date could result in a ruling against them. In unlawful detainers specifically, it would result in a judgment for possession of their home and an almost immediate lockout. In addition, we suggest including that people with disabilities can request to receive materials in alternate formats like Braille or large print free of charge and that they can request relocating services or programs to accessible facilities. As part of the MC-410-INFO form, people should know that there are various ways in which people with disabilities can be accommodated. **D. The MC-410-INFO Form Should Include Additional Information Regarding How to Ask for a Review of the Court's Reasonable Accommodations Decision.** On page 3 of the MC-410-INFO Form there is a proposal to have a link to information about how to ask for a review of the Court's decision. We suggest that the form summarize the information from CRC 1.100(g) on the Court's process for review including that a request for review must be in writing, who the request for review may be sent to, and the timing for the request. It is of fundamental importance that the process for review of a full or partial denial of a reasonable accommodation request is easily understood and that the information is readily available.	Committee has added a link to an existing brochure, which provides greater detail on potential accommodations that can be requested. The brochure is available at: https://www.courts.ca.gov/documents/Disability-Accommodations-in-California-Courts.pdf The Committee appreciates this comment. The possibility of adding information about the process to request a review of the court's decision will be considered for a future proposal.
6.	O. Raquel Ramirez Senior Deputy County	N/A	There were no comments from DCFS or county counsel subject matter experts on these proposed revisions.	The Committee appreciates the time taken to review the proposal.

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	Counsel Warrant Desk Attorney Los Angeles County Counsel			
7.	Scott B. Garner, President Orange County Bar Association	A	*Please indicate the instruction(s) you are commenting on:* SPR20 - 02, 03, 04, 10, 15, 18, 19, 20, 21, 26 (Forms EA-120), 27, 32 and LEG20 - 01 Agree ☒ Agree as Modified ☐ Disagree ☐ **Comments:** The Orange County Bar Association agrees with the above-referenced instructions.	The Committee appreciates the time taken to review the proposal.
8.	Leigh E. Ferrin, Director of Litigation and Pro Bono Public Law Center	A	Public Law Center (PLC) is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, veterans and health law. Additionally, PLC provides legal assistance to non-profits and low-income entrepreneurs. A significant number of PLC's clients identify as people with disabilities. While some clients are very comfortable and experienced with requesting accommodations, others are not. PLC appreciates the amendments proposed by Judicial Council, particularly regarding an accessible information sheet in plain language and reviewed for readability. PLC would encourage the Judicial Council to review more of its forms (maybe one day	The Committee appreciates these comments.

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			all of them?) through an accessibility lens.	
9.	Renee Sanchez HR Analyst	A	My only concern as the ADA Coordinator would be the elimination of the option to grant an accommodation indefinitely in the instance where it is apparent that the disability is permanent. To eliminate that option would force the Court User to reapply for an accommodation unnecessarily.	The Committee appreciates this comment and has restored this option to the form.
10.	Adam Byer, Administrator, Executive Office Projects & Programs Superior Court of California, County of Alameda	N/A	Here are my comments on the attached proposed MC-410 form: • Delete optional box at the top of page 2. This will result in potentially 58 different forms and doesn't seem necessary for courtroom-based accommodations. In our Court, courtroom staff make arrangements for these accommodations and naturally know when hearings are reset or vacated. If I'm wrong and it is beneficial, courts can include these instructions when conveying any granted accommodation. • On page 2, change the text after the "Your Request is DENIED IN WHOLE OR IN PART." to "The denied portion of your request:" Overall, I think the form is a huge improvement.	The Committee appreciates this comment. The purpose of the term "Optional" in this box is to accommodate the variety of approaches in the courts for receiving requests and adjusting to changes in scheduled hearings. Some courts prefer to be contacted when a hearing date or time changes and would like to provide this contact information to litigants. The Committee appreciates this comment and has made the suggested addition.
11.	Brian Borys Superior Court of California, County of Los Angeles	AM	The warning on the proposed MC-410-INFO form about electronic filing should be modified. Currently, it says: Please note: If you are submitting papers to the court electronically, through electronic filing, you must not include form MC-410 with your filing. Form MC-410 is a confidential form that is not part of the case file. The form must be given to the ADA Coordinator or designated person in your court. It should say:	The Committee appreciates this concern and notes that the purpose of this language was to avoid situations in which an MC-410 was filed into a case, but never delivered to the ADA Coordinator. While the confidentiality concerns are well-taken, the Committee has decided to retain the stronger "must not" language in the hopes of avoiding situations in which a person believes they have filed their request by including the MC-410 in their e-filing packet.

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			Please note: If you are filing electronically and want your information to remain confidential, do not electronically file form MC-410. Form MC-410 is a confidential form that is not part of the case file. Instead, give the form to the ADA Coordinator or designated person in your court. The warning is included because not all the courts have automatic confidentiality settings in their CMSs for efiled documents. However: • CRC 1.100(c)(1) allows requests to be submitted "ex parte on a form approved by the Judicial Council, in another written format, or orally" and • CRC 1.100(c)(4) requires the court to "keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law." By using "must not" and "must," the current warning suggests that efiling waives confidentiality, which is incorrect. The alternate language avoids this error, still warns people about efiling, still provides them with an alternative means to submit the form, and still applies statewide for courts at each level.	
12.	Pauleen Temperani Chief Human Resources Officer Superior Court of California, County of Marin	N/A	The form MC-410 looks easier to use and understand. I still worry about those people that tend to write a lot or in larger handwriting than others that they will not attach another pages and will try to 'squeeze" all the information on the page. Are the courts able to return the MC410 form or contact the person to request the information to be clearly stated?	The Committee appreciates this comment. Each court has its own process for receiving and reviewing accommodation requests, so the Committee is unable to provide a general answer to the question of what happens when information is illegible or unclear on the form. However, in accordance with California Rules of Court, rule

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				1.100(c)(2), the court may request additional information.
			• Yes, the proposal appropriately addresses the stated purpose. • Yes the form accurately reflects the process established by CA Rules of Court, rule 1.100. • As of right now, no the 2 pages will not create any issues with our local CMS or our existing process for receiving and responding to requests for accommodations. As far as our new CMS, I am not sure but we can work the new form into our set up. • I do not see any issues or concerns asking for information about the person assisting/helping fill out the form. In fact I think that is very helpful to have.	The Committee appreciates these comments.
			As far as costs and implementation matters, • I don't believe there will be a cost savings per se. It may assist in lessening the amount of time to determine what the person is requesting for an accommodation. • The implementation would be minimal for the court staff, it would just require a review of the new form and since we have not rolled out a new case management system we would be able to add this fairly easily. • I would think that 3 months would be plenty of time for implementation. • I think this proposal will work well with all courts of all sizes.	The Committee appreciates these comments on the operational impact of the redesigned form.
13.	Randy Montejano, Courtroom Operations	N/A	• Does the proposal appropriately address the stated purpose? Yes, the increase in font size and the spacing makes the form	The Committee appreciates this feedback.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
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	Supervisor IMPACT Team—Criminal Operations Superior Court of California, County of Orange West Justice Center		easier to read and to follow. In comparing the current MC-410-INFO to the proposed MC-INFO, the proposed document is much more detailed on what information is needed on each section. Also, it gives examples which helps the illustration of what type of information is precisely needed to be in that section of the form. Also, the links make it easier to get references when filling it out via computer. Ultimately, this new information form describes the process for requesting an accommodation, instructions to accompany form MC-410 questions, and help with understanding the court's response which the current information form does not cover. **Recommendations:** Any important information should be in bold and italics and or underlined like the following: • ***Should not electronically file the MC-410*** • Make this request at least ***5 calendar days*** (when court is open) before you need the accommodation (adding ***calendar*** because not everyone may know what this calendar icon stands for)  • I think the above should add the page where the phone number and email address is provided which in this case would be at the top of t **page 2.** • Does the form accurately reflect the process established in California Rules of Court, rule 1.100? Yes, this new revised form accurately reflects the process under the California Rules of Court 1.100. • Request may be presented ex parte on this new proposed form	The Committee appreciates this comment and has opted to retain "when the court is open" as a plain language definition of a "court day" or a "court business day." The Committee appreciates this comment and notes that these instructions are at the top of page 2. The Committee appreciates this feedback.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			• The form provides a section to include a description of the accommodation sought, along with a statement of the medical condition that necessitates the accommodation • Requests for accommodations must be made no fewer than 5 court days before the requested implementation date • The form and its contents are considered **CONFIDENTIAL** • Will a two-page form create any issues with local case management systems or existing processes for receiving and responding to requests for accommodations? No, I don't believe so. There are other forms that have more pages and does not seem to create any issues with any local case management or existing processes for receiving and responding. • Are there any concerns about the optional collection of information about a person— either a member of court staff or a personal helper—who may have helped a court user fill out the form? A member of court staff is not disconcerting. However, a personal helper is a concern due to the California Rule of Court confidentiality clause. **Recommendation:** There should be some type of clause that the court user freely and voluntarily gave all information to (Name) to assist in filling out this form in its entirety where it says **(Optional) Complete if someone helped you fill out this form:** which is located on the bottom of page 1 of the form. • Would the proposal provide cost savings? If so, please quantify. No, it would not. Courts that uses the form will incur the cost of replacing the old version of the form with the new version. **Recommendation**:	The Committee appreciates this input on operational impacts of this proposal on the courts. The Committee appreciates this comment and has revised this section of the form to account for logistical and confidentiality concerns.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Create an accessible instructional video/page on the Judicial Council website, where court users who need accommodations can learn about updated form MC-410 and possibly provide updated instructional video portion on how to fill out the form. Provide resources that may be available to assist in completing the form. This may encourage them to fill out the form in this manner, therefore, saving time to fill it out in person. • 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? There is no need for additional training as there is no substantial change to the process. The only change is deleting the links to the old forms in the court's website and in the procedures and replacing it with the links to the new version of the form. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be enough time for implementation. • How well would this proposal work in courts of different sizes? It all depends on the size of the court. The costs may be a factor in smaller courts due to maybe court users in that area may not have less access to technology and who rely heavily on paperwork.	The Committee appreciates this feedback. The Committee appreciates this suggestion and is interested in continuing to build on the content developed for the MC-410-INFO to reach the public through multiple modalities in the future. The Committee appreciates this feedback on operational impacts.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
14.	Family Law Division Superior Court of California, County of Orange	N/A	**Request for Specific Comments** • **Does the proposal appropriately address the stated purpose?** Yes, the proposal recommends the redesign of form MC-410, used to request accommodation for disability, and the adoption of a new information sheet, form MC-410-INFO, to accompany and explain the process to request an accommodation. • **Does the form accurately reflect the process established in California Rules of Court, rule 1.100?** Yes, the form describes the process for requesting an accommodation under rule 1.100, including that the use of form MC-410 is not required and that there are other ways to make the request. • **Will a two-page form create any issues with local case management systems or existing processes for receiving and responding to requests for accommodations?** No, as the two-page form would accompany form MC-410 and explain the process of requesting an accommodation. • **Are there any concerns about the optional collection of information about a person-either a member of court staff or a personal helper-who may have helped a court user fill out a form?** No concerns as providing the information will be optional. • **Would the proposal provide cost savings? If so, please quantify.** The proposal would not result in any cost savings.	The Committee appreciates this feedback and in particular, the discussion of operational impacts on the courts.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			• **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?** The proposal will not result in the need for additional training for court personnel because there have been no substantive changes to the process. • **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, 3 months should suffice as there will only need time to replace old forms with revised forms as well as updating current procedures with the revised and informational forms. • **How well would this proposal work in courts of different sizes?** It is anticipated that this streamlined and redesigned version of the form with accessibility features will make it easier for form users to request accommodations and for form consumers in the courts of different sizes to process the request and make an appropriate response.	

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
15.	Juvenile Court Division Superior Court of California, County of Orange	N/A	**No general comments.** **Request for Specific Comments** ▪ ***Does the proposal appropriately address the stated purpose?*** Yes, the proposal recommends the redesign of form MC-410, used to request accommodation for disability, and the adoption of a new information sheet, form MC-410-INFO, to accompany and explain the process to request an accommodation. ▪ ***Does the form accurately reflect the process established in California Rules of Court, rule 1.100?*** Yes, the form describes the process for requesting an accommodation under rule 1.100, including that the use of form MC-410 is not required and that there are other ways to make the request. ▪ ***Will a two-page form create any issues with local case management systems or existing processes for receiving and responding to requests for accommodations?*** No, as the two-page form would accompany form MC-410 and explain the process of requesting an accommodation. ▪ ***Are there any concerns about the optional collection of information about a person-either a member of court staff or a personal helper-who may have helped a court user fill out a form?*** No concerns as providing the information will be optional.	The Committee appreciates this feedback and in particular, the discussion of operational impacts on the courts.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			▪ ***Would the proposal provide cost savings? If so, please quantify.*** No cost savings identified. Cost of form copying will be minimal. ▪ ***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?*** Some procedures will need to be updated and staff informed. Self-help and ADA coordinator staff will need to be informed. Old forms will need to be replaced and old links updated on public facing web sites. ▪ ***Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes, it should suffice as there will only need time to replace old forms with revised forms as well as updating current procedures with the revisions and informational forms. ▪ ***How well would this proposal work in courts of different sizes?*** It is anticipated that this streamlined and redesigned version of the form with accessibility features will make it easier for form users for the courts of different sizes to process the request and make an appropriate response.	

S20-27

Rules and Forms: Request for Disability Accommodations (approve form MC-410-INFO, revise form MC-410)

All comments are verbatim unless indicated by an asterisk (*)

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
16.	Training and Analyst (TAG) Team Superior Court of California, County of Orange	A	OCSC agrees with this proposal as written and tested with the appropriate end users. 1. Does the proposal appropriately address the stated purpose? Yes 2. Does the form accurately reflect the process established in California Rules of Court, rule 1.100? Yes 3. Will a two-page form create any issues with local case management systems or existing processes for receiving and responding to requests for accommodations? No 4. Are there any concerns about the optional collection of information about a person—either a member of court staff or a personal helper—who may have helped a court user fill out the form? No 5. Would the proposal result in costs or savings to the court? If so, please what costs or savings would be associated with implementing the proposal? Other than minor copying of forms and replacing old forms. No costs or savings. 6. 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?	The Committee appreciates this feedback, particularly on the operational impacts of the proposal on courts.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Some procedures will need to be updated and staff informed. Self-help and ADA coordinator staff will need to be informed. Old forms will need to be replaced and old links updated on public facing web sites. 7. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient. 8. How well would this proposal work in courts of different sizes? This proposal will work effectively in courts of all sizes; process is not changing.	
17.	Mike Roddy, CEO Superior Court of California, County of San Diego	N/A	**GENERAL COMMENTS** **MC-410:** Page 2: "Your Request is **DENIED IN WHOLE OR IN PART.** Your request:…" Propose including a checkbox in front of "Reasons supporting the box(es) checked above." As currently drafted, the form may lead applicants to believe reasons must be listed, when the item(s) checked above are in fact the reason(s) why the request was denied which are provided for under Rule 1.100(f). While additional reasons may be provided, they are not required.	The Committee appreciates this comment and has revised the language of this section.

S20-27

Rules and Forms: Request for Disability Accommodations (approve form MC-410-INFO, revise form MC-410)

All comments are verbatim unless indicated by an asterisk (*)

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			MC-410-INFO Propose the following changes: **Deadline:** "~~If possible,~~ ~~m~~**M**ake this request at least 5 days (when court is open) before you need the accommodation." This conforms with the instruction listed on the MC-410 form above item 1.	The Committee appreciates this comment and has reworded the language on the MC-410-INFO to conform with the language on the MC-410. On the MC-410-INFO, the following statement has been added: "If this is not possible, you can still make a request."
			Court Name and Address: "Write the name and address of your court. If you do not know the court address, ask the ADA Coordinator **or court staff** for help." Information re court locations/addresses can be obtained from court staff. Limiting it to the ADA Coordinator may cause delays in obtaining the information.	The Committee appreciates this comment and has made this change.
			Pg 2. Signatures: "The court will respond to your request by telling you in person, calling you on the phone, or **by mailing or emailing you a copy**. ~~sending you a letter or an email.~~"	The Committee appreciates this comment and has changed this sentence to read: "The court will respond to your request by telling you in person, calling you on the phone, or by mailing or emailing you a response."
			Pg 3. Third Bullet Point: "The court may respond by telling you in person, calling you on the phone, or **by mailing or emailing you a copy**. ~~sending you a letter or an email.~~"	The Committee appreciates this comment and has changed this sentence to read: "The court will respond to your request by telling you in person, calling you on the phone, or by mailing or emailing you a response."
			Does the proposal appropriately address the stated purpose? Yes.	
			Does the form accurately reflect the process established in California Rules of Court, rule 1.100? Yes.	

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Will a two-page form create any issues with local case management systems or existing processes for receiving and responding to requests for accommodations? No. Are there any concerns about the optional collection of information about a person— either a member of court staff or a personal helper—who may have helped a court user fill out the form? Our court has concerns that including an email/phone number for the person who helped complete the form may lead the applicant to believe that the court will contact that individual. These are strictly confidential requests and our court would not contact that person without an express waiver of confidentiality by the applicant. Would the proposal provide cost savings? If so, please quantify. No. 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? Updating training materials and notifying staff. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give	The Committee appreciates these comments on the operational impacts of the proposal. The Committee appreciates this comment and has revised this section of the form to account for logistical and confidentiality concerns.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			courts sufficient time to update their procedures, configure local packets, and order printed stock. How well would this proposal work in courts of different sizes? It appears that the proposal will work for courts of various sizes.	
18.	Georgia Ku Court Manager, Facilities and Security Division Superior Court of California, County of Santa Clara	N/A	Thank you for providing SC Court an opportunity to comment. I believe the proposed change appropriately address the need to make it easier to fill out. There is definitely more space. I don't think 2 pages will create any issues with Odyssey. From a training stand point, I think it is a matter of Judicial Officers and Staff getting use to the new format. The Santa Clara Superior Court does not have pre-printed MC410 forms. With that said, will the old format be accepted still? From PDF: 5 Court days should be specified. This implies 5 calendar days. Suggestion: Change "5 days (when the court is open) to "5 court business days." On checkbox under Item 5: State "Check this box if more information on this request is attached"	The Committee appreciates this comment. Because this is an optional form, other accommodation request forms may be accepted by the courts, as long as they contain the items set forth in CRC Rule 1.100. The Committee appreciates this comment and has opted to retain "when the court is open" as a plain language definition of a "court day" or a "court business day." The Committee appreciates this comment and has instead revised the instruction on the MC-410-INFO to read: "There is a check box under this question that you can check if you attach additional information about your request to the form."
19.	Michelle Uzeta, Esq.	N/A	I am writing in response to the Council's invitation to comment	

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
	Law Offices of Michelle Uzeta		on revision of the Disability Accommodation Request Form (MC-410) and approval of the information sheet titled "How to Request a Disability Accommodation for Court" (fMC-410-INFO). I am an attorney with over twenty-five years' experience working with and for people with disabilities in California, including thirteen years with Disability Rights California, four years leading the legal programs at the Housing Rights Center and Disability Rights Legal Center, and many years in private practice. Since 2017 I have served as a board member for the Disability Rights Bar Association, a national association of disability law practitioners. I have counseled and represented many individuals in seeking disability related accommodations from California's courts, and understand firsthand the barriers they encounter. I have reviewed and unreservedly join in the June 9, 2020 comments submitted by DRC. My primary purpose in writing separately is to expand upon the concerns raised with the 5-day timeline for accommodation requests contained in CRC 1.100(c)(3) ("Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement. [*Commenter described a personal experience with the process and provide the following comment regarding the proposal:] There is a strong need for the request for accommodation form to clarify that the 5-day timeline is an encouraged preference or best practice for ensuring accommodations will be provided, and	The Committee appreciates this feedback. The Committee appreciates this comment and acknowledges that there are occasions on which making a request 5 days before a court proceeding is impossible. In those cases, in accordance with California Rules of Court, rule 1.100(c)(3), the

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			not a bright line cut-off. Court personnel require training on the same, and on their obligation to make reasonable efforts to accommodate regardless of when the request is received.	court has the discretion to waive the 5-day requirement. However, because the rule of court is clear that requests must be made five days in advance, and, in the interest of consistency, the Committee has reworded this section to read as follows: "Make this request at least **5 days** (when the court is open) before you need the accommodation." On the MC-410-INFO, the following statement has been added: "If this is not possible, you can still make a request."
			I would also like to suggest that the accommodation request form be modified to provide space for individuals to identify alternative accommodations should their primary choice be unavailable or infeasible. Ideally, court personnel should be encouraged, if not required, to engage in an interactive process with individuals with disabilities regarding alternative accommodations that might be provided if their requested cannot be provided. [*Commenter described a personal experience with the process and provide the following comment regarding the proposal:]	The Committee appreciates this comment but believes that introducing these substantive changes to the form would be outside the scope of this proposal.
			Overall, I believe it will improve the effectiveness and efficiency of the court's accommodation process if the request form prompts individuals to identify acceptable alternative accommodations and/or court personnel is required to engage in an interactive process with individuals when their primary choice of accommodation cannot be provided. I appreciate the Judicial Council Advisory Committee's work to ensure that the revised MC-410 form complies with the Web Content	The Committee appreciates this comment but believes that introducing these substantive changes to the form would be outside the scope of this proposal.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Accessibility Guidelines and for the opportunity to submit these comments.	
20.	Andrea Velasquez ADA Coordinator Superior Court of California, County of Orange	N/A	Add an additional line to #4 On the information page, inform the applicant what happens if the deadline is not met.	The committee appreciates this comment and has added another line to Item 4 on the MC-410 The committee appreciates this comment. Each court has its own process for receiving and reviewing accommodation requests, so the Committee is unable to provide a general answer to the question of what happens when an accommodation is requested with fewer than five days advance notice. However, in accordance with California Rules of Court, rule 1.100(c)(3), the court may waive this requirement.
21.				

Item number: 31

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service
Amend Cal. Rules of Court, rule 2.255

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Andrea Jaramillo, 916-263-0991, andrea.jaramillo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A Approved by JCTC January 16, 2020
Project description from annual agenda: Amend the California Rules of Court to indicate that an electronic filing service provider must allow the party to proceed with an electronic filing even if the party does not consent to receive electronic service.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on: September 24–25, 2020

Title

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 2.255

Recommended by

Information Technology Advisory Committee

Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Date of Report

August 3, 2020

Contact

Andrea L. Jaramillo, 916-263-0991

andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rule 2.255 of the California Rules of Court. The proposed amendment would require an electronic filing service provider to allow an electronic filer to proceed with an electronic filing even if the electronic filer does not consent to receive electronic service. The proposal further clarifies procedures for consent to electronic service as permitted by Code of Civil Procedure section 1010.6.

Recommendation

The Information Technology Advisory Committee (ITAC) recommends the Judicial Council amend rule 2.255 of the California Rules of Court effective January 1, 2021. The proposed amendment would add a new subdivision (g) to rule 2.255 to require an electronic filing service provider to allow an electronic filer to proceed with an electronic filing even if the electronic filer does not consent to electronic service. The proposed amendment applies only to permissive electronic service, which requires consent, and not to electronic service required by court order or local rule, which does not require consent. The text of the amended rule is attached at page 5.

Relevant Previous Council Action

In response to a legislative amendment to Code of Civil Procedure section 1010.6 (section 1010.6) requiring parties to expressly consent to electronic service, the Judicial Council amended rules 2.251 and 2.255[1] effective January 1, 2019, and January 1, 2020, to provide procedures for express consent that comply with statute.

Analysis/Rationale

In 2017, the Legislature amended section 1010.6 to state that for cases filed on or after January 1, 2019, electronic service was "not authorized unless a party or other person has expressly consented to receive electronic service in that specific action" or if electronic service was required by local rule or court order. Rule 2.251(b) had previously allowed the act of electronic filing alone to be evidence of consent to receive electronic service for represented persons, but the amendment to section 1010.6 eliminated this option. Section 1010.6 does, however, allow a person to provide express consent electronically by "manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service." (Code Civ. Proc., § 1010.6(a)(2)(A)(ii).)

The Legislature did not provide a definition or meaning for "manifesting affirmative consent through electronic means." To fill this gap, the Judicial Council amended rule 2.251(b) to allow an electronic filer to consent by agreeing to a term with an electronic filing service provider (EFSP) that "clearly states that agreement constitutes consent" to receive electronic service. (Cal. Rules of Court, rule 2.251(b)(1)(B)(i).) The rules allow, but do not require, an EFSP to include such a term.

The proposed amendment to rule 2.255 would require an EFSP that includes a term for the electronic filer's consent to electronic service to allow an electronic filer to proceed with an electronic filing even if the electronic filer does not agree to electronic service. For example, if an EFSP had a check box that an electronic filer could click to agree to electronic service, the proposed rule would require the EFSP to allow the electronic filer to proceed with the electronic filing even if the electronic filer did not click on the check box.

The proposed amendment would apply only to electronic service by express consent. Accordingly, it would not apply to electronic service required by local rule or court order.

Policy implications

The proposal advances the judicial branch goal of promoting rule changes that facilitate the use of technology. (*Strategic Plan for Technology 2019–2022*, pp. 14–15.) It advances objectives of ensuring that rules promote equal access to justice and do not inhibit use of technology. (*Id.* at p. 15.)

[1] This and all further references to rules are to the California Rules of Court.

Comments

Nine commenters responded to the invitation to comment including:

1. California Department of Child Support Services
2. California Lawyers Association, Executive Committee of the Family Law Section
3. Child Support Directors Association, Judicial Council Forms Committee
4. Orange County Bar Association
5. Public Law Center
6. Superior Court of Orange County, Family Law Division
7. Superior Court of Orange County, Juvenile Court Division
8. Superior Court of Orange County, Training and Analyst Group
9. Superior Court of San Diego County

Most of the comments supported the proposed amendment, but one court raised concerns about workload and its case management system. ITAC sought specific comments on whether electronic filers should be able to "opt out" of electronic service, and this topic generated the most comments. Most commenters agreed that they should, but one court commenter stated they should not. Comments in support included the following reasons for their support:

- Opt-out reduces barriers to using electronic filing.
- Opt-out improves access to courts.
- Electronic filers should be able to use any means legislatively permitted, and it should not be up to a service provider that is not a party to the action.
- Electronic filers should be able to select whatever services benefit them.
- Some people may be able to submit an electronic filing, but not have regular access to technology in order to receive electronic service.

The committee members agreed with these points and were particularly concerned about ensuring access to justice for litigants who have limited access to technology or limited knowledge of using technology for court matters.

One court commenter opposed opt-out and stated "courts need to have the ability to electronically serve the parties with orders, notices, etc. . . . in [electronically filed] cases. If the parties were allowed to [electronically file] and choose not to be electronically served, it would result in courts having to devise systems to serve in two forms, which is costly and difficult for staff." The committee acknowledged the court's concerns, but ultimately determined that it should recommend the proposed amendment for adoption by the Judicial Council because facilitating electronic filing improves access to justice. In addition, one of the committee members investigated at his court how often litigants who electronically file then choose not to receive electronic service. The committee member noted that it was a small minority comprised mostly of self-represented litigants. While there may be some variation in the courts, overall, the

committee member expects those electronic filers who opt out of electronic service will be a minority.

Alternatives considered

The committee considered the alternative of making no change but found the proposal preferable as it may reduce barriers to electronic filing by ensuring electronic filers are able to opt out of electronic service when electronic service is not otherwise required by the court.

Fiscal and Operational Impacts

Two courts commented that the proposal would require staff training and updates to case management systems, which would result in increased costs for the training and updates. One of the courts commented there might be minimal savings associated with not having to process paper such as "the costs of stamping conformed copies and the postage required to return them by mail if the postage was not provided by the filing party."

Attachments and Links

1. Cal. Rules of Court, rule 2.255, at page 5
2. Chart of comments, at pages 6–18
3. Link A: Code Civ. Proc., § 1010.6, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6*
4. Link B: *Strategic Plan for Technology 2019–2022*, *https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf*

Rule 2.255 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 2.255. Contracts with and responsibilities of electronic filing service providers and electronic filing managers

(a)–(f) * * *

(g) Electronic filer not required to consent to electronic service

(1) An electronic filing service provider must allow an electronic filer to proceed with an electronic filing even if the electronic filer does not consent to receive electronic service.

(2) This provision applies only to electronic service by express consent under rule 2.251(b).

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Department of Child Support Services by Lara Racine, Attorney III Rancho Cordova, CA	A	The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposal made in this invitation. REQUEST FOR SPECIFIC COMMENTS: 1. Does the proposal appropriately address the stated purpose? Yes, the proposal is clear as to intent and purpose. The background section was well stated, especially as to the many iterations of Code of Civil Procedure (CCP) Section 1010.6, the applicable California Rules of Court (CRC), and the proposed amendment to CRC 2.255 as it pertains to electronic filing and electronic service requirements. 2. Should electronic filers be able to opt out of electronic service? Why or why not? Yes. Where not required or otherwise ordered, an electronic filer should have the option to decline electronic service. An individual that is filing a document via the electronic process may not know what rules apply to their particular circumstance. If	The committee appreciates the comment and perspective DCSS offers as a regular electronic filer.

	Commenter	Position	Comment	Committee Response
			they fall in the permissive category of e-filing and simply want to submit a document to the court on their case, they should be allowed to do that without also having to serve or accept documents electronically. Allowing a party to opt out of electronic service improves access to the court if that person is not interested in the electronic service process. GENERAL COMMENTS: DCSS agrees that this proposal may reduce barriers to electronic filing by ensuring electronic filers are able to opt out of electronic service when electronic service is not otherwise required by the court. The proposal will ensure litigants always have the option to electronically file at courts where electronic filing is permitted and thus increase access to the court. The proposal also provides clarification as to when the rule applies and to whom. DCSS is a current e-filer with several Superior Courts statewide. When our LCSAs e-file legal documents today, they do so via an established e-filing process vetted and approved by the Judicial Council. However, DCSS also files documents electronically using the	The committee appreciates this point and agrees reducing barriers to electronic filing is an important consideration.

	Commenter	Position	Comment	Committee Response
			electronic filing service providers on the court's public facing e-filing portals. DCSS works with many e-filing vendors including but not limited to, Tyler, JTI, and in-house information technology staff. While some of our counties are able to accept and process electronic service requests, others do not have a fully established process. Emergency Rule 12 will likely expand the ability of the local counties to accept and serve legal filings electronically, but eventually that rule may expire and the opt in mechanism for electronic service will once again apply. This proposal is more important from an access perspective for those filers that are not represented by an attorney and who are permitted to e-file, although are not required to participate in the process. Allowing this population of users to avail themselves to e-filing but not e-service, and making the rule clear as to intent, encourages the use of technology while not requiring participation in all aspects, which may otherwise deter some users. Further definition regarding the procedures required in CCP 1010.6 is always welcome, and explicit rules of court help facilitate the understanding of the entire electronic process.	The committee appreciates DCSS making this point and agrees that improving access to the courts through electronic filing is an important consideration.

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
2.	California Lawyers Association, Executive Committee of the Family Law Section (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislation Chair Sacramento, CA	A	FLEXCOM agrees with this proposal.	No response required.
3.	Child Support Directors Association, Judicial Council Forms Committee Ronald Ladage, Chair Sacramento, CA	A	The Committee agrees with the proposed revisions to Rule of Court 2.255. The proposed revision to California Rule of Court 2.255 accomplishes the stated purpose in that it allows electronic filers to utilize only the services of the EFSP that they wish to utilize, except when either a local rule of court directs that electronic service is mandatory when filing electronically or is specifically ordered by the court. The Committee believes that the proposal is feasible for the electronic filing service provider to offer a menu of services. Within the menu, the electronic filer should be able to select which services are of benefits to the electronic filed document and should not be mandated to receive services that are of no or limited benefit to the electronic filer.	The committee appreciates the comment.
4.	Orange County Bar Association by Scott B. Garner, President	A	Does the proposal appropriately address the stated purpose?	The committee appreciates the comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Yes, the proposal will require electronic filing services to update their forms to comply with the statutory changes to Code of Civil Procedure Section 1010.6. Should electronic filers be able to opt out of electronic service? Why, or why not? Yes. Conceivably some persons who are required to utilize electronic filing services may not have regular access to a reliable electronic means to receive service. Also, cyberspace does not always deliver documents properly, and mistakes can be made in attempts to effect electronic service. A party should have the option to avoid these types of problems by withholding consent. For Electronic Filing Service Providers, is the proposal feasible? Yes. It appears all that would be required is for EFSPs to add an additional check box to their forms as to whether or not a party consents to electronic service in those proceedings wherein that option is available.	The committee appreciates these point and agrees ensuring access to electronic filing and allowing a choice are important considerations.
5.	Public Law Center by Leigh E. Ferrin, Director of Litigation and Pro Bono	A	On a regular basis, but particularly over the last three months, PLC has worked with many self-represented litigants who may be	The committee appreciates PLC's perspective on the impact for self-represented litigants, particularly those without regular access to

	Commenter	Position	Comment	Committee Response
	Santa Ana, CA		able to file electronically, either through a legal services organization like PLC, or, once the stay-at-home orders are lifted, at a community center or local library. However, these same litigants often do not have regular access to an email address. Some litigants have no email address at all, others may only be able to check their email once a week or less frequently. This is particularly true now, during the stay-at-home orders, as people are more isolated now than ever and legal services is providing more services remotely as well. For instance, PLC currently assists individuals with drafting declarations to support their domestic violence restraining orders. PLC also assists these litigants with filing, in pro per, when the litigant is unable to file on their own. In these instances, it would be particularly valuable for those litigants to still receive service by mail, rather than being required to consent to electronic service. PLC has one additional suggestion, which is to find a way for the filing services to verify the address, maybe through USPS as many online retailers do, to ensure that the address entered in the electronic filing system is a correct address.	technology required in order to receive electronic service.

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
6.	Superior Court of Orange County, Family Law Division by Vivian Tran, Administrative Analyst	NI	Does the proposal appropriately address the stated purpose? Yes Should electronic filers be able to opt out of electronic service? Why or why not? Yes, electronic filers should be able to opt out of electric service. They are entitled to effectuate service by any means as described by the legislature. If there is no requirement per code or by rules of court that mandate electronic service of a document, then the EFSP should not be able to impose this restriction. Some courts have requirements regarding electronic filing. A filer would not be able to comply with the requirements if they were denied the opportunity to file electronically due to their choice not to accept electronic service of documents. The way a party receives service should not be determined by a service provider who is not a party to the action. For EFSPs, is the proposal feasible? Yes, the providers who are impacted by this change can remove the check box that identifies consent to electronic service, or	The committee appreciates these points and agrees with them.

	Commenter	Position	Comment	Committee Response
			they can change the functionality of the box so that it does not preclude the processing of documents if the box remains unchecked. Would the proposal provide cost savings? If so, please quantify. No, any potential cost savings is likely minimal. It is a possibility that the proposed change would increase the number of electronic filings received by the court and reduce the number of paper filings received by mail. This could save on the costs of stamping conformed copies and the postage required to return them by mail if the postage was not provided by the filing party. Would there be implementation requirements for courts? If so, what would they be— for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems? Case management system may need updates to capture or record who is opting out of e-service. Additionally, as a result of any system updates staff training will be needed.	The committee appreciates the comments on costs and implementation requirements and will report the information to the Judicial Council.

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
7.	Superior Court of Orange County, Juvenile Court Division by Linda Contreras, Administrative Analyst I	NI	Does the proposal appropriately address the stated purpose? Yes. Should electronic filers be able to opt out of electronic service? Why or why not? Yes, electronic filers should be able to opt out of electric service. It may reduce the barriers to electronic filing. For EFSPs, is the proposal feasible? Yes, the providers who are impacted by this change can remove the check box that identifies consent to electronic service, or they can change the functionality of the box so that it does not preclude the processing of documents if the box remains unchecked. Would the proposal provide cost savings? If so, please quantify. None identified at this time. Would there be implementation requirements for courts? If so, what would they be— for example, training staff (please identify position and expected hours of training), revising processes and procedures	The committee agrees with the comment that reducing barriers to electronic filing is an important consideration. The committee appreciates the comments implementation requirements and will report the information to the Judicial Council.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			(please describe), or modifying case management systems? Case management system may need updates to capture or record who is opting out of e-service. Additionally, as a result of any system updates staff training will be needed.	
8.	Superior Court of Orange County, Training and Analyst Group	NI	**General Comments** This ITC proposal was requested in part by OCSC. **Request for Specific Comments** 1. Does the proposal appropriately address the stated purpose? Yes 2. Should the electronic filers be able to opt out of electronic service? Why or why not? We defer to the Information and Technology Advisory Committee 3. For EFSPs, is the proposal feasible? Yes, it is feasible as it would only require minimal system updates.	

	Commenter	Position	Comment	Committee Response
			4. Would the proposal result in costs or savings to the court? If so, please quantify. The court would have to implement a mechanism for monitoring parties who opt out of e-service. This would result in additional costs to update the case management system and to train staff accordingly. 5. 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? This would require staff training and system updates to ensure notice is provided according to preference.	The committee appreciates the comments on costs and implementation requirements and will report the information to the Judicial Council.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	NI	Does the proposal appropriately address the stated purpose? Yes. Should electronic filers be able to opt out of electronic service? Why or why not?	

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			No. The courts need to have the ability to electronically serve the parties with orders, notices, etc…, in efile cases. If the parties were allowed to efile and choose not to be electronically served, it would result in courts having to devise systems to serve in two forms, which is costly and difficult for staff. For EFSPs, is the proposal feasible? Defer to EFSPs. Would the proposal provide cost savings? If so, please quantify. No, as set forth above, if parties were able to choose manner of service, it would increase costs to the court and defeat the savings from efiling. Would there be implementation requirements for courts? If so, what would they be—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems? Would the consent to service only apply to the parties or the court communication as	The committee acknowledges the concerns raised by the court about impact to its workload and case management system updates. The committee discussed the matter, but decided to recommend the proposal for adoption by the Judicial Council because facilitating electronic filing improves access to justice. The committee expects that parties choosing to electronically file, but opting not to receive electronic service will be a minority. The committee appreciates the comments on costs and implementation requirements and will report the information to the Judicial Council. The provision would apply to service, but not other forms of communication. This is a statutory requirement. Under Code of Civil

	Commenter	Position	Comment	Committee Response
			well? If it applies to service between the parties, minimal impact. However, if it applies to court communication, we would need to have development added to CCMS V-3 that would allow the recording of expressed consent somewhere on the participants' tab, which would result in a significant impact. It would also increase costs in cases because staff would have to serve in potentially two forms, which will take training, time, and significantly add to the costs incurred by the court to provide notice.	Procedure section 1010.6(a)(3), if the court is required to serve a party with a document and electronic service is not mandated by court order or local rule, then the party must have consented to receive electronic service in the case before the court can electronically serve them. To ensure courts would have a way of knowing an electronic filer had consented to electronic service through electronic filing service provider rather than through filing a form, the Judicial Council amended rule 2.255 last year to require the electronic filing service providers to transmit that information to the court.

Item number: 32

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child

Committee or other entity submitting the proposal:
Tribal Court - State Court Forum & the Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Indian Child Welfare Act Legal Updates: Monitor implementation of rules and forms created pursuant to AB 3176 (Waldron) Indian children. Assembly Bill 3176 updates the Indian Child Welfare Act provisions in the Welfare and Institutions Code to comply with recent Federal Bureau of Indian Affairs regulations (Item 3 ongoing projects, pg. 13 of the Family and Juvenile Law Advisory Committee Annual Agenda)
E & P approval of Forum Agenda: March 13, 2019. Project Description from annual agenda: Implement Assembly Bill 3176 Indian Children (Waldron; Stats. 2018, ch. 833) AB 3176 Indian Children, amends provisions of the Welfare and Institutions Code to conform California law to the requirements of the federal Indian Child Welfare Act Regulations and Guidelines adopted in 2016. The legislation directs the Judicial Council to enact rules and forms necessary to implement the legislation.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.514; adopt form ICWA-101

Recommended by
Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 30, 2020

Contact
Ann Gilmour, Attorney, 415-865-4207
ann.gilmour@jud.ca.gov

Executive Summary

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend effective January 1, 2021, amending rule 5.514 of the California Rules of Court and adopting a new mandatory form ICWA-101 to be used to have a judge witness the consent of an Indian parent or custodian to the temporary custodial placement of an Indian child in accordance with section 1913 of title 25 of the United States Code, 25 Code of Federal Regulations parts 23.125–23.127, and Welfare and Institutions Code section 16507.4(b)(3).

Recommendation

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.514 of the California Rules of Court to require juvenile courts to adopt as part of the court's intake procedures, procedures for the taking of the consent from a parent or Indian custodian to a temporary placement of an Indian child before a judge; and

2. Adopt a new mandatory form, *Agreement of Parent or Indian Custodian to Temporary Custody of Indian Child* (form ICWA-101) to be used to have a judge witness the consent of an Indian parent or custodian to the temporary custodial placement of an Indian child in accordance with section 1913 of title 25 of the United States Code, 25 Code of Federal Regulations parts 23.125–23.127, and Welfare and Institutions Code section 16507.4(b)(3).

The text of the amended rule 5.514 and the new form ICWA-101 is attached at pages 7–10.

Relevant Previous Council Action

The Judicial Council has acted on many occasions to implement the requirements of the Indian Child Welfare Act and corresponding state law. In 2005, the Judicial Council enacted rules and forms concerning the voluntary adoption of an Indian child implementing SB 947 (Ducheny; Stats. 2003, ch. 469).[1] The *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) was amended as part of that proposal. Following the passage of SB 678 in 2006, which wove requirements of the Indian Child Welfare Act into the provisions of the California Family, Probate, and Welfare and Institutions Codes, the Judicial Council enacted comprehensive rules and forms implementing SB 678.[2] In 2018, the Legislature enacted AB 3176, which amended many provisions of the Welfare and Institutions Code to conform California law to revised federal regulations.[3] In 2019, the Judicial Council made substantial revisions to rules and forms to implement AB 3176.

Analysis/Rationale

The Indian Child Welfare Act (ICWA) establishes requirements for the validity of a parent or Indian custodian's consent to the foster care placement of or termination of parental rights to an Indian child.[4] Prior to the enactment of comprehensive federal ICWA regulations in 2016, the law had been interpreted to mean that no actual "foster care placement" was being made for the purposes of ICWA until the court made an order granting care and custody of the child to someone other than the child's parent or Indian custodian. In a dependency case, this was determined to be the dispositional hearing. Thus, the voluntary consent provisions of ICWA had only been implemented in relation to the termination of parental rights in the Parent of Indian Child Agrees to End Parental Rights (form ADOPT-225). In 2018, the California Legislature

[1] The rules and forms implementing this legislation are available at *https://www.courts.ca.gov/documents/1004ItemA23.pdf*.
[2] SB 678 is available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060SB678*. The Judicial Council Rules and Forms Proposal implementing SB 678 is available at *https://www.courts.ca.gov/documents/102607ItemA27.pdf*.
[3] AB 3176 is available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*.
[4] Set out in 25 U.S.C. § 1913.

adopted Assembly Bill 3176,[5] which amended various provisions of the Welfare and Institutions Code to align California law with the requirements of the federal ICWA regulations. AB 3176 included various revisions to section 16507.4(b)(3) of the Welfare and Institutions Code governing voluntary out-of-home placements of a minor who has not been adjudicated by the juvenile court. In particular, AB 3176 confirmed that out-of-home placements under section 16507.4(b)(3) must comply with the consent requirements of ICWA whenever an Indian child is involved.

Due to the legal developments discussed above, there is a need to create a process and form for a judge to witness the consent of the parent or Indian custodian of an Indian child to the child's temporary custody in accordance with the requirements of ICWA.

Tribal advocates have indicated that the lack of a form for the consent of a parent or Indian custodian to the temporary custody of an Indian child is also a problem in the context of voluntary guardianships under the Probate Code. Tribal advocates have been asked to draft forms that meet the ICWA requirements but are uncomfortable doing so as they are not always familiar with California law. A form that could be used across all case types governed by ICWA would be useful to litigants and the courts.

The proposal would amend rule 5.514(b) of the California Rules of Court, which requires courts to establish intake procedures in juvenile cases that include a program for informal supervision by requiring these procedures to include (1) a process for a judge to witness the consent of an Indian parent or custodian consistent with the requirements of ICWA; and (2) the adoption of a new form, *Agreement of Parent or Indian Custodian to Temporary Custody of Indian Child* (form ICWA-101).

Policy implications

The proposal implements federal and corresponding state law requiring consents to voluntary placements of an Indian child to be taken before a judge. However, it is not something that juvenile courts have generally been doing and courts will have to develop new procedures to implement these requirements. The forum and committee considered whether detailed processes should be set out in the rule itself, or whether local courts should be able to develop their own detailed procedures within the guidelines set out in the statutes and the rule. Based on feedback from commenters, including several local courts, the forum and committee concluded that local courts should have some flexibility in developing detailed procedures that meet their local needs and conditions.

The forum determined that consistent with the requirements of Welfare and Institutions Code sections 361.31(g) of the Welfare and Institutions Code, which requires any person involved in the placement of an Indian child to use the services of the Indian child's tribe in securing a

[5] Assem. Bill 3176 (Waldron); Stats. 2018, ch. 833.

placement for the child, the tribe should be served with a copy of the consent form executed by the parent or Indian custodian.

Comments

The proposal circulated for public comment from April 10 through June 9, 2020, as part of the spring 2020 invitation to comment cycle. It was sent to the standard mailing list for family and juvenile law proposals that includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys, distributed through the monthly newsletter distributed by the Tribal Court–State Court Forum, and sent to the California Department of Social Services Office of Tribal Affairs listserve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

Eleven comments were received. None of the commenters opposed the proposal. Ten commenters agreed with the proposal, and one (representing two tribal organizations) did not indicate whether they agreed. The commenters included four superior courts, two child welfare departments, two county counsel's offices, a bar association, and the two tribal organizations. All commenters agreed that the proposal should move forward. There were a number of technical and stylistic corrections, and suggested revisions and amendments to both the proposed rule and form. All of the comments and proposed responses are included in the attached comment chart.

Several revisions were made in response to comments that helped to clarify and strengthen the proposal:

- The draft rule was amended to include a 72-hour time limit for having the matter brought before a judge and to specify that the court should retain the original of the document with a copy to the agency;
- The form was revised to clarify that it should not be signed until after the judge had fully explained the consequences to the parent or Indian custodian;
- The form was revised to include contact information for the social worker or other individual whom a parent or Indian custodian would contact to request return of the child;
- The form was revised to address the placement preferences of the Indian Child Welfare Act;
- The form was revised to change the language of "membership" to "enrollment"; and
- The form was revised to clarify the judicial certification language.

As part of the invitation to comment, the forum and committee sought comments on several specific questions. Those questions and the responses are discussed below:

- **In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should that be clarified in the rule?**

Of the six commenters who responded to this question, five indicated that both the court and the agency should retain a copy of the document. Two commenters felt the original should be retained by the court. One felt the original should be retained by the agency. All six felt that the issue should be clarified in the rule.

- **If the form is retained by the court, would it be discoverable under rule 10.500?**

  Of the five commenters who responded to this question, all five indicated that the form would not be discoverable on the basis that it would be subject to confidentiality under Welfare and Institutions Code section 827 and therefore exempt under rule 10.550(f)(5) and also as an adjudicative record as defined by rule 10.500(c)(1).

- **How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent?**

  Of the five commenters who responded to this question, four felt that appointment of an attorney was not required if the judge fully explained the consequences, the party indicated they understood, and there was no reason for the judge not to believe the party understood. One commenter suggested that an attorney should be appointed for the limited purpose of advising on this point and that the attorney should be required to sign the form.

- **The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the form be executed before the judge?**

  Of the five commenters that answered this question, all felt it was sufficient that the form be explained by the judge to the party and signed before the judge.

- **Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process?**

  Of the five commenters who responded to this question, four responded that the court should retain discretion to establish its own process. One felt that further explanation in the rule would be helpful.

Alternatives considered

The forum and committee considered establishing a rule that would set out the detailed procedures to be followed to take the consent, rather than allowing local courts flexibility to establish their own procedures, but in the end decided that local courts should be able to craft procedures consistent with local conditions.

Fiscal and Operational Impacts

Several superior court commenters indicated that the proposal would increase workload and have implementation requirements such as revising processes, procedures, and docket codes as well as training for judicial officers and staff; however, they indicated that these would be minimal.

Attachments and Links

1. Cal. Rules of Court, rules 5.514, at page 7
2. Form ICWA-101, at pages 8–10
3. Chart of comments, at pages 11–41

Rule 5.514 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 5.514. Intake; guidelines

(a) * * *

(b) Purpose of intake program

The intake program must be designed to:

(1)–(2) * * *

(3) Establish a process for a judge to witness the consent of the parent or Indian custodian to a placement of an Indian child under section 16507.4(b) before a judge in accordance with section 16507.4(b)(3) that ensures the placement is consistent with the federal Indian Child Welfare Act and corresponding state law and all of the rights and protections of the Indian parent are respected, using *Agreement of Parent or Indian Custodian to Temporary Custody of Indian Child* (form ICWA-101). This process must ensure that the witnessing of the consent is scheduled within 72 hours of the request having been made. The original completed *Agreement of Parent or Indian Custodian to Temporary Custody of Indian Child* (form ICWA-101) shall be retained by the court with a copy to the agency; and

(~~3~~4) Provide for the commencement of proceedings in the juvenile court only when necessary for the welfare of the child or protection of the public.

(c) * * *

(d) * * *

(e) * * *

ICWA-101 Agreement of Parent or Indian Custodian to Temporary Custody of Indian Child

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

(This form must be signed after the judge has explained the terms and conditions of the consent as set out in items 6 and 7. A copy of this form shall be provided to the child's tribe in accordance with sections 224.2(e)(3), (f), and 361.31(g) of the Welfare and Institutions Code.)

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 I want the child to be temporarily placed in the custody of *(Name(s) print or type):*

a. _____

b. _____

Their relationship to Indian child *(check all that apply):*

☐ Related to child *(specify):* _____

☐ Member of child's tribe ☐ Parent(s)

☐ None of the above

2 The placement in (1) complies with the placement preference requirements of the Indian Child Welfare Act and section 361.1 of the Welfare and Institutions Code because: *(please check one):*

a. The placement meets the placement preference requirements of the Indian Child Welfare Act because the placement is with:

☐ A member of the child's extended family;
☐ A foster home licensed, approved, or specified by the child's tribe;
☐ An Indian foster home;
☐ Follows the order of preference established by the child's tribe; OR

b. By clear and convincing evidence there is good cause to deviate from the placement preferences based on:

☐ The request of one or both of the Indian child's parents who attest that they have reviewed the placement options, if any, that comply with the order of preference;
☐ By request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
☐ The presence of a sibling attachment that can be maintained only through a particular placement;
☐ The extraordinary physical, mental, or emotional needs of the Indian child; or
☐ The unavailability of a suitable placement within the preferences; a diligent search was conducted. (If using this option, evidence of the diligent search must be contained in the record.)

3 Indian child *(name):* _____

Date of birth: _____ Age: _____

Child's tribe(s): _____

Membership: _____

☐ *Check here if you do not know the membership number.*

4 Your name: _____

☐ Parent ☐ Indian Custodian *(Check only one. Each must fill out a separate form.)*

Your address:

_____

City: _____ State: _____ Zip: _____

Phone: _____ Your tribe(s): _____ Membership #: _____

☐ *Check here if you do not know the membership number.*

Name of Parent or Indian custodian: _____

Case Number:

Your lawyer *(if you have one): (Name, address, phone number, and State Bar number):*

_____

_____

5 The proposed placement ☐ will ☐ will not be eligible for Aid to Families with Dependent Children.

6 I am the person in **4** and I say:

a. That I am presently unable to care for the child and prefer that the child be placed with the person(s) listed in **1**.

b. I agree to the temporary custody of my child by the person(s) listed in **1**.

c. No one has threatened me, including the threat of removing the child from my custody, or made promises to me to get me to sign this form.

d. I understand that I can change my mind and that, if I do, the child will be returned to me by contacting _____ (insert name of social worker of other individual to contact) at _____ (insert contact information).

e. I do not give up any of my rights under the Indian Child Welfare Act by signing this form.

f. My child was at least 10 days old when I signed this form.

7 At the time of signing this form, neither I nor the child live or are domiciled on an Indian reservation of a tribe that exercises exclusive jurisdiction over child custody proceedings.

Date: _____ _____ ▶ _____

Type or print your name

Signature of parent or Indian custodian

Name of Parent or Indian custodian: _____

Case Number:

Judge's Certification

I, Judge _____

Superior Court of California, County of _____, certify:

- It has been at least 10 days since the child's birth;
- I fully explained the terms and consequences of consenting and entering into this agreement in detail;
- If this is a voluntary out-of-home placement pursuant to section 16507.4 of the Welfare and Institutions Code, I have reviewed the written agreement between the county welfare department and the parent or Indian custodian or guardian and the SOC-155C form if any and fully explained the terms and consequences of those to the parent or Indian custodian, and they were fully understood by the parent or Indian custodian;
- I have explained to the parent or Indian custodian that they may withdraw their consent for any reason and at any time by contacting the person identified in (6) d. above;
- I have reviewed how the placement meets the placement preference requirements of the Indian Child Welfare Act and section 361.31 of the Welfare and Institutions Code and ☐ the placement meets the placement preferences or ☐ there is good cause to deviate from the placement preferences.
- After the terms and consequences as set out above were fully explained in detail to the parent or Indian custodian in English or after they were interpreted into a language that they understood, the terms and consequences were fully understood by the parent or Indian custodian and their consent was executed and recorded before me.

Certified: _____
Print or type name of Judge (or Judicial Officer)

Date: _____ _____
Judge (or Judicial Officer)

SPR 20-29

Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child (Amend rule 5.514 and Adopt form ICWA-101)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Tribal Families Coalition, by Delia M. Sharpe, Executive Director and California Indian Legal Services, By Dorothy Alther, Executive Director	NI	This letter is in response to the Judicial Council of California's invitation for comments to the proposed amendment to Rule 5.514 and the proposed adoption of form ICWA-101. California Tribal Families Coalition is a statewide organization governed by a thirteen-member Board of Directors comprised of duly elected tribal officials, with a membership of 36 federally recognized Indian tribes located across the state, as well as the Southern, Central and Northern California Tribal Chairman's Associations. The mission of CTFC is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and at the core of tribal sovereignty and tribal governance. Founded in 1967, California Indian Legal Services (CILS) is the oldest public interest Indian rights law firm in the country, promoting the fundamental rights of California tribes and Indians through litigation, legislative and administrative advocacy, community development, and other strategies for systemic change. CILS provides a full range of legal representation to California Indian tribes and Indian organizations, advocates for the rights of California Indians at the local, state, and national levels, and provides direct services and community education to low-income Indian individuals on issues related to federal Indian law.	No response required.

SPR 20-29

Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child (Amend rule 5.514 and Adopt form ICWA-101)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Comments: Rule 5.514	
			We strongly recommend that, in addition to the proposed Rule 5.514 requiring the establishment of a local process, there be a companion ICWA Rule adopted. The companion ICWA Rule should provide guidance regarding what the certification must include.	In lieu of a separate rule the proposal was amended to include this in the judicial certification requirements
			We recommend the companion ICWA Rule require a judge taking the consent of an Indian parent ask questions sufficient to establish that the voluntary custody is in fact voluntary, and not the result of duress, etc. The Rule should further require the judge to carefully explain the consequences of the consent, ensuring the parent fully understands, in English or translated into a language the parent does understand.	Form has now changed content of the certification Addressed in certification
			Only after the parent has appeared before the judge and the terms and conditions of the consent have been fully explained, should the parent be asked to complete the certification (the ICWA- 101 form). The form should be executed before the judge. This order of events is important to ensure this well-meaning rule and form are not inadvertently used to remove Indian children from their parents, such as occurs through "safety plans" and the use of the CDSS SOC-155C form.	Language has been added to the form stating that it should not be signed until after the judge has explained the consequences to the parents.
			An additional form will need to be developed to allow the local process developed pursuant to Rule 5.514 to be initiated. This may be a form titled, "Request for Judicial Certification," and would be limited to information necessary to get the matter before the court and would be filed	The forum and committee considered this comment but determined that local courts could develop forms if necessary consistent with their local process.

	Commenter	Position	Comment	Committee Response
			by the Agency in a juvenile dependency matter Or the Petitioner in a probate guardianship matter. ICWA-101 1. The form should be amended to include the contact information of the county social worker or other person whom the parent would contact in order to demand return of his/her child. 2. #2 should add "WIC 361.31" at the end of the sentence and strike "the placement preference." 3. #2 We recommend adding a list of placement preferences. If deviating from the preferences, create a space for "good cause to deviate." a. The following is a sample of the proposed language: "The placement meets the placement preference requirements of the Indian child Welfare Act because the child will be placed with: ___ A member of the child's extended family; A foster home licensed, approved, or specified by the child's tribe; ___ An Indian foster home; ___. These placement preferences may be amended by the child's Indian tribe. b. OR: The placement does not meet preference requirements of the Indian child welfare act and: ___ The court orders additional efforts be made to locate an appropriate temporary caregiver; ____ By clear and convincing evidence there is good cause to deviate from ICWA placement preferences based on the request of one or both of the Indian child's parents who attest that they have reviewed the placement options, if any, that comply with the order preference; by request of the child, if the child is of sufficient	 The form was amended in response to this comment. The form was amended in response to this comment The form was amended in response to this comment.

	Commenter	Position	Comment	Committee Response
			age and capacity to understand the decision that is being made; the presence of a sibling attachment that can be maintained only through a particular placement; The extraordinary physical, mental or emotional needs of the Indian Child; The unavailability of a suitable placement after determination by the court that a diligent search was conducted. 4. #3 should add information about notice to the child's tribe. 5. #3 "enrollment" should be amended to read "Membership number." 6. #3 The check box should be amended to delete the word "enrollment" and replace with "membership." This creates consistency with ICWA, which requires membership not enrollment. 7. The form should be amended to add a box that voluntary placements may be eligible for "Aid to Families with Dependent Children." 8. The Judge's Certification must comply with WIC 16507.4 and should read: a. It has been at least 10 days after the child's birth. b. I fully explained the terms and consequences of the consent in detail in English and they were fully understood by the parent, or they were interpreted into a language that the parent understood, including the following: i. A parent of an Indian child may withdraw his or her consent to a voluntary foster care placement or voluntary termination of parental rights or relinquishment for any reason at any time and the child shall be returned to the parent.	The form was amended in response to this comment. The form was amended in response to this comment. The form was amended in response to this comment. The form was amended in response to this comment. The form was amended in response to this comment.

	Commenter	Position	Comment	Committee Response
			c. The placement complies with preferences set forth in Section 361.31. d. The parent, after the terms and consequences of the consent were explained and I found them to be fully understood, executed the consent before me.	The form was amended in response to this comment. The form was amended in response to this comment.
2.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) By Saul Bercovitch, Director of Governmental Affairs	A	FLEXCOM agrees with this proposal.	No response required.
3.	Los Angeles Department of Child and Family Services, and County Counsel	A	I agree that a process and form should be established in all courts that hear ICWA cases to ensure ICWA is complied with when it comes to voluntary placement of children or termination of parental rights of an Indian Child. Request for Specific Comments on Page 3 has several questions requesting feedback- 1) The one thing that is not so clear is: who completes the proposed form- The Parent, Indian Custodian, Court Clerk, Parents' Attorney. I suppose this would fall under "comments from the courts" as to how this will be determined by each court as they determine their policies and procedures regarding their implementation plan developed by the various courts in the country. 2) The question of "Who should support the parent/ Indian Custodian to ensure the Voluntary Temporary Custody is understood by the parent/Indian Custodian?" It seems to me that this would be the role of the CSW at the time the child is taken into temporary protective	No response required

	Commenter	Position	Comment	Committee Response
			custody; Parents Attorney/Parents Dependency Investigator at the beginning of Detention hearing, and the Judge during the hearing. 3) As for the implementation of this new form, and the other 2 forms, I suspect the training could be done in 3 hours by one of the Judges for Judicial staff, by County Counsel for County Counsel, LADL for LADL, CLC for CLC, and DCFS Staff, etc. 4) I suspect for a large county like LA County, it could take a minimum of 6 months before this process would be completely ready for Dependency court, most likely longer for Juvenile Court. 5) This proposal will most definitely work better in small counties. LA County will most likely struggle with this new proposal as it does with ICWA as a whole. I anticipate possibly more Appeals. 6) One additional suggestion regarding the form itself, I suggest that the language (Print or Type) be added to the top of the document above line # 1. And again at the Line "I, Judge_____" should be printed/typed. 7) Yes, the form should be kept in the Court File and the DCFS CSW ICWA Folder.	The form was amended in response to this comment. The proposal was revised in response to this comment.
4.	Orange County Bar Association By Scott B. Garner, President	A	Does the proposal appropriately address the stated purpose? *Yes.* Does the proposed form cover all of the topics that should be covered? *Yes.* In the context of a juvenile case, would the completed form be retained in the agency file or	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			by the court? *Files should be kept by both.* Should this be clarified in the rule itself? *Yes.* If the form is retained by the court, would it be discoverable under rule 10.500? *It should be subject to W.I.C. section 827 confidentiality, which is covered by rule 10.550(f)(5).* How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent? *The court can make this determination as it makes other determinations of self-represented parties. Appointment of an attorney is not necessary and would impose an undue burden of time and money on the system.* The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the form be executed before the judge? T*he term executed seems to sufficiently comply with ICWA regulations.* Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process? *Given the great variety of Superior Courts in California, each court should be able to retain discretion to establish its own process.*	The rule was revised in response to this comment. No response required. No response required. No response required. No response required.
5.	Sacramento County Counsel's Office By Christopher S. Costa, Deputy County Counsel	A	***Question 1: Does the proposal appropriately address the stated purpose?*** -Overall, yes, the proposal addresses the stated purpose. However, the following areas should	The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			be included or clarified, as applicable, to provide juvenile court participants additional practical guidance. (1) **Addressing Departing from Placement Preferences.** Welfare and Institutions Code (WIC) Section 16507.4(b)(3)(D) indicates that the [voluntary] placement must comply with preferences set forth in Section 361.31. However, WIC sections 16507.4 and 361.31 do not provide specific guidance as to how a judge should proceed if the placement preferences are not met at the time of the voluntary proceeding. The December 2016 – Guidelines for Implementing the [ICWA], at part I, section I.2, explain that placement preferences apply to both voluntary and involuntary placements, and that the judge may consider as a basis for good cause to depart from the placement preferences, under certain circumstances, the request of one or both parents. Proposed Rule 5.514(b) should specify, consistent with WIC section 361.31(h)-(j), that, if the parent or Indian custodian asserts that good cause exists not to follow the placement preferences, said assertion (and the attestation that the parent or Indian custodian has reviewed placement options that may meet preferences) shall be provided orally on the record or provided in writing (via the ICWA-101 in Section 5). Correspondingly, the proposed ICWA-101 should include, in the Judge's Certification section, an option for a finding that good cause to deviate from placement preferences exists, as required by WIC section 361.31(j).	The form was amended in response to this comment.

	Commenter	Position	Comment	Committee Response
			Without the guidance identified above, practitioners may question whether departing from placement preferences is allowed under WIC section 16507.4 and, if so, how to document compliance with placement preferences in voluntary proceedings, if a deviation is requested, under the ICWA and California law. (2) **Addressing the California Department of Social Services (CDSS) SOC 155C form.** WIC section 16507.4(b)(2) indicates that, for voluntary placements, there must be a written agreement between the parent and county on a CDSS form that shall be used by *all* counties. CDSS currently has a required SOC 155C (Voluntary Placement Agreement Parent/Agency (Indian Child)) form that includes a "Certification" section in the bottom right hand corner for the judge to sign. Proposed Rule 5.514(b) should, in light of WIC section 16507.4(b)(2) and the current SOC 155C form (that requires a judge's signature), address that the ICWA-101 is required in addition to any written agreement required by CDSS/WIC section 16507.4(b)(2). This also will remind practitioners that the "terms and consequences" the judge is certifying are within the written agreement. Given that the SOC 155C has not been updated since approximately January 2000, and it currently requests signature from a judge, it would benefit practitioners (and avoid confusion) if the SOC 155C form was updated to no longer require a judge's	The form was amended in response to this comment.

	Commenter	Position	Comment	Committee Response
			signature/certification. Or, alternatively, if the SOC 155C form was replaced (in light of the ICWA-101) by the standard SOC 155 form – a form that more thoroughly lists the rights and responsibilities of the parent/guardian, child, and agency. (3) **Addressing Timelines for the Judge's Certification.** WIC section 16507.4 pertains to voluntary placement agreements (up to six months) and the agency's option to offer informal services, via WIC section 301, in lieu of the agency filing a petition (on a substantiated referral). Under the newly proposed WIC section 16507.4 process, if the agency determines informal supervision and voluntary placement (for up to six months) of an Indian child will be effective and the parent(s) agree, it will take some period of time prior to schedule for the judge to certify the ICWA-101. The longer the period of time, the more difficult this process will be for the family and for the child welfare agency (i.e. depending on the nature of the referral, this may lead to more exigent removals during the interim waiting period). In practice, child welfare agencies oftentimes – to prevent removal – have to safety plan and provide temporary out of home care solutions at the early stages of the investigation prior to determining whether the allegation is substantiated and whether formal/informal services should be provided. Under WIC section 16501(b), respite care is a child welfare service, which may be provided to the child's	The rule was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			parents or guardians, that generally does not exceed 72 hours, but, in order to preserve the placement, may be provided for up to 14 days in any one month. Respite care is an option for families in crisis and is a child abuse and neglect prevention strategy available under California and Federal law. See WIC sections 16501(b), 16501.01(c)(1)-(4), ACIN I-50-16, ACIN I-51-16, 42 USC 5116h(3). The proposed rule should include a 72 hour timeframe for the agency/judge to schedule a voluntary proceeding to ensure that the Indian child/family does not exceed the initial timeframe for respite care services and to ensure that the voluntary proceeding is quickly addressed to avoid difficulties for the agency and family. ***Question 2: Does the proposed form cover all of the topics that should be covered?*** -Please see response (1) to question 1 above. The proposed ICWA-101 should include, in the Judge's Certification section, an option for a finding that good cause to deviate from placement preferences exists, as required by WIC section 361.31(j). ***Question 3: In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should this be clarified in the rule itself?*** -WIC section 361.31(m) and CDSS MPP Section 31-075.3 indicate that records of foster placement must be maintained by the State Department of Social Services in perpetuity. Given the county welfare agency's obligation to	The form was amended in response to this comment. The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			enter and maintain ICWA related information in certain statewide databases, it seems more fitting for the county welfare agency – that is responsible to provide information to the State Social Services Department and/or the Bureau of Indian Affairs – to retain the original ICWA-101. It would be helpful guidance to include, in the proposed rule of court, a provision identifying that the county will maintain the original ICWA-101 and the certifying court will maintain a copy for its records. ***Question 4: If the form is retained by the court, would it be discoverable under rule 10.500?*** -No. The ICWA-101 would still be part of the "juvenile case file" as defined under WIC section 827(e) and Rule 5.552(a), and subject to disclosure/discovery only under the criteria of those authorities. ***Question 5: How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent?*** -The December 2016 – Guidelines for Implementing the [ICWA], at part I, section I.6 indicate that, prior to accepting consent, the court must explain to the parent or Indian custodian "[t]he terms and consequences of the consent *in detail"*. The judge can certify that the form is fully understood by confirming with the parent on the record that the parent or Indian custodian has been informed of and agrees to the terms of the SOC 155C/written agreement	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			with the agency (including the right to withdraw consent, etc.). -Given that the certification is a prerequisite for the child welfare agency to provide certain services (here, informal supervision services per WIC sections 301 and 16507.4), and substantive due process rights are not affected – since the parent or Indian custodian has the right to withdraw consent at any time – appointment of counsel seems unnecessary. ***Question 6: The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the form be executed before the judge?*** -Yes. It appears the word "execute" is written in the federal law to denote that the consent is not legally effective unless it is acknowledged in writing. And, the term "record", in the context of the federal law, is used to show that the written instrument must be furnished as evidence to the judge. I think the use of both terms is helpful since it leaves the option for the ICWA-101 to be signed by the parent prior to the voluntary proceeding. ***Question 7: Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process?*** -Generally, I think the court should retain discretion to establish its own process – particularly regarding the logistics of filing documents and having the proceeding set.	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			However, as indicated in the above responses to questions 1-6, there are certain fundamental steps that should be included. For example, I believe practitioners, without further guidance from the proposed rule, will not know: whether there needs to be a finding to depart from placement preferences; whether the child welfare agency has an obligation to maintain the record in perpetuity to satisfy WIC section 361.31(m) and the CDSS regulations; or, what the appropriate timeframe is for scheduling the proceeding.	
6.	San Diego Child Welfare Services By Karla Morales, Policy Analyst	A	[No further comment provided]	No response required.
7.	Superior Court of California County of Los Angeles by Bryan Borys, Assistant Court Executive Officer	A	Does the proposal appropriately address the stated purpose? Answer: Yes Does the proposed form cover all of the topics that should be covered? Answer: Yes In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should this be clarified in the rule itself? Answer: The completed form should be retained by the court; this should be clarified in the rule. •If the form is retained by the court, would it be discoverable under rule 10.500? Answer: No; it is adjudicative information. How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent? Answer: An attorney should be appointed for the parent unless the judicial officer determined that the parent was able to represent himself/herself.	No response required. No response required. The proposal was revised in response to this comment. No response required.

	Commenter	Position	Comment	Committee Response
			The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the form be executed before the judge? Answer: It is sufficient that the form be executed before a judicial officer. Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process? Answer: The specific procedures of the process for taking the consent should be at the discretion of each court to establish its own process. Would the proposal provide cost savings? If so, please quantify. Answer: No. It will increase workload. 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? Answer: Training for judicial officers and staff. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Answer: Yes.	No response required. No response required. No response required. No response required. No response required.
8.	Superior Court of California County of Orange, Family Law Division By Vivan Tran, Administrative Analyst	A	Amend rule 5.514(b) No comments. New Form – Parent or Custodian of Indian Child Agrees to Temporary Custody ICWA-101	No response required. The proposal was not amended in response to this comment. 25 U.S.C. section 1913 establishes the

	Commenter	Position	Comment	Committee Response
			•Page 2 of ICWA-101 – Consider renaming the section from "Judge's Certification" to "Judicial Officer's Certification" in the event a Commissioner is presiding over the case. Also, add "Commissioner" to the "I, Judge/Commissioner…" section.	requirements for valid consent to the placement of an Indian child. It states "… such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction…" therefore it should be a Judge rather than a commissioner.
			Comments on the proposal as a whole: This is a welcomed proposal to ensure that the Indian parent or custodian can consent to temporary out-of-home placement of the child without giving up his/her rights under ICWA. It enables the court to ensure that these rights are fully understood by the parent/Indian Custodian.	No response required.
			Does the proposal appropriately address the state purpose? Yes.	No response required.
			Does the proposed form cover all of the topics that should be covered? Yes, the proposed form is mirrored after the ADOPT 225 form that we have had available in Family Law adoption cases for many years. As it is laid out in the proposal, this new form can be used for all case types in which ICWA applies.	No response required.
			In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should this be clarified in the rule itself? The filed document should be retained in the court file and a conformed copy kept with the	The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			agency file. This document should be treated as any other filed document in the court record. If the form is retained by the court, would it be discoverable under rule 10.500? If this completed form is retained in a court file, the same rules of confidentiality that apply to Juvenile cases - Welfare and Institution code § 827 and rule 5.552 - would not also apply to this form. How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent? It would have to be upon inquiry of the parent or Indian custodian that the court would have to determine if they understand. If they do not fully understand the court could appoint an attorney if one would not normally be appointed. Could an addition to the form be a line for the parent/Indian custodian to initial their understanding after the judicial officer goes through Item #5 a-f on the form? Might this also be a type of certification that the party understands his or her rights? The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the forms be executed before the judge?	No response required.

	Commenter	Position	Comment	Committee Response
			It should be sufficient that the form be executed before a judge. It can be "recorded" in the minute order that the form was executed in writing and in front of the judicial officer and that is was filed into the case.	No response required.
			Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process? Possibly add to the form ICWA-101 "This form should be completed in front of a judge/commissioner." If there needs to be more interpretation as to certification and recording of this form or how this form is retained, then a specific procedure would need to be detailed in the rule.	The form was amended in response to this comment.
			Would the proposal provide cost savings? If so, please quantify. No, I do not see a cost savings currently.	No response required.
			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? Training will be minimal for the FL adoptions courtroom and case processing staff, judicial officers, legal research and self-help staff. The Indian Child Welfare Act (ICWA) Requirement Procedures will need an update. There will	No response required.

	Commenter	Position	Comment	Committee Response
			need to be new event codes and macros added to the Odyssey Case Management systems. Would 3 months form Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months would be sufficient time for implementation. How well would this proposal work in court of different sizes? This proposal should work in courts of all sizes.	No response required. No response required.
9.	Superior Court of California County of Orange, Family Law and Juvenile Court By Linda Contreras, Administrative Analyst I	A	**New Form – *Parent or Custodian of Indian Child Agrees to Temporary Custody* ICWA-101** Page 2 of ICWA-101 – Consider renaming the section from "Judge's Certification" to "Judicial Officer's Certification" in the event a commissioner is presiding over the case. Also, consider removing the "I, Judge" section since there is a signature line. If you need the "I, Judge section, then consider adding "Commissioner" to the "I, Judge/Commissioner…" section. This is a welcomed proposal to ensure that the Indian parent or custodian can consent to temporary out-of-home placement of the child without giving up his/her rights under ICWA. It enables the court to ensure that these rights are fully understood by the parent/Indian Custodian. ***Does the proposal appropriately address the state purpose?*** Yes, the proposal appropriately states the purpose.	ICWA mandates that the consent be taken by a judge. No response required.

	Commenter	Position	Comment	Committee Response
			Does the proposed form cover all of the topics that should be covered? Yes, the proposed form is mirrored after the ADOPT 225 form that we have had available in Family Law adoption cases for many years. As it is laid out in the proposal, this new form can be used for all case types in which ICWA applies. ***In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should this be clarified in the rule itself?*** The filed document should be retained in the court file and a conformed copy kept with the agency file. This document should be treated as any other filed document in the court record. Since this will be a mandatory Judicial Council form and there will be a judicial officer's signature and a file stamp on the completed form, this completed form would have to be retained by the court. ***If the form is retained by the court, would it be discoverable under rule 10.500?*** It does not apply because Rule 10.500 applies to public access to judicial administrative records. Rule 10.500(b) (1) This rule applies to public access to judicial administrative records, including records of budget and management information relating to the administration of the courts. (2) This rule does not apply to, modify	No response required. The proposal has been revised to clarify where the form should be retained. No response required.

	Commenter	Position	Comment	Committee Response
			or otherwise affect existing law regarding public access to adjudicative records. ***How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent?*** An attorney should be appointed to the parent who is signing the form. A Judge should not be advising rules and then certifying that they understand those advisements without an attorney to circumvent the issue. ***The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the forms be executed before the judge?*** Once it has been "Executed in writing before a judge" and given to the clerk to file, it would be recorded. It should be sufficient. ***Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process?*** Possibly add to the form ICWA-101 "This form should be completed in front of a judge/commissioner." Each court should retain discretion to establish its own process.	The committee declined to require that an attorney be appointed. No response required. The form was revised.

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			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? Training for Juvenile and Family Law Judicial Officers, legal research, self-help staff, and courtroom clerks would be minimal with forms and appointed counsel. Procedures would need to be created or updated. The Odyssey case management system would need to be updated to capture that the form was completed and signed before a judge/commissioner and an event code to capture the filing of the ICWA-101 and findings of this amended rule.	No response required.
			Would 3 months form Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	
			How well would this proposal work in court of different sizes?	No response required.

SPR 20-29

Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child (Amend rule 5.514 and Adopt form ICWA-101)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			This proposal should work in courts of all sizes with the proper training and procedures.	
10.	Superior Court of California, County of Riverside By Susan Ryan, Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the consent requirements of ICWA and AB 3176. Does the proposed form cover all of the topics that should be covered? Yes, the form covers all topics as laid out in WIC Section 16504.4(b)(3) In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should this be clarified in the rule itself? The court would file and retain the form if there was a juvenile petition ever filed regarding the parent. If this is on a pre-file case then the department should retain the document in their files. If the form is retained by the court, would it be discoverable under rule 10.500? Since this form would more relate a child welfare issue and not judicial administration it would seem that rule 10.500 should not apply to these documents. Courts could even create miscellaneous juvenile case files solely for the purpose of receiving, calendaring and filling these documents if for parties that have never had a juvenile case file. How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent?	No response required

	Commenter	Position	Comment	Committee Response
			The judge could appoint an attorney if/when needed if he/she felt that the party did not understand. The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the form be executed before the judge? Executed would mean that the form was explained and signed by the party and the judge. Does recorded mean that the form would be filed on a court case? Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish it's own process? Since it would be new to courts to have this function for parties that may not have a juvenile case file, the rule should explain the procedures. Would the proposal provide cost savings? If so, please quantify. There would be no cost savings. 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), change docket codes in case management systems, or modify case management systems. The court would need to create new procedures for clerk's office to process these forms and calendar the matter for the judge to witness and take the consent. A procedure for Courtroom	

	Commenter	Position	Comment	Committee Response
			staff would need to be created to handle these types of hearings. New filing codes for the form and new minute codes in the case management system for hearings and findings would be needed. Hearing codes to set hearings when an appearance is requested would also need to be created as well as JBSIS stats for these types of hearings would need to be accounted for. Staff training on the new forms and procedures would need to be completed for all juvenile courtroom and clerk's office staff. Perhaps one to two hours to review training materials would be needed. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, but six months would be preferred. How well would this proposal work in courts of different sizes? The proposals should work well for courts of any size.	
11.	Superior Court of California County of San Diego By Mike Roddy, Executive Officer	A	**GENERAL COMMENTS** **CRC 5.514(b)(3)** – Change as indicated because the parent does not necessarily need to be Indian. The operative requirement is that the *child* is an Indian child. The child may still qualify as an "Indian child" even if only one parent has Native American heritage. If it is a custodian, however, it must be an "Indian custodian." "Establish a process for a judge to witness the consent of an Indian the parent or Indian custodian to a placement of an Indian child	The rule was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			under section 16507.4(b) before a judge in accordance with section 16507.4(b)(3) that ensures that the placement is consistent with the federal Indian Child Welfare Act and corresponding state law and that all of the rights and protections of the Indian parent are respected, using *Parent or Indian Custodian of Indian Child Agrees to Temporary Custody* (form ICWA-101); and"	
			Query – If form ICWA-101 is intended to be used across all case types, should a similar provision be added to the Family Court rules and the Probate Court rules? Or should the form be executed before a juvenile court judge regardless of the case type?	The form can be used across case types.
			ICWA-101 - Title (top of page 1 and footers on both pages): Suggestions for clarity-- "Agreement of Parent or Indian Custodian of Indian Child Agrees to Temporary Custody of Indian Child" - Footers: Shouldn't statutory citations be in right footer rather than left footer (as in other Judicial Council forms)? - Item 4: Suggested for clarity -- "*Each must fills out a separate form.*"	The form was amended in response to this comment.
			Note – The instruction to "*skip this if you have a lawyer*" can be interpreted to allow the parent or Indian custodian to skip the lines for phone number, tribe, and enrollment number. Was that the intended result? - Item 5a: "with the person(s) listed in 1."	The form was amended in response to this comment.

	Commenter	Position	Comment	Committee Response
			- Item 5d: "I understand that I can change my mind and that, if I do, the child will be returned to me." - Item 6: "Signature of Indian parent or Indian custodian" - Judge's Certification: Insert comma after blank line for judge's name. - Second bullet point: Suggestion -- - "I fully explained the terms and consequences of the agreement to the parent(s) or Indian custodian(s), including (if applicable) the terms of any written agreement under section 16507.4 of the Welfare and Institutions Code, and they had no questions I could not answer (*name of parent(s) or Indian custodian(s)*) _____ **ICWA-101**, continued - Third bullet point: Suggestion -- - "The parent(s) or Indian custodian(s) fully understood the terms and consequences - Fourth bullet point: Suggestion -- "The parent(s) or Indian custodian(s) speaks English or used an interpreter at the hearing."." Does the proposal appropriately address the stated purpose? Yes, except that it is not clear how the form can be used in family or probate matters, as the committee intends it to be used. Please see General Comments for specific comments.	The form was amended in response to this comment. The form was amended in response to this comment. The form was amended in response to this comment.

	Commenter	Position	Comment	Committee Response
			Does the proposed form cover all of the topics that should be covered? Yes, but it might be prudent to add an instruction that a separate form should be completed for each child if there is more than one child in the case to whom the agreement applies. In the context of a juvenile case, would the completed form be retained in the agency file or by the court? Should this be clarified in the rule itself? The original should be retained by the court, the agency should retain a copy, and whatever is decided should be stated in the rule. If the form is retained by the court, would it be discoverable under rule 10.500? No. I would argue that the completed form is properly considered an "adjudicative record" as defined in rule 10.500(c)(1) ["any writing prepared for or filed or used in a court proceeding [or] the judicial deliberation process"], not a "judicial administrative record" as defined in rule 10.500(c)(2) (see also examples listed in subd. (e)(2)). How can the judge certify (as required by federal law) that the form is fully understood by the parent or Indian custodian? Does an attorney need to be appointed for the parent? Given the legal consequences of signing this agreement and in consideration of other ICWA provisions (e.g., requiring the appointment of counsel for a	The form was amended in response to this comment. The proposal was revised in response to this comment. No response required. The forum and committee declined to require that an attorney be appointed given the weight of the other responses to this question.

	Commenter	Position	Comment	Committee Response
			parent or Indian custodian in non-voluntary proceedings), an attorney should be appointed for the parent or Indian custodian for the limited purpose of advising the client on the agreement, and the attorney should be required to sign the form (i.e., add an item 7 for the attorney's signature). The federal law states that the judge's certification include that the document was "executed in writing and recorded before a judge." Is the term "recorded" appropriate in the California context, or is it sufficient that the form be executed before the judge? I would interpret "recorded" as the equivalent of "executed before the judge," as opposed to any other means of recording. Should the specific procedures of the process for taking the consent be set out in detail in the rule, or should each court retain discretion to establish its own process? If the committee decides that an attorney should be appointed for the parent or Indian custodian, that requirement should be stated in the rule. Otherwise, each court should retain discretion to establish its own process. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided final version of the form is provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to	No response required. No response required because no attorney appointment required. No response required.

SPR 20-29

Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child (Amend rule 5.514 and Adopt form ICWA-101)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			update their procedures and provide training to staff.	

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Indian Child Welfare Act (ICWA): Tribal Information Form. Amend Cal. Rules of Court, rule 5.522; approve forms ICWA 100 and ICWA-100-Info

Committee or other entity submitting the proposal:
Tribal Court - State Court Forum & the Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Indian Child Welfare Act Legal Updates: Monitor implementation of rules and forms created pursuant to AB 3176 (Waldron) Indian children. Assembly Bill 3176 updates the Indian Child Welfare Act provisions in the Welfare and Institutions Code to comply with recent Federal Bureau of Indian Affairs regulations (Item 3 ongoing projects, pg. 13 of the Family and Juvenile Law Advisory Committee Annual Agenda)
E & P approval of Forum Agenda: March 13, 2019. Project Description from annual agenda: Implement Assembly Bill 3176 Indian Children (Waldron; Stats. 2018, ch. 833) AB 3176 Indian Children, amends provisions of the Welfare and Institutions Code to conform California law to the requirements of the federal Indian Child Welfare Act Regulations and Guidelines adopted in 2016. The legislation directs the Judicial Council to enact rules and forms necessary to implement the legislation.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Indian Child Welfare Act (ICWA): Tribal Information Form

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.522; approve forms ICWA-100 and ICWA-100-INFO

Recommended by
Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 4, 2020

Contact
Ann Gilmour, Attorney, 415-865-4207
ann.gilmour@jud.ca.gov

Executive Summary

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend amending rule 5.522 of the California Rules of Court and approving a new optional form and instruction sheet for that form, to be used by an Indian child's tribe to provide information to the court on issues where consultation with the child's tribe is required by the Indian Child Welfare Act, and for the tribe's position on these issues in cases governed by the Indian Child Welfare Act. This proposal originated with comments from tribal advocates and attorneys.

Recommendation

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.522 of the California Rules of Court;

2. Approve *Tribal Information Form* (form ICWA-100); and

3. Approve *Instruction Sheet for Tribal Information Form* (form ICWA-100-INFO).

The text of the amended rule and the new forms are attached at pages 6–11.

Relevant Previous Council Action

The Judicial Council has acted on many occasions to implement the requirements of the Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq.) and corresponding state law. Following the passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838) in 2006, which wove requirements of the Indian Child Welfare Act into the provisions of the California Family, Probate, and Welfare and Institutions Codes, the Judicial Council enacted comprehensive rules and forms implementing SB 678.[1] In 2018, the Legislature enacted Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833), which amended many provisions of the Welfare and Institutions Code to conform California law to revised federal regulations.[2] In 2019, the Judicial Council made substantial revisions to rules and forms to implement AB 3176.

Analysis/Rationale

California is home to more people of Indian ancestry than any other state in the nation. Currently, 109 tribes are federally recognized in California, a number second only to the number of tribes in the state of Alaska. California's Indian population includes a large number of people affiliated with out-of-state tribes or tribes whose territories and primary headquarters are based in neighboring states, such as the Washoe, Fort Mojave, Chemehuevi, Colorado River, and Quechan tribes.[3]

Tribes within California are often located in remote areas, often making travel to court locations burdensome. Tribal resources and staffing vary greatly, but many tribes have only one full-time staff person devoted to child welfare cases, and that individual may have active cases in multiple

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[1] SB 678 is available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060SB678*. The Judicial Council Rules and Forms Proposal implementing SB 678 is available at *https://www.courts.ca.gov/documents/102607ItemA27.pdf*.

[2] AB 3176 is available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*.

[3] Judicial Council of Cal., Center for Families, Children & Cts., "Native American Statistical Abstract: Population Characteristics" *Research Update* (Mar. 2012), *www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf*; California Indian Tribal Homelands and Trust Land Map, *https://www3.epa.gov/region9/air/maps/ca_tribe.html*.

counties and states. Under the federal Indian Child Welfare Act and corresponding California statutes, an Indian child's tribe has a right to participate in cases governed by ICWA, and proper implementation of and compliance with ICWA involves tribal input on a number of key issues. However, as noted in *ICWA Compliance Task Force: Report to the California Attorney General's Bureau of Children's Justice* (2017), many tribes find it difficult to exercise their right to fully participate in ICWA cases. [4] Of particular concern are the rights of "lower-income tribes, as they often do not have resources to retain legal counsel, travel and be present at all hearings or even pay fees associated with telephonic appearances." If a tribe intervenes in a case, the tribe becomes a full party. Rule 5.534(e) recognizes various rights of a tribal representative, including the right to submit written reports and recommendations to the court even if the tribe does not intervene in the case; however, tribes located out of state or unrepresented by counsel may be unfamiliar with California court procedures, and an optional form may encourage them to exercise their right to submit information more often.

If the tribe's position on key ICWA issues is unknown as a case progresses, this lack of clarity can have negative consequences on the case. For instance, if the court is unaware of the tribe's position on permanency planning until after reunification services have been terminated, unnecessary conflicts and disruptions may occur during placement. California has a high number of appeals related to the Indian Child Welfare Act.[5] Some of these appeals might be avoided if tribal input could be consistently obtained throughout the life of a case.

Policy implications

The purpose of this form is to more easily allow an Indian child's tribe to submit information to the court on key issues. The forum and the committee considered whether to require that this form be included with every hearing notice sent out to a tribe in a case governed by the Indian Child Welfare Act, but decided to defer such a requirement to a later time depending on the success and use of the form.

Comments

The proposal circulated for public comment from April 10 through June 9, 2020, as part of the spring 2020 invitation to comment cycle. It was sent to the standard mailing list for family and juvenile law proposals that includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys, and included in the monthly newsletter distributed by the Tribal Court–State

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[4] Cal. ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), p. 41, *www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf*.

[5] In 2016, California had 114 appeals related to ICWA. (Prof. Kathryn E. Fort, "2016 ICWA Appellate Cases by the Numbers" *Turtle Talk* [Indigenous Law and Policy Center blog], Michigan State University College of Law, Jan. 4, 2017, *https://turtletalk.wordpress.com/2017/01/04/2016-icwa-appellate-cases-by-the-numbers/*).

Court Forum, and sent to the California Department of Social Services Office of Tribal Affairs listserve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

The proposal received 10 comments. Seven commenters agreed with the proposal and three did not indicate their position. The commenters included two statewide tribal organizations that submitted joint comments, the Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM), representatives of five superior courts, two child welfare departments, two county counsel's offices, and the Orange County Bar Association.

The comments included technical and stylistic corrections as well as more substantive comments, many of which were accepted as they strengthened and clarified the proposal. All of the comments and responses to them are set out in the attached comment chart. Revisions made in response include:

- Revising form ICWA-100-INFO to recognize the ability to fax file the form;
- Revising form ICWA-100-INFO to clarify what to expect on the day of the hearing, including requesting remote appearance;
- Revising form ICWA-100-INFO to add more guidance on how and when to file the form with the court;
- Revising form ICWA-100 to include information about the tribe's status within the proceedings;
- Revising form ICWA-100 to include more areas on which the tribe is encouraged to submit information to the court; and
- Revising forms ICWA-100 and ICWA-100-INFO to clarify how they would be used in case types other than juvenile.

Alternatives considered

The forum and the committee considered taking no action, but decided that providing a way for tribes to more easily communicate directly with the courts on issues of importance in cases governed by the Indian Child Welfare Act was important to improving tribal access to the courts, compliance with the Indian Child Welfare Act, reducing appeals that result from lack of tribal participation, and ultimately improving outcomes for Indian children and families.

Fiscal and Operational Impacts

Some of the superior court commenters noted that the creation of the new form would require some training for staff to make them aware of the process. Court case management systems would need to be updated to incorporate the new form. Another commenter noted that the court would have to create a new filing code and that there would be very minimal training requirements.

Attachments and Links

1. Cal. Rules of Court, rule 5.522, at page 6
2. Forms ICWA-100 and ICWA-100-INFO, at pages 7–11
3. Chart of comments, at pages 12–30.

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**
CHILD'S NAME: HEARING DATE AND TIME: DEPARTMENT: *(JUVENILE, FAMILY, OR PROBATE)*	
TRIBAL INFORMATION FORM	CASE NUMBER:

To the representative of the Indian Child's Tribe: You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. You may attach additional information on a separate sheet if you need more space to respond to any section on this form or have other information that you wish to share with the court, by checking item 10. You may also submit this form by fax. Phone the court to ask for the correct fax number. Be aware that any written information provided, including this form, may not be admitted as evidence if the court determines that it is not admissible by law.

1. **Child's Information**
   a. Child's full name:
   b. Child's date of birth:
   c. Child's age:
2. **Tribal Information**
   a. Name of tribe:
   b. Name of person completing this form:
   c. Name(s) of persons authorized to represent the tribe in this case:
   d. Tribal representative's contact information
      Address:
      Telephone:
      Fax:
      Email:
   e. Duplicate notices, reports, orders, and other documents concerning this case ☐ may ☐ may not be served by email at the above address.
3. **Tribal Intervention**
   a. ☐ The Indian child's tribe: ☐ is intervening or ☐ has intervened in the case.
   b. ☐ The tribe requests that this form be admitted by the court under California Rules of Court, rule 5.534(e)(2)(E).
4. **Hearing Information**
   This *Tribal Information Form* is submitted for the *(insert type of hearing):*
   scheduled for *(insert date of hearing):* in department
   If you indicate in items 4 through 7 that the tribe has not been consulted on any issue, please explain in the "Further Comments" section the particulars of communication or attempts at communication with the agency or petitioner throughout this time period.
5. **Communication**
   a. ☐ In the last six months, or since the last hearing, there ☐ has ☐ has not been ongoing consultation and communication between the agency or other petitioner and the tribe.
   b. ☐ Further comments:

Form Approved for Optional Use
Judicial Council of California
ICWA-100 [New January 1, 2021]

Cal. Rules of Court, rule 5.534(e)
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. **Case Planning, Services, and Active Efforts**

a. ☐ In the last six months, or since the last hearing, the tribe ☐ has ☐ has not been consulted on the appropriate services to be provided to the parent(s), legal guardian(s), or Indian custodian(s), and the child.

b. ☐ The tribe submits the following information and comments with regard to case planning and services for the child and parent(s), legal guardian(s), or Indian custodian(s), and efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

c. ☐ The tribe recommends that the following programs and services be integrated into the parent's and child's case plan:

d. ☐ The tribe has the following input on the child's well-being:

e. ☐ The tribe has the following input on the child's educational status:

f. ☐ The tribe has the following input on the child's social development:

g. ☐ The tribe has the following input on the child's adjustment to the child's living arrangements:

h. ☐ The tribe has the following input on upcoming tribal/cultural/social events that the tribe recommends the child attend:

i. ☐ The tribe has the following observations regarding visitation:

j. ☐ The tribe has the following input on the needs of the parent(s) or child:

k. ☐ The tribe has the following other recommendations:

l. ☐ Further comments:

7. ☐ **Placement *(if the child is in out-of-home placement)***

a. ☐ The tribe ☐ has ☐ has not been consulted on the child's placement.

b. ☐ The tribe ☐ does ☐ does not know where the child is currently placed.

c. ☐ The tribe ☐ does ☐ does not agree with the child's current placement.

d. ☐ The tribe requests that the child be placed with *(insert name)*: .
This placement is preferable because: .

e. ☐ Further comments:

CHILD'S NAME:	CASE NUMBER:

8. ☐ **Permanency Planning** ***(if the child is in out-of-home placement)***

   a. The tribe ☐ has ☐ has not been consulted regarding the appropriate permanent plan for the child should reunification with the parent(s), legal guardian(s), or Indian custodian(s) fail.

   b. The agency ☐ has ☐ has not discussed with the tribe tribal customary adoption as a permanency option should reunification with the parent(s), legal guardian(s), or Indian custodian(s) fail.

   c. ☐ Further comments:

9. Other information:

10. ☐ If you need more space to respond to any section on this form or have other information that you wish to share with the court, please check this box and attach additional pages.

    Number of pages attached: _____

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 TRIBAL REPRESENTATIVE WHO HAS COMPLETED THIS FORM)

INSTRUCTION SHEET FOR TRIBAL INFORMATION FORM

Background

1. **What is the Tribal Information Form?** The *Tribal Information Form* (form ICWA-100) is intended to provide an accessible way for an Indian child's tribe to provide information to the court about the case and the tribe's position on the case. The form should be completed by the duly authorized representative of the tribe able to represent the tribe's position in the court case.
2. **When does it need to be filled out and filed?** The *Tribal Information Form* is an optional form. If you choose to use it, fill it out and file it with the court, along with eight copies, at least five calendar days before the hearing, or mail it and eight copies to the court for filing at least seven calendar days before the hearing. Follow the instructions below. Do not wait until the day of the court hearing to file the form.

How to Fill Out Form ICWA-100

1. **Complete the caption.** These are the boxes at the top of the page.
   - *Court name, street address, and mailing address.* Write the name of the county where the court is located, and the street and mailing address of the court. If you do not know the name and address of the court, look on the notice of the court hearing you received in the mail or go to *www.courts.ca.gov/find-my-court.htm* to find the contact information for your court. For department name, write the location of the court and either "Family," "Juvenile," or "Probate" depending on which department is hearing the case. If you are not certain, phone the court.
   - *Child's Name.* Write the child's full name.
   - *Hearing Date and Time*. Write the hearing date and time. If you do not have this information, ask the social worker in a juvenile case or the court in a family or probate case.
   - *Case Number.* This number is on the notice of the court hearing you received in the mail. If you do not have the number, ask the child's social worker or attorney for the number in a juvenile case or call the court in a family or probate case. If the case involves brothers and sisters (siblings), there may be more than one case number. Be sure to use a separate form and the correct number for each child.
2. **Complete the information about the child and about the tribe and tribal representative.**
   - *Item 1.* Fill in the child's full name, date of birth, and age.
   - *Item 2.* Complete the information about the tribe.
3. **Complete items 3–9 about the case.** For each question, check the box to indicate whether there is new information since the last hearing. Briefly write new information in the appropriate section of the form.
   - *Item 3.* Indicate whether the tribe has intervened, is intervening now, or wishes the form to be admitted under California Rules of Court, rule 5.534(e)(2)(E), which authorizes the court to receive written information from a tribal representative when the tribe has not intervened.
   - *Item 4.* Provide information about the hearing for which the form is submitted.
   - *Item 5.* Provide information on the communication between the agency or petitioner and the tribe since the last hearing.
   - *Item 6.* Provide information about case planning, services, active efforts, and other issues.
   - *Item 7.* Provide information about the child's placement.
   - *Item 8.* Provide information about the appropriate concurrent and permanent plan for the child.
   - *Item 9.* Provide other information the tribe wants to convey to the court.
4. **Add any attachments.** Check the box in item 10 to add additional pages.
5. **Sign and date the form.** On the bottom of page 2, write the date, type or print your name, and sign your name.

What to Do With the Form After You Have Filled It Out

1. **Make copies.** Tribal representatives should make eight or more copies of the completed form ICWA-100 and any attachments.
2. **If you choose to file the form in person.** At least **five** calendar days before the hearing date, bring the original form and the eight copies to the court clerk's office at the courthouse where the hearing will be held. Ask the clerk to file the form for you. Keep one copy of the date-stamped form for yourself. The clerk will provide a copy of the form to each party and will complete and file the proof of service form.
3. **If you choose to file the form by fax.** Contact the court to get the appropriate fax number, and fax the completed form to the court at least five days prior to the hearing.

Form Approved for Optional Use
Judicial Council of California
ICWA-100-INFO [New January 1, 2021]

Cal. Rules of Court, rule 5.534(e)
www.courts.ca.gov

INSTRUCTION SHEET FOR TRIBAL INFORMATION FORM
Background

4. **If you choose to file the form by mail.** At least **seven** calendar days before the hearing date, mail the original form and all but one of the copies to the court clerk's office at the courthouse where the hearing will be held. Put sufficient postage on the envelope. Include a note indicating "For filing and service" and include the case number. The clerk will provide a copy of the form to each party and will complete and file the proof of service form.
5. **Confirm the hearing date, time, and place.** If you plan to attend the hearing, call the social worker if there is one, or contact the court to confirm the hearing date, time, and courtroom.
6. **If you wish to participate in the hearing remotely.** Contact the court at least five days in advance if you wish to appear remotely for the hearing.

What to Do on the Hearing Day

1. **Bring extra copies of the form.** If you decide to attend the hearing, it is suggested that you make additional copies of the form and any attachments to provide to anyone at the hearing who did not receive them.
2. **Comments in court.** If you attend the hearing in person, you should speak to the bailiff prior to the start of court to identify yourself, the tribe you represent, and the case you are there for, and indicate that you would like to address the court.
3. **Remote appearance.** You may also appear remotely by notifying the court at least five days in advance.
4. **Effects of Participation:** If you participate in the hearing, you may be subject to cross-examination. If you do not participate in the hearing, and are not available for cross-examination, any evidence contained in the form that is not otherwise admissible in court may be excluded.

SPR20-30

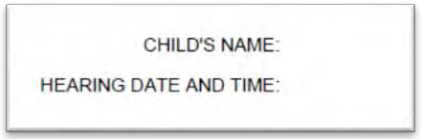
Indian Child Welfare Act (ICWA): Tribal Information Form (Amend Cal. Rules of Court, rule 5.522; approve forms ICWA-100 and ICWA-100-Info) All comments are verbatim unless indicated by an asterisk (*).

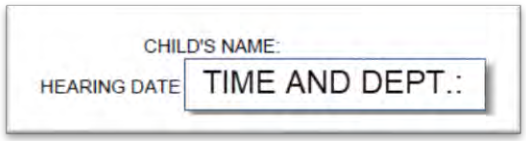
	Commenter	Position	Comment	Committee Response
1.	California Tribal Families Coalition, By Delia M. Sharpe, Executive Director and California Indian Legal Services By Dorothy Alther, Executive Director	A	We are in support of the amendment to Rule 5.522 and the adoption of forms ICWA-100 and ICWA-100-Info with the following recommendations. ICWA-100-INFO Proposed amendments to Rule 5.522 allow fax filing, but the ICWA-100-INFO form only addresses mail and in-person options. We recommend this form be revised to include information regarding fax filing. We also recommend that the ICWA-100-INFO form be revised to include in the "What to Do on the Hearing Day" section that the tribal social worker may be subject to cross-examination. Form ICWA-100 The ICWA-100 form includes information regarding notice to the tribe. We recommend that #2(d) be revised to specific that "duplicate" notices, reports, orders, and other documents... may be served by email. New #4 regarding tribal intervention. The Indian child's tribe: ___ is intervening or _____ has intervened. We also strongly recommend that the ICWA-100 include sections for the tribe to provide input regarding: (1) child's wellbeing, (2) education, (3) social development, (4) adjustment to living	No response required. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment.

			arrangements; (5) Tribal/Cultural events attended or upcoming; (6) visitations observed; (7) needs of parents or child; and (8) recommendations.	
2.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Saul Bercovitch, Director of Governmental Affairs	A	FLEXCOM agrees with this proposal. FLEXCOM suggests that instead of language at the end of the form advising one can attach additional pages, that an advisement be placed next to item numbers with a check box. This would allow someone who is filling in the form to be aware at the time they are completing an item that an attachment can be used.	The form was revised to add language explaining this at the beginning of the form.
3.	Los Angeles Department of Child and Family Services, and County Counsel By O. Raquel Ramirez, Senior Deputy County Counsel	A	This is an excellent proposal. 1) This form could be faxed or e-mailed, to the Tribe(s) at the time of an Indian Child being taken into Temporary Custody or detained, before the Detention Hearing, to give the Tribe the opportunity to engage the Court as early as the Detention Hearing. Would this faxing the tribe the ICWA 100 be something done by the CSW or DI CSW? Many times, the parents are not certain as to which tribe they belong to and not until after the DCFS 030 packet is sent to many tribes, each checks their tribal member directory, which takes some time before it is determined if the child is an Indian Child and which tribe determines the child eligible for membership. Would each tribe(s) also receive the ICWA 100? In this instance, they would they also to complete the ICWA-100 form when the ICWA 030 is mailed/emailed?	No response required.

			2) If the Tribe is unable to be present or participate remotely (as proposed in "SR20-31 ICWA Remote Appearance by and Indian Child's Tribe in ICWA Proceedings") this is a good alternative. However, SR20-31, proposes that Tribes who want to appear at an Indian Child's court hearing, and do not have fiscal resources for telecommunication devices or fees, fees would be waived. 3) I suggest that on the ICWA-100 INFO form, that the Child's middle name (if they have one) be included in the lines requesting Child's Name. Possibly also adding Child's Tribal (name if they have one). 4) The ICWA-100 INFO form "What to Do on the Hearing Day" possibly add #3) add "Remote Appearance- If you choose to attend the hearing remotely, when you answer roll call, let the court know that you have comments you would like to make before the end of the hearing" 5) See SR20-29 regarding training, implementation recommendations and record keeping of forms.	No response required. The form was revised in response to this comment. The form was revised in response to this comment.
4.	Orange County Bar Association By Scott B. Garner, President	A	Does the proposal appropriately address the stated purpose? Yes. Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input? Yes.	No response required.
5.	Sacramento County Counsel's Office By Christopher S. Costa, Deputy County Counsel	A	Questions 1 and 2: Does the proposal appropriately address the stated purpose? Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input?	No response required.

			-Overall, yes, the proposal and form appropriately address the stated purpose and promote tribal input. However, the following areas should be included or clarified, as applicable, to provide juvenile court participants additional practical guidance.	
			(1) Relationship Between ICWA-100 and Rule 5.534(e)(2)(E). Rule 5.534(e)(2)(E) indicates that, for non-intervening tribes, the court may permit a tribal representative to submit written reports and recommendations to the court. The proposed ICWA-100 and Instruction Sheet do not address whether the tribe has communicated with the court or whether the tribal representative has been permitted by the court to submit written reports. To ensure that the information provided by the tribal representative can be appropriately considered by the court, the Instruction Sheet under the "What to Do on the Hearing Day" section, should encourage tribal representatives to attend the hearing – whether by phone or in-person - to be available for the court to answer questions and to ensure that the proposed ICWA-100 has been appropriately considered.	The ICWA-100 form was revised to include a section indicating whether the tribe had intervened or intended to intervene. The ICWA-100 and ICWA-100-INFO form were amended in response to this comment. The form was revised in response to this comment.
			Further, to provide practitioners guidance on the admissibility of the proposed ICWA-100 – since the information provided will likely be related to substantive findings for certain hearings – the introductory paragraph at the top of page 1 of the proposed ICWA-100 (preferably after the second sentence) should include information similar to the following: "Any written information provided, including this form, may	The form was revised in response to this comment.

			not be admitted as evidence unless the parties agree to do so or the court determines the written information is otherwise admissible under the law." (2) Explanations in Items 4-7 of the Proposed ICWA-100. To assist the court and the parties to fully understand the tribe's position regarding items 4-7, the introduction sentence in Paragraph 3 of the Information Sheet should encourage tribal representatives to explain, in the "Further Comments" sections of Items 4-7, in detail, how the agency has or has not consulted with the tribe.	The form was revised in response to this comment.
6.	San Diego Child Welfare Services By Karla Morales, Policy Analyst	A	No further comments.	No response required.
7.	Superior Court of California, County of Orange Family Law Division By Vivian Tran, Administrative Analyst	NI	**Tribal Information Form (Form ICWA 100)** Will this form also be used for filings in Family Law or Probate? If yes, then it may be confusing if the department that the hearing is being heard in is not listed on the form. Recommend adding Department to the hearing date and time information in the case caption box. Proposed Case Caption:  Recommended Case Caption:	The form was revised in response to this comment.

			 Item #3: Hearing information - This *Tribal Information Form* is submitted for th scheduled for *(insert date of hearing)*: Also recommend adding (insert date of hearing, time and dept.)	The form was revised in response to this comment.
			Instruction Sheet for Tribal Information Form (Form ICWA 100 – INFO) Subsection 2 - How to Fill Out Form ICWA-100 – Item #1 – 1st bullet – last sentence – "For branch name, write "Juvenile". Will this form also be used for Indian Tribes to file in Family Law and Probate cases? There needs to be some clarification as to this issue. Recommend modification here if this form is to be used for other case types.	The form was revised in response to this comment.
			Subsection 3 – What to Do with the Form After You Have Filled It Out There are only two choices to file this form, in person and by mail, in this subsection. There should be a choice to fax this form to the court as this proposal also includes amending rule 5.552 to include a fax filing option for an Indian Tribe. Recommend adding a fax filing option to this subsection.	
			Subsection 3 – What to Do with the Form After You Have Filled it Out - Item #3 – Sentence – "Put two stamps on the envelope."	The form was revised in response to this comment. It now says "Put sufficient postage on the envelope."

			This sentence may be misleading. It is too vague as to the value of the stamps needed to send an original form and 7 copies. Are we certain this will provide enough postage every time? What if there are even more documents or several attachments to this form being sent by the Indian Child's Tribe or the Tribe's Representative in one envelope? What if the envelope comes back to the Tribe with postage due and it did not reach the court to be filed prior to the hearing and the Tribe states to the court that they were in compliance with what the INFO sheet directed them to do by putting "two stamps" on it? Recommend sentence to be modified to "Place two FOREVER stamps on the envelope." (if it must be kept on the form) or replace the sentence with "Place appropriate postage on the envelope" or delete this sentence from the sheet. Subsection 4 – What to Do on the Hearing Day – Item #2 – Comments in Court. – Sentences – "If you choose to attend the hearing…" and "You may raise your hand to let the judge know you would like to speak…". This may imply to the reader, that the Tribe's representative must appear at the hearing only in person as there is no other option listed in this subsection. I just commented on the legislation change of rules 5.9, 5.482 and 5.531, "Remote Appearances by an Indian Child's Tribe at an ICWA proceeding – (SPR20-31), in which a Tribe may now appear telephonically or in some other computerized remote way at an ICWA	The form has been revised to provide greater clarity and explanations under this subsection in response to this and other comments. It now addresses the option of appearing remotely.

			proceeding. The remote appearance change will be effective on the same date as these changes. Recommend adding this remote appearance information/option to this form.	
8.	Superior Court of California, County of Orange Juvenile Law Division By Linda Contreras, Administrative Analyst I	NI	***Tribal Information Form* (Form ICWA 100)** Will this form also be used for filings in Family Law or Probate? If yes, then it may be confusing if the department that the hearing is being heard in is not listed on the form. Recommend adding Department to the hearing date and time information in the case caption box. Item #3: Hearing information: Recommend adding time and department. (insert date of hearing, <u>time and dept.</u>) ***Instruction Sheet for Tribal Information Form* (Form ICWA 100 – INFO)** <u>Subsection 2 - How to Fill Out Form ICWA-100 – Item #1 – 1st bullet – last sentence – "For branch name, write "Juvenile". </u>Will this form also be used for Indian Tribes to file in Family Law and Probate cases? There needs to be some clarification as to this issue. Recommend modification here if this form is to be used for other case types. <u>Subsection 3 – What to Do with the Form After You Have Filled It Out</u> There are only two choices to file this form, in person and by mail, in this subsection. There should be a choice to <u>fax</u> this form to the court as this proposal also includes amending rule 5.552 to include a fax filing option for an Indian	The form has been amended in response to this and other comments. The form has been amended in response to this and other comments The form has been amended in response to this and other comments. The form has been amended in response to this and other comments.

			Tribe. Recommend adding a fax filing option to this subsection. <u>Subsection 3 – What to Do with the Form After You Have Filled it Out - Item #3 – Sentence – "Put two stamps on the envelope."</u> This sentence may be misleading. It is too vague as to the value of the stamps needed to send an original form and 7 copies. Are we certain this will provide enough postage every time? What if there are even more documents or several attachments to this form being sent by the Indian Child's Tribe or the Tribe's Representative in one envelope? What if the envelope comes back to the Tribe with postage due and it did not reach the court to be filed prior to the hearing and the Tribe states to the court that they were in compliance with what the INFO sheet directed them to do by putting "two stamps" on it? Recommend sentence to be modified to one of 3 options below: "Place two FOREVER stamps on the envelope," Replace the sentence with "Place appropriate postage on the envelope" Delete this sentence from the sheet. <u>Subsection 4 – What to Do on the Hearing Day – Item #2 – Comments in Court. – Sentences – "If you choose to attend the hearing…" and "You may raise your hand to let the judge know you would like to speak…".</u> This may imply to the reader, that the Tribe's representative must appear at the hearing <u>only in person</u> as there is no other option listed in this	The form has been revised in response to this and other comments. The form has been revised in response to this and other comments.

			subsection. Orange County Superior Court also commented on the legislation change of rules 5.9, 5.482 and 5.531, "Remote Appearances by an Indian Child's Tribe at an ICWA proceeding – (SPR20-31), in which a Tribe may now appear telephonically or in some other computerized remote way at an ICWA proceeding. The remote appearance change will be effective on the same date as these changes. Recommend adding this remote appearance information/option to this form. **Comments on the proposal as a whole:** The proposal as a whole can be very effective and provide the courts with valuable information on the Indian Tribe's input or views on the ICWA cases. These new forms can help alleviate unnecessary conflicts, disruptions, hearings or issues that can lead to the orders being set aside/vacated or the cases being appealed. ***Does the proposal appropriately address the stated purpose?*** In some ways the proposal is a bit confusing. One reason that it can be confusing as to whether this form can be used in multiple case types that ICWA requirements apply. The proposal stated in the *Alternatives Considered* section, "Tribes may be involved in cases in different counties arising in probate, family or juvenile court. A consistent, simple form for statewide use will facilitate tribal participation in <u>all these cases</u>."	No response required. The proposal was modified in response to comments above to address the use of the form ICWA-100 in case types other than juvenile.

			These forms look as if they are intended for use in Juvenile cases only as it mimics a Juvenile form and it directs the Indian Tribe, in the ICWA – 100 - INFO, to write Juvenile as the branch division only. Is this the intention to have this form only filed in Juvenile cases? If yes, then it is unclear in the proposal and will a new form also be created for Family Law and Probate cases where ICWA requirements can apply? This form or another form geared to Family Law and Probate courts may also provide crucial information to these courts before an Indian parent(s)' parental rights are terminated or the Indian child is adopted or is placed in custody of a Legal Guardian away from the Indian parent(s). Additionally, the proposal states that rule 5.552 is being amended to allow an Indian Tribe to fax this form to the court for filing. I do not see a fax filing option listed on the ICWA 100 – INFO sheet. ***Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input?*** The proposed form is not complicated, and the language is clear/concise. It also allows for additional input/comments from the Indian Tribe/representative either in the items itself or by way of attachments. The ICWA 100 – INFO sheet also assists in stating the purpose of filing the form and the ease of filling it out.	 The ICWA-100-INFO form has been revised to include the fax filing option. No response required.

			Would the proposal provide cost savings? If so, please quantify. It may provide a cost savings to the court. It will definitely benefit the court to have the Indian Tribe's input into these cases at an earlier stage, if possible. It could save the court money, in the long run, by avoiding unnecessary hearings, re-hearings or ex-parte hearings. ***What would the implementation requirements be for courts, for example: training staff (positions and hours), revising procedures and process (describe), changing docket codes in case management system, or modifying case management systems:*** For Juvenile a procedure would need to be created to mirror the process for the Caregiver Information form that is currently used. Courtroom Staff would need to be made aware of the form and trained on the process. The Odyssey case management system would need to be updated to capture the filing of the form. It would depend on if this form may also be used in Family Law (FL) adoption cases. If it can, then there would be minimal training needed for judicial officers, courtroom and case processing staff, and legal research staff. There will need to be an addition to the Odyssey case management system and new macros in Odyssey Clerk Edition. The Indian Child Welfare Act (ICWA) Requirements Procedure would need to be updated as well. There will also be a need to train FL adoptions staff on the process of serving, all parties to the case, with	No response required. No response required.

			the copies of this form given by the Indian Tribe. ***Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation:*** Yes, 3 months is sufficient time. ***How well would this proposal work in courts of different size:*** It can work well in courts of different sizes since it is an optional form.	 No response required. No response required.
9.	Superior Court of California, County of Riverside By Susan Ryan, Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, the form should provide an efficient and cost-effective means for the child's tribe to provide certain information to the court. Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input? Yes, it is recommended that the form be submitted to the court at least three court days prior to the scheduled hearing to allow the court ample time to process the form and have it available for the judicial officer. Would the proposal provide cost savings? If so, please quantify. There would be no cost savings. 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), change docket codes in case	 No response required. No response required. No response required.

			management systems, or modify case management systems. The court would have to create new filing codes for the ICWA-100 form. Very minimal training of staff would be required. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? The proposal should work well for courts of any size.	No response required.
10.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer	NI	GENERAL COMMENTS: ICWA-100-INFO - Background, item 1: Delete unnecessary commas and redundant "easily." "The Tribal Information Form, (form ICWA-100), is intended to provide an easily accessible way for an Indian child's tribe … ." Background, item 2: Query -- Add instructions for fax filing? How to Fill Out, item 1, par. 1: transpose period & close quote. For branch name, write "Juvenile"." Query – Should this be revised to include Family and Probate cases? For example: "… write "Juvenile," "Family," or "Probate," as appropriate." Comment – In some counties (like San Diego), "branch" refers to the geographical location of the courthouse (e.g., "North County"), and	The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment.

			"division" is used for the different types of cases ("Juvenile Division"). In San Diego, the Juvenile Division has courts in North County, Central (Meadow Lark), and East County, so a form stating "Juvenile" will not tell the court which branch is hearing the case. Also, if we want the tribe to specify whether the case is in Juvenile, Family, or Probate, it might be difficult for some tribes to determine which "branch" the case is in. Should the instructions provide guidance on how to find this information or tell tribes they can leave this blank if they are not certain? How to Fill Out, item 1, par. 3: Suggestion – If you do not have this information, ask the social worker, if you do not have this information. What to Do With the Form, item 1: Comment -- Is there a reason for specifying that copies be made by tribal representatives? If completing and submitting the form is meant to be done solely by tribal representatives, perhaps that should be made clear earlier in the instructions. For example, in item 1 under "Background," add, "The form should be completed and filed by the tribal representative." On the other hand, if the form can be used by any responsible adult in the tribe, why should the instructions specify that the tribal representative make the copies? Suggested change – "Make copies. Tribal representatives should make eight or more copies of the completed form ICWA-100 and any attachments."	The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment.

			Also, should it be clarified why more than eight copies might be needed? What to Do With the Form, item 2: Suggestion -- "At least five calendar days before the hearing date, bring the original form and the recommended eight copies to the court clerk's office at the courthouse where the hearing will be held. Ask the clerk to file the form for you. Keep one copy of the date-stamped form for yourself. The clerk is responsible for providing will provide a copy of the form to all parties each party and will completing and filing the proof of service form." - What to Do With the Form, item 3: Suggestion -- "At least seven calendar days before the hearing date, mail the original form and all but one of the seven copies to the court clerk's office at the courthouse where the hearing will be held. Keep the eighth copy for yourself. Put two stamps on the envelope. Include Enclose a note indicating "For filing and service" and including the case number. The clerk is responsible for providing will provide a copy of the form to all parties each party and will completing and filing the proof of service form." What to Do With the Form, add an item between 3 and 4: "If you choose to file the form by fax." Add instructions for fax filing. Renumber item 4. ICWA-100	The form was revised in response to this comment. The form was revised in response to this comment.

			Second box in caption: Query – Should "CHILD'S NAME" be changed to "CHILD'S OR NONMINOR'S NAME"? That is, will this form be used for nonminor dependents as well? If so, all other references to "child" on the form should add "or nonminor" (e.g., item 1). Instruction box: Add instructions for fax filing. Item 2b: Change "Name" to "Name(s)." Also, a suggestion to avoid repetition – "Name(s) of tribe's representatives persons authorized to represent the tribe in this case: Item 2c: Suggestion for clarity – "Tribal representative's contact information" Item 5: Insert comma after "Services." Item 5a: Suggestion for clarity – Item 5a: Suggestion for clarity – "In the last six months, or since the last hearing, the tribe … been consulted on the appropriate services to be provided to the parents(s), legal guardian(s), or Indian custodian(s), and the child or nonminor." Item 5b: Suggestion for clarity – "The tribe submits the following information and comments with regard to case planning, and services and active efforts for the parents(s), legal guardian(s), or Indian custodian(s), and the child or nonminor, and active efforts designed to prevent the breakup of the Indian family." Item 5c: Insert an apostrophe after "parents" and add "or nonminor's" after "child's" (or change "parents and child's" to "family's"). Item 6: Change "where" to "if." Item 6b: Suggest changing "… is … is not … aware of …" to	The committee did not revise the form. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment.

			"… does … does not … know…" Item 6c: Suggest changing "… is … is not … in agreement …" to "… does … does not … agree …" Item 6d: Move "This" to beginning of second line so that entire sentence is together. Item 7: Change "where" to "if." Item 7a: Suggestion – "… been consulted regarding the appropriate permanent plan for the child or nonminor should reunification with the parents(s), legal guardian(s), or Indian custodian(s) fail." Item 7b: Suggestion – "… discussed with the tribe tribal customary adoption as a permanency option should reunification with the parents(s), legal guardian(s), or Indian custodian(s) fail." Does the proposal appropriately address the stated purpose? Yes. Please see General Comments for specific comments. Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input? Yes. Items 8 and 9 provide space for any additional input the tribe may wish to provide. Would the proposal provide cost savings? If so, please quantify. Probably not for the courts (except to the extent it can reduce the number of appeals and writs filed), but possibly for the tribes.	The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment. The form was revised in response to this comment.

			What would the implementation requirements be for courts? Training – introducing court clerks and clerical staff to new forms and how they should be processed. Drafting written court procedures to clerks to follow when processing new forms. Drafting new docket codes to be used when the court acknowledges receipt of the form. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the form is provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff. How well would this proposal work in courts of different sizes? Probably quite well, though it will increase the clerks' workload to some degree.	No response required. The form was revised to explain that an additional sheet could be attached if the tribe wished to provide further input on any subject. No response required. No response required.

Item number: 34

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 20, 2020

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (amend rules 5.9, 5.482, and 5.531)

Committee or other entity submitting the proposal:
Tribal Court - State Court Forum & the Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 28, 2019
Project description from annual agenda: Indian Child Welfare Act Legal Updates: Monitor implementation of rules and forms created pursuant to AB 3176 (Waldron) Indian children. Assembly Bill 3176 updates the Indian Child Welfare Act provisions in the Welfare and Institutions Code to comply with recent Federal Bureau of Indian Affairs regulations (Item 3 ongoing projects, pg. 13 of the Family and Juvenile Law Advisory Committee Annual Agenda)
E & P approval of Forum Agenda: March 13, 2019. Project Description from annual agenda: Implement Assembly Bill 3176 Indian Children (Waldron; Stats. 2018, ch. 833) AB 3176 Indian Children, amends provisions of the Welfare and Institutions Code to conform California law to the requirements of the federal Indian Child Welfare Act Regulations and Guidelines adopted in 2016. The legislation directs the Judicial Council to enact rules and forms necessary to implement the legislation.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 24–25, 2020

Title
Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531

Recommended by
Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 4, 2020

Contact
Ann Gilmour, Attorney, 415-865-4207
ann.gilmour@jud.ca.gov

Executive Summary

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend revising rules 5.9, 5.482, and 5.531 of the California Rules of Court to permit an Indian child's tribe to participate by telephone or other computerized remote means in any hearing in a proceeding governed by the Indian Child Welfare Act, as required by Welfare and Institutions Code section 224.2(k).

Recommendation

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.9, which governs appearances by telephone in family law cases, by specifying that cases falling under the Indian Child Welfare Act are governed by rule 5.482(g);

2. Amend rule 5.482 by adding subdivision (g) regarding a tribe's right to appear by telephone or other remote means in a case governed by the Indian Child Welfare Act; and

3. Amend rule 5.531, which governs appearances by telephone in juvenile cases, by adding a reference to Welfare and Institutions Code section 224.2(k), and adding subdivision (b)(1) requiring that standards for local procedures or protocols must allow an Indian child's tribe to appear by telephone or other computerized remote means at no charge consistent with section 224.2(k).

The text of the amended rules is attached at pages 5–6.

Relevant Previous Council Action

The Judicial Council has acted on many occasions to implement the requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) and corresponding state law. Following the passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838) in 2006, which wove requirements of the Indian Child Welfare Act into the provisions of California Family Code, Probate Code, and Welfare and Institutions Code, the Judicial Council enacted comprehensive rules and forms implementing SB 678.[1] In 2018 the Legislature enacted Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833), which amended many provisions of the Welfare and Institutions Code to conform California law to revised federal regulations.[2] In 2019 the Judicial Council made substantial revisions to rules and forms to implement AB 3176.

Analysis/Rationale

California is home to more people of Indian ancestry than any other state in the nation. Currently, 109 tribes are federally recognized in California, a number second only to the number of tribes in the state of Alaska. California's Indian population includes a large number of people affiliated with out-of-state tribes or tribes whose territories and primary headquarters are based in neighboring states, such as the Washoe, Fort Mojave, Chemehuevi, Colorado River, and Quechan tribes.[3] Tribes within California are often located in remote areas, making travel to court locations burdensome. Tribal resources and staffing vary greatly, but many tribes have only one full-time staff person devoted to child welfare cases, and that individual may have active

[1] SB 678 is available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060SB678*. The Judicial Council rules and forms proposal implementing SB 678 is available at *www.courts.ca.gov/documents/102607ItemA27.pdf*.

[2] AB 3176 is available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*.

[3] Judicial Council of Cal., Center for Families, Children & Cts., "Native American Statistical Abstract: Population Characteristics," *Research Update* (Mar. 2012), www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf; California Tribal Lands, *https://www3.epa.gov/region9/air/maps/ca_tribe.html*.

cases in multiple counties and states. Under the federal Indian Child Welfare Act and corresponding California statutes, an Indian child's tribe has a right to participate in cases governed by ICWA, and proper implementation of and compliance with ICWA involves tribal input on a number of key issues. However, as noted in *California ICWA Compliance Task Force: Report to the California Attorney General's Bureau of Children's Justice* (2017), many tribes find it difficult to exercise their right to fully participate in ICWA cases.[4] Of particular concern are the rights of "lower-income tribes, as they often do not have resources to retain legal counsel, travel and be present at all hearings or even pay fees associated with telephonic appearances." If the tribe's position on key ICWA issues is unknown as a case progresses, this lack of clarity can have negative consequences on the case. For instance, if the court is unaware of the tribe's position on permanency planning until after reunification services have been terminated, unnecessary conflicts and disruptions may occur during placement.

California has a high number of appeals related to the Indian Child Welfare Act.[5] Some of these appeals might be avoided if tribal input could be consistently obtained throughout the life of a case.

Policy implications

The proposal is required to implement statute; any policy implications arise from the statute

Comments

The proposal circulated for public comment from April 10 through June 9, 2020, as part of the spring 2020 invitation-to-comment cycle. It was sent to the standard mailing list for family and juvenile law proposals that includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys, included in the monthly newsletter distributed by the Tribal Court–State Court Forum and sent to the listserve of the California Department of Social Services Office of Tribal Affairs to reach those with an interest in the Indian Child Welfare Act and tribal issues.

The proposal received eight comments, including from two superior courts, a child welfare agency, a county counsel's office, the executive committee of the Family Law Section of the California Lawyers Association, the Alliance for Children's Rights, the California Tribal

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[4] *California ICWA Compliance Task Force: Report to the California Attorney General's Bureau of Children's Justice* (2017), p. 41, www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf.

[5] In 2016, California had 114 appeals related to ICWA. (Prof. Kathryn E. Fort, "2016 ICWA Appellate Cases by the Numbers," *Turtle Talk* (Indigenous Law and Policy Center blog), Michigan State University College of Law, Jan. 4, 2017, https://turtletalk.wordpress.com/2017/01/04/2016-icwa-appellate-cases-by-the-numbers/.)

Families Coalition, and California Indian Legal Services. Six commenters agreed with the proposal and two did not indicate whether or not they agreed.

The comments included technical and stylistic corrections as well as more substantive comments, many of which were accepted as they strengthened and clarified the proposal. All of the comments and responses to them are set out in the attached comment chart at pages 6–17. Revisions to the rules made in response to the comments include:

- Clarification that remote appearance options must ensure that tribes have access to the courtroom sufficient to allow them to fully exercise their rights, taking into account the different technological capacities of different tribes; and

- Clarification that the tribes did not need to request permission to appear remotely, but only to notify the court of their intent to appear remotely.

Alternatives considered

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee considered acting on two comments. One suggested amending rule 3.670 governing telephonic appearances in civil matters in a similar way to the amendment to rule 5.9. Rule 3.670 would apply to probate guardianship cases involving ICWA. The forum and the committee declined to modify rule 3.670 at this time both because it was beyond the scope of the proposal as circulated for public comment, and because rule 7.1015, which governs probate guardianship proceedings involving ICWA already incorporates by reference rule 5.482. The other comment suggested developing a form by which a tribe could notify the court of its intention to appear remotely and advise the court of any capacity issues the tribe might have. While the forum and the committee agreed that such a form might be useful, it is outside the scope of this proposal.

Fiscal and Operational Impacts

No fiscal or operational impacts are anticipated. The superior courts that commented on the proposal agreed that it would likely have beneficial impact or that any negative impacts would be minimal. In any event the proposal is required to implement a statutory mandate.

Attachments and Links

1. Cal. Rules of Court, rules 5.9, 5.482, and 5.531, at pages 5–6
2. Chart of comments, at pages 7–16

Rules 5.9, 5.482, and 5.531 of the California Rules of Court are amended, effective January 1, 2021, to read:

Rule 5.9. Appearance by telephone

(a) Application

This rule applies to all family law cases, except for actions for child support involving a local child support agency and cases governed by the Indian Child Welfare Act. Rule 5.324 governs telephone appearances in governmental child support cases. Rule 5.482(g) governs telephone appearances in cases governed by the Indian Child Welfare Act.

(b)–(d) * * *

Rule 5.482. Proceedings after notice

(a)–(f) * * *

(g) Tribal appearance by telephone or other remote means

In any proceeding governed by the Indian Child Welfare Act involving an Indian child, the child's tribe may, on notification to the court, appear at any hearing, including the detention hearing, by telephone or other computerized remote means. The method of appearance may be determined by the court consistent with court capacity and contractual obligations, and taking into account the capacity of the tribe, as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided. No fee may be charged to the tribe for such telephonic or other remote appearance.

Rule 5.531. Appearance by telephone (§§ 224.2(k), 388; Pen. Code, § 2625)

(a) * * *

(b) Standards for local procedures or protocols

Local procedures or protocols must be developed to ensure the fairness and confidentiality of any proceeding in which a party is permitted by statute, rule of court, or judicial discretion to appear by telephone. These procedures or protocols must, at a minimum:

(1) Allow an Indian child's tribe to appear by telephone or other computerized remote means at no charge in accordance with rule 5.482(g). The method of appearance may be determined by the court consistent with court capacity and contractual obligations, and taking account of the capacity of the tribe, as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided;

~~(1)~~(2)* * *

~~(2) (9)~~(3)–(10) * * *

(c) * * *

SPR 20-31

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Alliance for Children's Rights By Kristin Power, Government Relations Director	A	Since its passage, the Indian Child Welfare Act (ICWA) has provided important rights and protections to Indian families. While progress has been made, major concerns persist regarding ICWA compliance and how ICWA proceedings are conducted. In 2015, the California ICWA Compliance Task Force was formed to examine compliance issues and provide recommendations to strengthen understanding and compliance of the ICWA. The Task Force report documented the barriers to participation tribes experience in these cases due to geographic distance between the location of the tribe and the location of the state court case. By requiring the Judicial Council to establish a rule of court that authorizes the use of telephonic or other remote access by an Indian child's tribe in proceedings where ICWA apply, legislation passed in 2019 ensures that Indian tribes can fully participate in ICWA cases preventing resource issues from negatively impacting Indian tribes' participation in ICWA proceedings. We believe the proposed amendments reflect the intent of the legislation and appropriately address the stated purpose of ensuring remote access. We appreciate the proposed amendments provide for use of various remote communications modalities which provides flexibility for the courts and tribes and allows for innovations in technology in future years.	No response required.

SPR 20-31

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
2.	California Tribal Families Coalition By Delia M. Sharpe, Executive Director California Indian Legal Services By Dorothy Alther, Executive Director	NI	The proposal should apply across all cases where ICWA applies, including probate and family law cases. To this end, we recommend that the approach used in proposed Rule 5.9, also be used to amend Rule 3.670 regarding probate matters. The language in proposed Rules 5.482(g) and 5.531(b)(1) should be amended to clarify that remote appearance options must ensure access to the courtroom sufficient to allow Tribes to fully exercise their rights as parties. This language is important, as it cannot be a one size fits all approach. For instance, video conferencing may not work for some tribes that lack adequate telecommunication structures which could hinder their participation. Proposed Rule 5.482(g) includes the phrase "on request." This phrase will cause confusion unless a process is identified regarding where and how the request is made. Further, the tribe, pursuant to AB 686 has a right to appear remotely, which should not require approval. In addition to being contrary to legislative intent, requiring court approval creates a barrier to tribal appearances at detention hearings because there is no prior hearing at which to request such access. Therefore, we recommend "on request" be amended to state "upon notification." We further recommend that the Judicial Council develop a form tribes may use to notify courts of their wish to appear remotely, and that the form and the Rule specify that Tribes may "appear at	Amendment to rule 3.670 is outside the scope of this proposal as circulated for public comment, and within the purview of other advisory committees. The comment will be referred to the appropriate committees for consideration. The proposal was revised in response to this comment. The proposal was revised in response to this comment. The Forum and Committee considered this suggestion but decided that such a form should circulate for public comment. The form will be developed as a separate proposal during a later Invitation to Comment cycle.

SPR 20-31

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			any hearing, *including the detention hearing*, by telephone… without cost." Additionally, we strongly encourage the Rules 5.482(g) and 5.531(b)(1) to directly contact tribes for the, at least, the detention hearings given the timing issues involved. Courts that understand and appreciate the importance of having the tribe present are already engaging in this process, which should be replicated statewide.	
3.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) By Saul Bercovitch, Director of Governmental Affairs	A	FLEXCOM agrees with this proposal.	No response required.
4.	Los Angeles County Department of Child and Family Services, and County Counsel By O. Raquel Ramirez, Senior Deputy County Counsel	A	Barbara Hitchcock, CSA I Training, with DCFS had the following comments to Proposed CRC Revision SPR 20-31 This is a great proposal. 1) In this day of telework and teleconferencing, it makes no sense that Tribes should be prohibited from participating in an Indian Child's Hearing. The establishment of a Conference call number for each courtroom should not be an issue. 2) It would also be amazing if each courtroom be given a large monitor on one of the walls and each hearing be a zoom or go to meeting opportunity for the Tribe, Indian Parent and Indian Child. This will allow the parties to see each other and begin building relationships and trust in the Tribe's involvement.	No response required.

SPR 20-31

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			3) See SR20-29 for recommendations about training, implementation and record keeping of forms. The County Counsel Trial Team in Dept. 421 provided the following comments to Proposed CRC Revision SPR 20-31: In addition to the court already waiving court call fees, the court should provide equipment in the courtroom to allow for easy video/listening access to all participants. Per County Counsel O. Raquel Ramirez: I attended the Zoom LASC "COVID-19 Q&A Presentation with LASC Court Leadership," wherein the presenters indicated that they are in the process of implementing remote participation for all LA county court cases. I would hope that remote tribal participation in dependency proceedings would be one of the priorities. Tribes already had been participating in dependency proceedings via the Court Call process, which was not always seamless due to the lack of infrastructure and cumbersome process of the tribes having to submit fee waiver requests to pay for the service before each hearing. The trial county counsel in Dept. 421 facilitated the fee waiver process, but at times the emergency nature of dependency hearings was not conducive to setting up a Court Call.	
5.	Orange County Bar Association By Scott B. Garner, President	A	Does the Proposal Appropriately address the Stated Purpose? Yes.	No Response required.

SPR 20-31

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
6.	Superior Court of California County of Orange family Law Division By Vivian Tran, Administrative Analyst	NI	**Cal. Rules of Court, proposed amended rule 5.9** No comments. **Cal. Rules of Court, proposed amended rule 5.482** No comments. **Cal. Rules of Court, proposed amended rule 5.531** No comments. **Comments on the proposal as a whole:** The proposal appears clear as stated and addresses requirements for telephonic/remote appearance for an Indian Child's Tribe in an ICWA proceeding. **Does the proposal appropriately address the stated purpose?** Yes, the proposal appropriately addresses the stated purpose. **Would the proposal provide cost savings? If so, please quantify.** Yes, it will provide cost savings to the court. Orange County Superior Court - Family Law Division has already established Court Call in most of their courtrooms or they have some other means of providing remote telephonic appearances. Without the need to install and provide more technology, this will indeed save the court time and money.	No response required. The committee and the forum appreciate the comments on specific questions.

	Commenter	Position	Comment	Committee Response
			What would the implementation requirements be for courts, for example: training staff (positions and hours), revising procedures and process (describe), changing docket codes in case management system, or modifying case management systems: The requirements for implementation will be minimal as Orange County Superior Court – Family Law Division has already established training on Court Call / telephonic appearances. No new training will be needed if the proposal is approved as represented here. There is only one procedure that will need to be modified for the Family Law Division – the Indian Child Welfare Act (ICWA) Requirements Procedure. There is no anticipation of changes needed to the case management systems either. Communication with Court Call personnel will need to be established. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation:** Yes, 3 months is sufficient time for implementation. **How well would this proposal work in courts of different size:** This proposal should work for courts of all sizes as there is no requirement to supply specific	

	Commenter	Position	Comment	Committee Response
			technology. Allowing flexibility can allow the process to fit the needs of the courts within their current capacity.	
7.	Superior Court of California, County of Orange Juvenile Law Division By Linda Contreras, Administrative Analyst I	A	The proposal does address all the requirements made in Assembly Bill 686 for establishing telephonic/remote appearances for an Indian Child's Tribe in an ICWA proceeding. The proposal is well thought out. There is an ease in implementation of its requirements as it allows for flexibility for each individual court. These requirements can be accomplished through already established means, for telephonic appearances, set up by the different courts. Saves each court time, costs and the hardship of having to implement new technology or hardware. Also, the amended language used in the three rules is easy to understand and to apply. **Does the proposal appropriately address the stated purpose?** Yes, the proposal appropriately addresses the stated purpose. There should be a means for an Indian Child's Tribe to appear remotely in ICWA proceedings (in any case type) with no cost to the tribe or to the court. **Would the proposal provide cost savings? If so, please quantify.** Yes, it will provide cost savings to the court. Orange County Superior Court - Family Law Division has already established Court Call in	No response required. The committee and the forum appreciate the comments on specific questions.

	Commenter	Position	Comment	Committee Response
			most of their courtrooms or they have some other means of providing remote telephonic appearances. Without the need to install and provide more technology, this will indeed save the court time and money. **What would the implementation requirements be for courts, for example: training staff (positions and hours), revising procedures and process (describe), changing docket codes in case management system, or modifying case management systems:** Minimal training would most likely be required in Orange County Juvenile for courtroom clerks. A procedure for telephonic appearance would need to be created or the process would need to be added to the current Indian Child Welfare Act (ICWA) Requirements procedure. The Odyssey case management system may require a new event code created to capture telephonic/remote appearances or adding a new macro for use in a minute order. The requirements for implementation will be minimal as Orange County Superior Court – Family Law Division has already established training on Court Call / telephonic appearances. Both Juvenile and Family Law departments have been managing remote hearings in response to COVID 19, which include WebEx and TEAMS options. No new training will be needed if the proposal is approved as	

SPR 20-31

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

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	Commenter	Position	Comment	Committee Response
			represented here. There is only one procedure that will need to be modified for the Family Law Division – the Indian Child Welfare Act (ICWA) Requirements Procedure. There is no anticipation of changes needed to the case management systems either. Communication with Court Call personnel will need to be established. **Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation:** Yes. **How well would this proposal work in courts of different size:** This proposal should work for courts of all sizes as there is no requirement to supply specific technology. Allowing flexibility can allow the process to fit the needs of the courts within their current capacity.	
8.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	**Does the proposal appropriately address the stated purpose?** Yes. **Would the proposal provide cost savings? If so, please quantify.** Probably not, but it is required by law. **What would the implementation requirements be for courts?**	No response required. The committee and the forum appreciate the comments on specific questions.

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Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings (Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Deciding what method of remote appearance is best suited for our court and the parties involved, and installing or updating whatever technology is needed to implement the procedure. **Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **How well would this proposal work in courts of different sizes?** Probably quite well, given the greater need for all courts to utilize remote appearance technology in this post-COVID-19 era.	

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 25, 2020

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rule 9.21; and revise forms FL-192, FL-445, FL-575; ICWA-030, ICWA-090; JV-101A, JV-110, JV-221, JV-410, JV-457, and JV-535.

Recommended by
Judicial Council staff
Susan R. McMullan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
August 20, 2020

Contact
Susan R. McMullan, 415-865-7990
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Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation, and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective January 1, 2021:

1. Amend rule 9.21 to update the address for the Office of the Clerk, State Bar Court;

2. Revise forms FL-192, FL-445, and FL-575 to remove a reference to incorrect forms and to make the relief requested conform with the Family Code;

3. Revise *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to make it consistent with legal requirements by removing notice to the Secretary of the Interior;

4. Revise the name of *Order on Ex Parte Hearing to Return Physical Custody of an Indian Child* (form ICWA-090) to *Order After Hearing on Ex Parte Request to Return Physical Custody of an Indian Child*;

5. Revise *Additional Children Attachment – Juvenile Dependency Petition (form JV-101(A))* to replace the word "sex" with "gender," to make it consistent with related forms;

6. Revise *Juvenile Dependency Petition (Version Two)* (form JV-110) to make the language in item 2.c. the same as the language in item 2.c. of a related form, Juvenile *Dependency Petition (Version One)* (form JV-100);

7. Revise *Proof of Notice of Application* (form JV-221) to add a checkbox for item 5, to delete item number "5" on page 2, and to replace the incorrect reference to "page 3" with "page 4" under the signature lines on pages 2 and 3;

8. Revise *Findings and Orders After Detention Hearing* (form JV-410) to correct the name of the hearing in item 2 of page one from "Dispositional" to "Detention";

9. Revise *Twenty-four-Month Prepermanency Attachment: Reunification Services Terminated* (form JV-457) to correct the title in the footer and change the name to "*Twenty-four-Month Permanency Attachment: Reunification Services Terminated.*"

10. Revise *Order Designating Educational Rights Holder* (form JV-535), items 1.a.&b. (3), to replace the incorrect reference to "section 319(g)" with "section 319(j)."

The text of the amended rule and the revised forms are attached at pages 6–45.

Relevant Previous Council Action

Although the Judicial Council has acted on these rules and forms, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these rules and forms are technical in nature and necessary to correct inadvertent omissions and incorrect references as discussed more fully below.

Rule 9.21

Rule 9.21 is amended to change the address of the Office of the Clerk, State Bar Court, from its former location at 1149 South Hill Street, Los Angeles, California 90015, to its current location at 845 S. Figueroa Street, Los Angeles, California 90017.

Forms FL-192, FL-445, and FL-575

Forms FL-192, FL-445, and FL-575 are revised to remove a reference to incorrect forms and to have requested relief conform with the Family Code. Specifically, form FL-192 current states in the section entitled "What forms do I need?":

> If you are asking to change a child support order open with the local child support agency, you must fill out one of these forms:
>
> - FL-680, *Notice of Motion (Governmental)* or FL-683 *Order to Show Cause (Governmental)* ***and***
>
> - FL-684, *Request for Order and Supporting Declaration (Governmental)*

This item directs self-represented litigants to the correct form to request the modification of a support order if the local child support agency (LCSA) is involved in their case. However, the first two governmental forms listed are specifically designed to be completed and filed only by an LCSA. Additionally, rule 5.92(a)(3) states, "[i]n a local child support action under the Family Code, any party other than the [LCSA] must use Request for Order (form FL-300) to ask for court orders." As the form currently contains incorrect information, it is recommended that the references to these governmental forms be deleted.

In addition, forms FL-445 and FL-575, at item 2 are revised to remove the term "service" from the following sentence, "I request that service of the registration of support order be vacated (canceled) because…" This change is needed so the forms conform with the relevant provisions of the Family Code that state a party may contest the registration of a support order by requesting the registration, not the service of the registration, be vacated.[1]

Form ICWA-030

Notice of Child Custody Proceeding for Indian Child (form ICWA-030) is revised to remove the requirement to send notices in ICWA cases to the Secretary of the Interior, in addition to the Sacramento Area Director of the Bureau of Indian Affairs, to make it consistent with the new federal regulations issued in 2016 and in AB 3176. By error, the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) which implements the notice requirements of ICWA was not revised to remove reference to notice to the secretary of the Interior. This can cause confusion by implying that such notice continues to be necessary.

[1] See Fam. Code § 5603 regarding contesting the registration of a California support order; see Fam. Code §§ 5700.606, 5700.607 regarding contesting the registration of an out-of-state support order.

Form ICWA-090

Order on Ex Parte Hearing to Return Physical Custody of an Indian Child (form ICWA-090) is revised to change the form name to *Order After Hearing on Ex Parte Request to Return Physical Custody of an Indian Child*. A rules and forms proposal that implemented AB 3176 included the adoption of three new forms to implement the mandate in Welfare and Institutions Code § 319.4 establishing a right to request an ex parte hearing for return of an Indian child who was removed on an emergency basis if a party asserts that the emergency placement is no longer necessary and required the Judicial Council to develop rules and forms to implement the section.

One of the new forms, *Order on Request for Ex Parte Hearing to Return Physical Custody of an Indian Child* (form ICWA-080) was to be used by the court after the court determined whether a hearing was warranted. Another order form, form ICWA-090 was intended to be used by the court to issue its order if a hearing was held and a determination made after hearing. In error, the form was given the same name as form ICWA-080, rather than named correctly to identify it as an order after hearing. The proposed revision would change the name of the ICWA-090 to *Order After Hearing on Ex Parte Request to Return Physical Custody of an Indian Child*. The proposed change will avoid confusion by differentiating the use and purpose of form ICWA-090 from form ICWA-080.

Form JV-101(A)

A rules and forms proposal that implemented AB 3176 revised *Juvenile Dependency Petition (Version One)* (form JV-100) and the *Juvenile Dependency Petition (Version Two)* (form JV-110). In addition to certain substantive amendments, the proposal revised items 1.(e) and 1.(b) respectively to substitute the term "gender" for the term "sex". No revisions were made to the *Additional Children Attachment – Juvenile Dependency Petition* (form JV-101(A)) which is a companion to the petitions and is used when there are more children encompassed by the petition that can be fit on the petitions themselves. Item 5. e. on page 1 of the JV-101(A) form continues to say "sex" rather than "gender". Users pointed out the inconsistency between the forms and stated that this inconsistency could create confusion. Form JV-101(A) is therefore revised to replace the word "sex" with "gender," to make it consistent with related forms.

Form JV-110

The rules and forms proposal that implemented AB 3176 revised both the *Juvenile Dependency Petition (Version One)* (form JV-100) and the *Juvenile Dependency Petition (Version Two)* (form JV-110), but incorrectly used different language in item 2. c. of each form, though that item addresses the same issue.

Item 2. c. of form JV-110 currently reads "Inquiry has been made by *(insert name)* _____ as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible." To avoid confusion and make it consistent with form JV-100, the language in item 2.c. is revised to

read "Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible."

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal Rules of Court, rule 9.21 at page 6;
2. Forms FL-192, FL-445, FL-575; ICWA-030, ICWA-090; JV-101A, JV-110, JV-410, JV-457, and JV-535, at pages 7–45.

Rule 9.21 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Rule 9.21. Resignations of licensees of the State Bar with disciplinary charges pending

(a) General provisions

A licensee of the State Bar against whom disciplinary charges are pending may tender a written resignation from the State Bar and relinquishment of the right to practice law. The written resignation must be signed and dated by the licensee at the time it is tendered and must be tendered to the Office of the Clerk, State Bar Court, ~~1149 South Hill Street~~ 845 S. Figueroa Street, Los Angeles, California ~~90015~~ 90017. The resignation must be substantially in the form specified in (b) of this rule. In submitting a resignation under this rule, a licensee of the State Bar agrees to be transferred to inactive status in the State Bar effective on the filing of the resignation by the State Bar. Within 30 days after filing of the resignation, the licensee must perform the acts specified in rule 9.20(a)(1)–(4) and (b) and within 40 days after filing of the resignation, the licensee must file with the Office of the Clerk, State Bar Court, at the above address, the proof of compliance specified in rule 9.20(c). No resignation is effective unless and until it is accepted by the Supreme Court after consideration and recommendation by the State Bar Court.

(b)–(e) * * *

NOTICE OF RIGHTS AND RESPONSIBILITIES
Health-Care Costs and Reimbursement Procedures

DRAFT
Not approved by the Judicial Council

IF YOU HAVE A CHILD SUPPORT ORDER THAT INCLUDES A PROVISION FOR THE REIMBURSEMENT OF A PORTION OF THE CHILD'S OR CHILDREN'S HEALTH-CARE COSTS AND THOSE COSTS ARE NOT PAID BY INSURANCE, THE LAW SAYS:

1. Notice. You must give the other parent an itemized statement of the charges that have been billed for any health-care costs not paid by insurance. You must give this statement to the other parent within a reasonable time, but no more than 30 days after those costs were given to you.

2. Proof of full payment. If you have already paid all of the uninsured costs, you must (1) give the other parent proof that you paid them and (2) ask for reimbursement for the other parent's court-ordered share of those costs.

3. Proof of partial payment. If you have paid only your share of the uninsured costs, you must (1) give the other parent proof that you paid your share, (2) ask that the other parent pay his or her share of the costs directly to the health-care provider, and (3) give the other parent the information necessary for that parent to be able to pay the bill.

4. Payment by notified parent. If you receive notice from a parent that an uninsured health-care cost has been incurred, you must pay your share of that cost within the time the court orders; or if the court has not specified a period of time, you must make payment (1) within 30 days from the time you were given notice of the amount due, (2) according to any payment schedule set by the health-care provider, (3) according to a schedule agreed to in writing by you and the other parent, or (4) according to a schedule adopted by the court.

5. Disputed charges. If you dispute a charge, you may file a motion in court to resolve the dispute, but only if you pay that charge before filing your motion. If you claim that the other party has failed to reimburse you for a payment, or the other party has failed to make a payment to the provider after proper notice has been given, you may file a motion in court to resolve the dispute. The court will presume that if uninsured costs have been paid, those costs were reasonable. The court may award attorney fees and costs against a party who has been unreasonable.

6. Court-ordered insurance coverage. If a parent provides health-care insurance as ordered by the court, that insurance must be used at all times to the extent that it is available for health-care costs.

a. **Burden to prove.** The party claiming that the coverage is inadequate to meet the child's needs has the burden of proving that to the court.

b. **Cost of additional coverage.** If a parent purchases health-care insurance in addition to that ordered by the court, that parent must pay all the costs of the additional coverage. In addition, if a parent uses alternative coverage that costs more than the coverage provided by court order, that parent must pay the difference.

7. Preferred health providers. If the court-ordered coverage designates a preferred health-care provider, that provider must be used at all times consistent with the terms of the health insurance policy. When any party uses a health-care provider other than the preferred provider, any health-care costs that would have been paid by the preferred health provider if that provider had been used must be the sole responsibility of the party incurring those costs.

Form Approved for Optional Use
Judicial Council of California
FL-192 [Rev. January 1, 2021]

Family Code, §§ 4062, 4063
www.courts.ca.gov

INFORMATION SHEET ON CHANGING A CHILD SUPPORT ORDER

General Information
The court has just made a child support order in your case. This order will remain the same unless a party to the action requests that the support be changed (modified). An order for child support can be modified only by filing a motion to change child support and serving each party involved in your case. If both parents and the local child support agency (if it is involved) agree on a new child support amount, you can complete, have all parties sign, and file with the court a *Stipulation to Establish or Modify Child Support and Order* (form FL-350) or *Stipulation and Order (Governmental)* (form FL-625).

When a Child Support Order May Be Modified
The court takes several things into account when ordering the payment of child support. First, the number of children is considered. Next, the net incomes of both parents are determined, along with the percentage of time each parent has physical custody of the children. The court considers both parties' tax filing status and may consider hardships, such as a child of another relationship. An existing order for child support may be modified when the net income of one of the parents changes significantly, the parenting schedule changes significantly, or a new child is born.

Examples
- You have been ordered to pay $500 per month in child support. You lose your job. You will continue to owe $500 per month, plus 10 percent interest on any unpaid support, unless you file a motion to modify your child support to a lower amount and the court orders a reduction.
- You are currently receiving $300 per month in child support from the other parent, whose net income has just increased substantially. You will continue to receive $300 per month unless you file a motion to modify your child support to a higher amount and the court orders an increase.
- You are paying child support based upon having physical custody of your children 30 percent of the time. After several months it turns out that you actually have physical custody of the children 50 percent of the time. You may file a motion to modify child support to a lower amount.

How to Change a Child Support Order
To change a child support order, you must file papers with the court. *Remember:* You must follow the order you have now.

What forms do I need?
If you are asking to change a child support order, you must fill out one of these forms:
- Form FL-300, *Request for Order* ***or***
- Form FL-390, *Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support*

You must also fill out one of these forms:
- Form FL-150, *Income and Expense Declaration* ***or***
- Form FL-155, *Financial Statement (Simplified)*

What if I am not sure which forms to fill out?
Talk to the family law facilitator at your court.

After you fill out the forms, file them with the court clerk and ask for a hearing date. Write the hearing date on the form. The clerk may ask you to pay a filing fee. If you cannot afford the fee, fill out these forms, too:

- Form FW-001, *Request to Waive Court Fees*
- Form FW-003, *Order on Court Fee Waiver (Superior Court)*

You must serve the other parent. If the local child support agency is involved, serve it too.

This means someone 18 or over—**not you—**must serve the other parent copies of your filed court forms at least **16 court days** before the hearing. Add **5 calendar days** if you serve by mail within California (see Code of Civil Procedure section 1005 for other situations). **Court days** are weekdays when the court is open for business (Monday through Friday except court holidays). **Calendar days** include all days of the month, including weekends and holidays. To find court holidays, go to *www.courts.ca.gov/holidays.htm*.

The server must also serve blank copies of these forms:
- Form FL-320, *Responsive Declaration to Request for Order* ***and*** form FL-150, *Income and Expense Declaration,* ***or***
- Form FL-155, *Financial Statement (Simplified)*

Then the server fills out and signs a *Proof of Service* (form FL-330 or form FL-335). Take this form to the clerk and file it.

Go to your hearing and ask the judge to change the support. Bring your tax returns from the last two years and your last two months' pay stubs. The judge will look at your information, listen to both parents, and make an order. After the hearing, fill out:

- Form FL-340, *Findings and Order After Hearing* ***and***
- Form FL-342, *Child Support Information and Order Attachment*

Need help?
Contact the family law facilitator in your county or call your county's bar association and ask for an experienced family lawyer.

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address)*:	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER	CASE NUMBER:

NOTICE OF HEARING

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date):*

a. Date: Time: Dept: Div: Room:

b. The address of the court is ☐ same as noted above ☐ Other *(specify):*

2. ☐ I request that the registration of support order be vacated (canceled) because *(check all that apply)*:
   a. ☐ I am not the Obligor (the parent ordered to pay support) named in the statement for registration.
   b. ☐ the support order attached to the statement for registration is not a valid order.
   c. ☐ the amount of arrears (back support) listed in the paperwork attached to the statement for registration is incorrect. The correct amount of arrears is *(specify amount):* $ ☐ Supporting documents attached.
   (NOTE: You can file this *Request* without stating what you believe is the correct amount of arrears.)
   d. ☐ Other *(specify):*

3. ☐ I request that enforcement of the support order be stayed (stopped) because the order has been appealed. I have furnished security for payment of the support ordered and the appeal is pending or the order has been stayed by another court.

4. Explain the facts in support of your request:

☐ Contained in the attached declaration.

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 DECLARANT)

Form Adopted for Mandatory Use
Judicial Council of California
FL-445 [Rev. January 1, 2021]

Family Code, § 5603
www.courts.ca.gov

INFORMATION SHEET FOR REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Request for Hearing Regarding Registration of California Support Order* (form FL-445) if you do not have a lawyer representing you. Your lawyer, if you have one, should complete this form. You can get free help with this form from the family law facilitator in your county.

This form should be used if you received a notice of registration telling you that a California support order is being registered in a California court but you do not want that support order registered. To request a hearing regarding the registration of an out-of-state support order, use form FL-575. To request a hearing regarding the registration of an International Hague Convention support order, use form FL-594.

You must file your completed request for hearing with the court clerk. The address of the court clerk is the same as the one shown for the superior court on the notice of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file a *Request to Waive Court Fees* (form FW-001). You can get this form from the court clerk, the California Courts website at *www.courts.ca.gov*, or the family law facilitator in your county (who can also assist you with the application). Provide an original *Request for Hearing Regarding Registration of California Support Order* and any attachments plus at least three copies for filing. Keep copies of the filed request and any attachments for service, and keep the other copy for your records.

Someone other than you, who is at least 18 years old, must serve (deliver) copies of the request on the other parent, or their lawyer if they have one in this case. A copy must also be served on the local child support agency, if that office is providing services in the case. The paperwork must be served at least **15 days** before the hearing date. (**Note:** If the paperwork is served by mail, there are special rules regarding this service deadline.) Be sure to file your *Proof of Service* with the court clerk. More information about how to serve legal paperwork can be found on the California Courts website at *www.courts.ca.gov/selfhelp-serving.htm* or from the family law facilitator in your county.

INSTRUCTIONS FOR COMPLETING THE *REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER* (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN BLACK OR BLUE INK):

Page 1, first box, top of form, left side: Print your name, address, phone number, and e-mail address in this box.

Page 1, second box, left side: Print the name of your county and the court's address in this box. Use the same address for the court that is on the notice of registration you received.

Page 1, third box, left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as listed on the notice of registration you received.

Page 1, first box, top of form, right side: Leave this box blank for the court's use.

Page 1, second box, right side: Print your case number in this box. This number is also shown on the notice of registration you received.

Instructions for Numbered Paragraphs

1. Leave this section blank. The court clerk will fill in the date, time, and location of the hearing.

2. Check this box if you do not want the support order to be registered. Then, check the box or boxes to tell the court the reasons why you do not want the support order to be registered.

   a. Check this box if you are not the person named in the statement for registration you received.

Information Sheet for Request for Hearing Regarding Registration of California Support Order (continued)

b. Check this box if the support order attached to the statement for registration you received is not a valid order. You will need to explain to the court why you believe the order is not valid in item 3 of the form.

c. You should check this box if you disagree with the amount of arrears (back support) listed in the paperwork attached to the statement for registration. Tell the court the correct amount of arrears owed in the space provided (if known). If you attach any documents to support your position, check the applicable box. (**Note:** This is not a valid defense if the amount of arrears listed in the paperwork attached to the statement for registration was already determined by another court.)

d. Check this box if you have another reason to object to the registration of the support order and state your reason in the space provided.

3. Check this box if you want enforcement of the support order stayed (stopped) because you have appealed the order, you have furnished security for the support order, and the appeal is still pending or if the order has been stayed by another court to give you time to appeal the order.

4. You must fully explain all of the reasons that you checked in item 2 or 3 of this request. If you need more space, you may attach additional sheets. Check the box labeled “Contained in the attached declaration" if you are attaching a declaration or additional pages explaining your reasons for this request.

You must date the form, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

If you need assistance with this form, contact a lawyer or the family law facilitator in your county.

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address)*:	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR HEARING REGARDING REGISTRATION OF OUT-OF-STATE SUPPORT ORDER	CASE NUMBER:

NOTICE OF HEARING

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date):*

a. Date:	Time:	Dept:	Div:	Room:

b. The address of the court is ☐ same as noted above ☐ Other *(specify):*

2. I request that the registration of support order be vacated (canceled) because *(check all that apply)*:
   - a. ☐ the court or tribunal that issued the order did not have personal jurisdiction over me.
   - b. ☐ the support order was obtained by fraud.
   - c. ☐ the support order has been vacated, suspended, or modified by a later order. *(Attach a copy of the later order.)*
   - d. ☐ the order has been stayed pending appeal.
   - e. ☐ the amount of arrears (back support) listed in the letter for transmittal requesting registration or sworn statement is incorrect. The correct amount of arrears is *(specify amount):* $ ☐ Supporting documents attached.
     (NOTE: You can file this *Request* without stating what you believe is the correct amount of arrears.)
   - f. ☐ some or all of the arrears are not enforceable.
   - g. ☐ there is a defense under California law to the remedy sought.
   - h. ☐ there is another support order that is the controlling (correct) order. *(Attach a copy of the other order.)*
   - i. ☐ Other *(specify):*

3. Explain the facts in support of your request:

☐ Contained in the attached declaration.

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 DECLARANT)

Form Adopted for Mandatory Use
Judicial Council of California
FL-575 [Rev. January 1, 2021]

Family Code, §§ 5700.606, 5700.607
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the *Request for Hearing Regarding Registration of Out-of-State Support Order* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed

at *(place)*: , California,

on *(date)*:

Date: Clerk, by , Deputy

INFORMATION SHEET FOR REQUEST FOR HEARING REGARDING REGISTRATION OF OUT-OF-STATE SUPPORT ORDER

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Request for Hearing Regarding Registration of Out-of-State Support Order* (form FL-575) if you do not have a lawyer representing you. Your lawyer, if you have one, should complete this form. You can get free help with this form from the family law facilitator in your county.

This form should be used if you received a notice of registration telling you that an out-of-state support order is being registered in a California court but you do not want that support order registered. To request a hearing regarding the registration of an International Hague Convention support order, use form FL-594. To request a hearing regarding the registration of a California support order, use form FL-445.

You must file your completed request for hearing with the court clerk. You must also give the court clerk addressed envelopes with postage paid to mail copies of your request for hearing to the other parties. The address of the court clerk is the same as the one shown for the superior court on the notice of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file a *Request to Waive Court Fees* (form FW-001). You can get this form from the court clerk, the California Courts website at *www.courts.ca.gov*, or the family law facilitator in your county (who can also assist you with the application).

INSTRUCTIONS FOR COMPLETING THE *REQUEST FOR HEARING REGARDING REGISTRATION OF OUT-OF-STATE SUPPORT ORDER* (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN INK):

Page 1, first box, top of form, left side: Print your name, address, phone number, and e-mail address in this box.

Page 1, second box, left side: Print the name of your county and the court's address in this box. Use the same address for the court that is on the notice of registration you received.

Page 1, third box, left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as listed on the notice of registration you received.

Page 1, first box, top of form, right side: Leave this box blank for the court's use.

Page 1, second box, right side: Print your case number in this box. This number is also shown on the notice of registration you received.

1. Leave this section blank. The court clerk will fill in the date, time, and location of the hearing.

2. In this section you are telling the court why you do not want the support order to be registered. Check the box or boxes to tell the court the reasons why you do not want the support order to be registered.

   a. You should check this box if the court that issued the support order did not have jurisdiction over you to issue the order. You may need legal advice to find out if this is a valid reason in your case.

   b. Check this box if your support order was obtained by fraud. You may need legal advice to find out if this is a valid reason in your case.

   c. You should check this box if a court has suspended or vacated your support order. You should also check this box if your support order was modified by a later order. **If the order was modified, you must attach a copy of your most recent support order to your request for hearing.**

   d. Check this box if you have already filed an appeal to your support order and a court has stopped the order until the appeal is decided.

   e. You should check this box if you disagree with the amount of arrears (back support) listed in the letter of transmittal requesting registration or sworn statement. Tell the court the correct amount of arrears owed in the space provided (if known). If you attach any documents to support your position, check the applicable box.

Information Sheet for Request for Hearing Regarding Registration of Out-of-State Support Order (continued)

2. f. Check this box only if your support order was made by a court outside California and cannot be enforced due to the statute of limitations in that jurisdiction.

   g. Check this box if there is a defense under California law to the remedy sought.

   h. Check this box if there is another support order involving the parties and children that is the controlling (correct) order. *(Attach a copy of the other order.)*

   i. Check this box if you have another reason to object to the registration of the support order and then specify the other reason.

3. You must fully explain all of the reasons that you checked in item 2 of this request. If you need more space, you may attach additional sheets. Check the box labeled "Contained in the attached declaration" if you are attaching a declaration or additional pages explaining your reasons for this request.

You must date the form, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Page 2, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as on the front page.

Page 2, box on right side: Print your case number in this box. Use the same number as on the front page.

The court clerk will sign and date the request for hearing form before mailing it to the Petitioner/Plaintiff, Respondent/Defendant, Other Parent, and the local child support agency if that office is providing services in the case.

You must print the name and address in the brackets of the Petitioner/Plaintiff, Respondent/Defendant, Other Parent, and the local child support agency if that office is providing services in the case. The names are the same as those at the top of the page. You must also provide the court clerk with stamped envelopes addressed to each of the parties listed in the brackets.

If you need assistance with this form, contact a lawyer or the family law facilitator in your county.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD *(check all that apply):* ☐ **JUVENILE** ☐ **Dependency** ☐ **Delinquency** ☐ **ADOPTION** ☐ **CONSERVATORSHIP** ☐ **CUSTODY (Fam. Code, § 3041)** ☐ **DECLARATION OF FREEDOM FROM CONTROL OF PARENT** ☐ **GUARDIANSHIP** ☐ **TERMINATION OF PARENTAL RIGHTS** ☐ **VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT**	CASE NUMBER:	
	HEARING DATE:	DEPT.:

NOTICE TO *(check all that apply):*

☐ **Parents or Legal Guardians** ☐ **Tribes** ☐ **Indian Custodians** ☐ **Sacramento Area Director, BIA**

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child *(a separate notice must be filed for each child):*

   Name Date of Birth Place of Birth

2. HEARING INFORMATION

   a. Date: Time: Dept.: Room:
   Type of hearing:

   b. Address and telephone number of court ☐ same as noted above ☐ is *(specify):*

3. The child is or may be eligible for membership in the following Indian tribes *(list each):*

***Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.**

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-030 [Rev. January 1, 2021]

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD
(Indian Child Welfare Act)

25 U.S.C. § 1901 et seq.;
Welfare & Institutions Code, §§ 224.2, 224.3;
Probate Code, §§ 1449, 1459.5; 1460.2;
Cal. Rules of Court, rules 5.480–5.487 and 7.1015
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. **Under the Indian Child Welfare Act (ICWA) and California law:**
   a. The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
   b. The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
   c. The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
   d. With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 additional days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
   e. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible termination of parental rights and adoption of the child.
   f. If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
   g. The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
   h. An Indian custodian is any Indian person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

5. **INFORMATION ON THE CHILD NAMED IN 1**
   a. A copy of the petition initiating this case is attached.
   b. The child's birth certificate is ☐ attached ☐ unavailable.
   c. A copy of the tribal registration card of ☐ the child ☐ the parent is attached.
   d. Biological relative information is listed below. *(Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A".) (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.3.)*
   e. ☐ If the chart does not represent the gender identities of the individuals in the child's family tree, please attach an appropriate equivalent.

Biological Mother	Biological Father
Name *(include maiden, married, and former names or aliases):*	Name *(include former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:

CASE NAME:	CASE NUMBER:

5. f. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Mother (Child's Maternal Grandmother)	**Father's Biological Mother (Child's Paternal Grandmother)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Mother's Biological Father (Child's Maternal Grandfather)	**Father's Biological Father (Child's Paternal Grandfather)**
Name *(include former names or aliases):*	Name *(include former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:

5. g. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Grandmother (Child's Maternal Great-grandmother)	**Mother's Biological Grandmother (Child's Maternal Great-grandmother)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Mother's Biological Grandfather (Child's Maternal Great-grandfather)	**Mother's Biological Grandfather (Child's Maternal Great-grandfather)**
Name *(include former names or aliases):*	Name *(include former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:

5. h. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Father's Biological Grandmother (Child's Paternal Great-grandmother)	**Father's Biological Grandmother (Child's Paternal Great-grandmother)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Father's Biological Grandfather (Child's Paternal Great-grandfather)	**Father's Biological Grandfather (Child's Paternal Great-grandfather)**
Name *(include former names or aliases):*	Name *(include former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:

5. i. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A")

Information on Indian Ancestry of Other Lineal Biological Ancestors	**Information on Indian Ancestry of Other Lineal Biological Ancestors**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

☐ More information on lineal biological ancestors is attached on a separate sheet.

5. j. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Indian Custodian Information	**Indian Custodian Information**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birthdate and place:	Birthdate and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:

CASE NAME:	CASE NUMBER:

6. **ADDITIONAL INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown.)

a. ☐ Biological father is named on birth certificate. ☐ Unknown
b. ☐ Biological father has acknowledged parentage. ☐ Unknown
c. ☐ There has been a judicial declaration of parentage. ☐ Unknown
d. ☐ Other alleged father *(name each):*

☐ Unknown

The following optional questions may be helpful in tracing the ancestry of the child named in 1.

7. Has the child named in 1 or any members of the child's family ever *(if "yes," provide the information requested below):*

a. Attended an Indian school? ☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Type of school	Dates attended	Name and location of school

b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?
☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Type of treatment	Dates of treatment	Location where treatment given

c. Lived on federal trust land, a reservation, rancheria, an allotment or in an Alaska Native village or other tribal trust land?
☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Name/description of property and address	Dates of residence

d. Other relative information *(e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)*

Name/relationship to child	Current and former address	Birthdate and place	Tribe, band, and location

8. ☐ Tribal affiliation and location of child named in 1 *(check all that apply):*

a. ☐ 1906 Final Roll Name of relative listed on roll:
Relationship to child named in 1:

b. ☐ Roll of 1924 Name of relative listed on roll:
Relationship to child named in 1:

c. ☐ California Judgment Roll. Name of relative listed on roll:
Relationship to child named in 1:

CASE NAME:	CASE NUMBER:

9. Additional party information *(list the name, mailing address, and telephone number of all parties notified):*

Name	Mailing Address	Telephone Number

DECLARATION

(To be completed, dated, and signed in all cases by each petitioner named in companion petition.)

I am the petitioner or we are all of the petitioners in this proceeding. In response to items 5–9 of this form, I/we have given all information I/we have about the relatives and, if applicable, the Indian custodian, of the child named in item 1 of this form.

I/We declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE)

CASE NAME:	CASE NUMBER:

CERTIFICATE OF MAILING—JUVENILE COURT PROCEEDINGS

(To be completed by social worker or probation officer.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.3.) Each envelope was sealed and deposited with the United States Postal Service at *(place):*

on *(date):* .

Date: Title: Department:

▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

DECLARATION OF MAILING—ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS

(To be completed by the attorney for Petitioner if Petitioner is represented.)

☐ I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter.

☐ I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.3.) Each envelope was sealed and deposited with the United States Postal Service at *(place):*

on *(date):* .

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

CERTIFICATE OF MAILING—PROBATE PROCEEDINGS

(To be completed by the clerk of the court if Petitioner is unrepresented.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.3.) Each envelope was sealed and deposited with the United States Postal Service at *(place):* on *(date):* .

Date: Title: Department:

▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

This form and all return receipts must be filed with the court.

CASE NAME:	CASE NUMBER:

NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS, TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED

1. ☐ Parent *(Name):*
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

2. ☐ Parent *(Name):*
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

3. ☐ Guardian *(Name):*
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

4. ☐ Guardian *(Name):*
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

5. ☐ Indian Custodian *(Name):*
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

6. ☐ Indian Custodian *(Name):*
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

7. ☐ *Sacramento Regional Director*
Bureau of Indian Affairs, Federal Office Building
Street address: 2800 Cottage Way
City, state, and zip code: Sacramento, CA 95825
Telephone number:

8. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

9. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

10. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

11. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

12. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state, and zip code:
Telephone number:

Note: Notice to the tribe must be sent to the tribal chairperson or designated authorized agent for service.

☐ Additional tribes served listed on attached form ICWA-030(A)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
ORDER AFTER HEARING ON EX PARTE REQUEST TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD	CASE NUMBER:

1. Child's name: Date of birth:

2. a. Date of hearing: Time: Dept.: Room:
   b. Persons present:
   - ☐ Child
   - ☐ Child's attorney
   - ☐ Probation officer/social worker
   - ☐ CASA
   - ☐ Tribal representative:
   - ☐ Parent (name):
   - ☐ Parent (name):
   - ☐ Guardian
   - ☐ County counsel
   - ☐ other *(specify):*
   - ☐ Parent's attorney
   - ☐ Parent's attorney
   - ☐ Indian custodian
   - ☐ District attorney

3. Having read and considered the request to return physical custody of an Indian child and the evidence submitted therewith and the evidence and submissions at the hearing, the court finds and orders:
   a. ☐ The child's emergency removal or detention and placement continues to be necessary to prevent imminent physical damage or harm to the child.
   b. ☐ New information establishes that the child's emergency removal or detention and placement is no longer necessary to prevent imminent physical damage or harm to the child, and the child is ordered returned to the physical custody of:
   _____.

Date:

_____
JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-090 [Rev. January 1, 2021]

25 C.F.R. § 23.113(b)(2);
Welfare & Institutions Code, § 319.4;
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 3a for concise statements of facts):*
☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name:	c. Age:	d. Date of birth:	e. Gender:

☐ Information is the same as that given for the child in item 1. *(If not the same, provide different information below.)*

f. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*
☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

5. a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 3a for concise statements of facts):*
☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name:	c. Age:	d. Date of birth:	e. Gender:

☐ Information is the same as that given for the child in item 1. *(If not the same, provide different information below.)*

f. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*
☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

Form Adopted for Mandatory Use
Judicial Council of California
JV-101(A) [Rev. January 1, 2021]

ADDITIONAL CHILDREN ATTACHMENT
Juvenile Dependency Petition

Welfare and Institutions Code, § 300;
Cal. Rules of Court, rule 5.504
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. Indian Child Welfare Act Inquiry *(check one)*:

   a. ☐ I have asked as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member, and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

   b. ☐ On information and belief, I am aware that inquiry has been completed by *(insert name)*:

   b. ☐ Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing duty to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
JUVENILE DEPENDENCY PETITION (VERSION TWO) **(Welf. & Inst. Code, § 300 et seq.)** ☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**	CASE NUMBER: RELATED CASE *(if any):*

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable subdivisions for each child; see attachment 1a for concise statements of facts)*:

b.

Child's name	Age	Date of birth	Gender	Section 300 subdivisions *(check all that apply):*
1.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
2.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
3.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
4.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
5.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j

c. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

d. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

e. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

f. Other *(state name, address, and relationship to child):*

☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

g. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

h. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*

☐ Relative ☐ Shelter/foster care ☐ Other

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

2. Indian Child Welfare Act Inquiry *(check one)*:

   a. ☐ I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member, and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

   b. ☐ On information and belief, I am aware that inquiry has been completed by *(insert name)*: and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

   c. ☐ Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership, and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

3. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Address and telephone number *(if different person signing than listed in caption above):*

☐ Number of pages attached: _____

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

JV-221 Proof of Notice of Application

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
v1.081320.xyz

Read form JV-217-INFO, *Guide to Psychotropic Medication Forms,* for more information about the required forms and the application process.

1 ☐ The following parents/legal guardians of the child were notified of the physician's request to begin and/or to continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms,* a blank copy of form JV-219*, Statement About Medicine Prescribed* and a blank copy of form JV-222, *Input on Application for Psychotropic Medication*.

a. Name: _____ Date notified: _____
Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*
_____

b. Name: _____ Date notified: _____
Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*
_____

c. Name: _____ Date notified: _____ Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*
_____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

2 ☐ Parental rights were terminated, and the child has no legal parents who must be informed.

3 ☐ Parent/legal guardian *(name):* _____
was not informed because *(state reason):* _____

4 ☐ Parent/legal guardian *(name):* _____
was not informed because *(state reason):* _____

5 ☐ The child's current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that an application is pending before the court. The caregiver was provided form JV-217-INFO, *Guide to Psychotropic Medication Forms* and a blank copy of form JV-219, *Statement About Medicine Prescribed,* or information on how to obtain a copy of the form as follows:

Child's name: _____ **Case Number:**

Caregiver's name: _____ Date notified: _____

Manner: ☐ In person ☐ By phone at *(specify):* _____

☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the following address

(specify): _____

At the time of service I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business mailing address is:

_____

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 *Sign your name* ☐ Signature follows on page 4.

6 ☐ The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed form JV-220, *Application for Psychotropic Medication;* completed JV-220(A), *Physician's Statement—Attachment* or completed form JV-220(B), *Physician's Request to Continue Medication—Attachment;* a copy of form JV-217-INFO, *Guide to Psychotropic Medication Forms;* a blank form JV-218, *Child's Opinion About the Medication;* and a blank copy of form JV-222, *Input on Application for Psychotropic Medication*, as follows:

a. Attorney's name: _____ Date notified: _____

Manner: ☐ In person ☐ By fax at *(specify):* _____

☐ By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. CAPTA guardian ad litem's name: _____ Date notified: _____

Manner: ☐ In person ☐ By fax at *(specify):* _____

☐ By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

7 ☐ The application could result in the child being prescribed three or more concurrent psychotropic medications for 90 days or more. The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with blank copies of *Position on Release of Information to Medical Board of California* (form JV-228), *Background on Release of Information to Medical Board of California* (form JV-228-INFO), and *Withdrawal of Release of Information to Medical Board of California* (form JV-229), as follows:

a. Attorney's name: _____ Date notified: _____

Manner: ☐ In person ☐ By fax at *(specify):* _____

☐ By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. CAPTA guardian ad litem's name: _____ Date notified: _____

Manner: ☐ In person ☐ By fax at *(specify):* _____

☐ By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

Child's name: _____ **Case Number:**

8 ☐ The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with a copy of form JV-217-INFO, *Guide to Psychotropic Medication Forms,* a blank copy of form JV-219, *Statement About Medicine Prescribed*; and a blank copy of form JV-222, *Input on Application for Psychotropic Medication,* or with information on how to obtain a copy of each form as follows:

a. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By depositing the required information and copies of forms JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*
_____

b. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By depositing the required information and copies of forms JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*
_____

c. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By depositing the required information and copies of forms JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*
_____

At the time of service I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business mailing address is:

_____

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 *Sign your name* ☐ Signature follows on page 4.

9 ☐ The child's CASA volunteer was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. The CASA volunteer was provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms;* a blank copy of form JV-218, *Child's Opinion About the Medicine;* and a blank copy of form JV-219, *Statement About Medicine Prescribed,* as follows:

CASA volunteer *(name):* _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____
_____

Child's name: _____ **Case Number:**

10 ☐ The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. The tribe was also provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms,* a blank copy of form JV-219, *Statement About Medicine Prescribed,* and a blank copy of form JV-222, *Input on Application for Psychotropic Medication*.

Indian Tribe *(name):* _____ Date notified: _____

Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____

☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):*

_____

At the time of service I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business mailing address is:

_____

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 *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	

FINDINGS AND ORDERS AFTER DETENTION HEARING **(Welf. & Inst. Code, § 319)**	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Detention**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-410 [Rev. January 1, 2021]

Welfare and Institutions Code, § 319
Cal. Rules of Court, rule 5.678
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. ☐ The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

6. ☐ a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
   (1) the child understands the nature of the proceedings;
   (2) 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
   (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
   b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

7. ☐ A Court Appointed Special Advocate is appointed for the child.

8. **Parentage**
   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
      (1) alleged parent *(name):*
      (2) alleged parent *(name):*
      (3) alleged parent *(name):*

9. **ICWA Inquiry**
   On the record, the court has:
   a. ☐ Asked each participant present at the hearing:
      - Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native village and if yes, the name of the tribe or village;
      - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native village and if yes, the name of the tribe or village;
      - Whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
      - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native village, and if so, the name of the tribe or village.
   b. ☐ Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native village.

10. **ICWA Status**
   a. ☐ The court finds there is no reason to believe or reason to know the child is an Indian child and ICWA does not apply; or
   b. ☐ The court finds there is reason to believe the child is an Indian child; and
      (1) ☐ The agency has completed further inquiry as required by Welf. & Inst. Code, § 224.2(e), and there is no reason to know that the child is an Indian child. ICWA does not apply; or
      (2) ☐ The agency is ordered to complete further inquiry as required by Welf. & Inst. Code, § 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services, and/or others.
   c. ☐ The court finds that there is reason to know that the child is an Indian child, and
      (1) ☐ The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status; or
      (2) ☐ The agency is required to exercise due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status and provide notice in accordance with Welf. & Inst. Code, § 224.3 and file proof of due diligence and notice with the court; and
      (3) ☐ Notice has been provided as required by law; and
      (4) ☐ The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

CHILD'S NAME:	CASE NUMBER:

10. d. ☐ The court finds that the child is an Indian child and a member of the tribe.

11. **ICWA Jurisdiction**

a. It is known or there is reason to know that the child is an Indian child. The court finds *(select one):*

(1) ☐ That it has jurisdiction over the proceeding because:

(a) The court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; and

(b) The court finds that the child is not already under the jurisdiction of a tribal court; or

(2) ☐ The court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court; or

(3) ☐ The court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with 25 U.S.C. § 1922.

Advisements and waivers

12. **The court has informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

of the following:

a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

b. The right to be informed by the court of the following:

- the contents of the petition;
- the nature of and possible consequences of juvenile court proceedings;
- the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
- the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
- that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
- that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.

c. The right to a hearing by the court on the issues presented by the petition.

d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian, or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

13. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

CHILD'S NAME:	CASE NUMBER:

14. ☐ **CHILD NOT DETAINED**

a. ☐ Services that would prevent the need for further detention, including those set forth in item 17, are available.

b. ☐ The child is returned to the custody of

☐ mother ☐ biological father ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ alleged father ☐ Indian custodian

15. ☐ **CHILD DETAINED**

a. Services that would prevent the need for further detention are not available.

b. A prima facie showing has been made that the child comes within Welf. & Inst. Code, § 300.

c. Continuance in the parent's or legal guardian's home is contrary to the child's welfare AND *(select at least one):*

(1) ☐ there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody of the parent or legal guardian.

(2) ☐ there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(3) ☐ the child has left a placement in which he or she was placed by the juvenile court.

(4) ☐ the child has been physically abused by a person residing in the home and is unwilling to return home.

(5) ☐ the child has been sexually abused by a person residing in the home and is unwilling to return home.

d. The child is detained, and temporary placement and care of the child is vested with the county child and family services agency pending the hearing under Welf. & Inst. Code, § 355 or further order of the court.

e. The initial removal of the child from the home was necessary for the reasons stated on the record.

f. The facts on which the court bases its decision to order the child detained are stated on the record.

g. The child is placed in

(1) ☐ the approved home of a relative.

(2) ☐ an emergency shelter.

(3) ☐ other suitable licensed place.

(4) ☐ a place exempt from licensure designated by the juvenile court.

(5) ☐ the approved home of a nonrelative extended family member as defined in Welf. & Inst. Code, § 362.7.

h. Services, including those set forth in item 17, are to be provided to the family as soon as possible to reunify the child with his or her family.

i. ☐ Reasonable efforts were made to prevent or eliminate the need for removal from the home.

j. ☐ Reasonable efforts were not made to prevent or eliminate the need for removal from the home.

k. ☐ There is a relative who is able, approved, and willing to care for the child.

l. ☐ A relative who is able, approved, and willing to care for the child is not available. *This is a temporary finding and does not preclude later placement with a relative under Welf. & Inst. Code, § 361.3.*

16. ☐ **CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

a. ☐ The evidence includes all of the requirements of Welf. & Inst. Code, § 319(b).

b. ☐ As detailed in the record, the agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved ☐ successful ☐ unsuccessful; or

☐ The agency has not made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; and

The agency is ordered to initiate or continue active efforts.

CHILD'S NAME:	CASE NUMBER:

16. c. ☐ For the reasons stated on the record, detention is necessary to prevent imminent physical damage or harm to the child.

d. ☐ The child's placement complies with the placement preferences set forth in Welf. & Inst. Code, § 361.31. The child is placed:

- ☐ With a member of the child's extended family;
- ☐ In a foster home licensed, approved, or specified by the child's tribe;
- ☐ In an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- ☐ In an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

OR

- ☐ For the reasons stated on the record, the court finds by clear and convincing evidence that there is good cause not to follow the placement preferences.

17. ☐ The services below will be provided pending further proceedings:

Service	Mother	Presumed father	Biological father	Legal guardian	Indian custodian	Other *(specify):*
a. ☐ Alcohol and drug testing	☐	☐	☐	☐	☐	☐
b. ☐ Substance abuse treatment	☐	☐	☐	☐	☐	☐
c. ☐ Parenting education	☐	☐	☐	☐	☐	☐
d. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
e. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
f. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐

18. ☐ **Contact with the child is ordered as stated in** *(check appropriate boxes and attach indicated forms):*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).

b. ☐ *Visitation Attachment: Sibling* (form JV-401).

c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

19. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ presumed father ☐ alleged father ☐ Indian custodian ☐ other *(specify):*

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

20. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ presumed father ☐ alleged father ☐ Indian custodian ☐ other *(specify):*

must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

21. ☐ There is reason to know the child is an Indian child and the county agency must provide notice under Welf. & Inst. Code, § 224.3 for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

22. ☐ **Other findings and orders:**

a. ☐ See attached.

b. ☐ *(Specify):*

23. ☐ The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

CHILD'S NAME:	CASE NUMBER:

24. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:

a. ☐ Jurisdictional hearing
b. ☐ Dispositional hearing
c. ☐ Settlement conference
d. ☐ Mediation
e. ☐ Other *(specify):*

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE

Date: _____

_____
☐ COMMISSIONER ☐ REFEREE

CHILD'S NAME:	CASE NUMBER:

TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.25)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4. ☐ The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:
   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
   d. These efforts and the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
   e. The active efforts have proved ☐ successful ☐ unsuccessful.
5. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and
   a. ☐ Qualified expert witness testimony was provided by *(name):* ; and
   b. ☐ Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
   c. ☐ There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
      ☐ mother ☐ biological father ☐ legal guardian
      ☐ presumed father ☐ Indian custodian
      ☐ other *(specify):*
6. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
   b. ☐ A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
   e. ☐ The child is placed in accordance with the preferences established by the tribe; or
   f. ☐ The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.
7. ☐ **The child's current placement is appropriate.**

Form Approved for Optional Use
Judicial Council of California
JV-457 [Rev. January 1, 2021]

TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT:
REUNIFICATION SERVICES TERMINATED
(Welf. & Inst. Code, § 366.25)

Welfare and Institutions Code, §§ 366.25, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.722
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-455, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

9. ☐ **The child is placed outside the state of California and that out-of-state placement**
   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-455, item 27 for a ☐ written ☐ oral report by the county agency on the progress made toward
      (1) ☐ returning the child to California and locating an appropriate placement within California.
      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
      (3) ☐ Other *(specify):*

Selection of permanent plan

10. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

11. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
   a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
      The likely date by which the child's permanent plan will be achieved is *(specify date):*
   b. ☐ The child remains in foster care with a permanent plan of *(specify):*
      (1) ☐ Return home.
      (2) ☐ Adoption.
      (3) ☐ Tribal customary adoption.
      (4) ☐ Legal guardianship.
      (5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
         ☐ return home ☐ establish legal guardianship
         ☐ place for adoption ☐ place with a relative
         ☐ other *(specify):*

      The likely date by which the child's permanent plan will be achieved is *(specify date):*
   c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

12. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**
   a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*
   b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*
   c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

CHILD'S NAME:	CASE NUMBER:

13. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.25(b).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or, in the case of an Indian child, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*

(2) *(name):*

(3) *(name):*

(4) *(name):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is *(specify date):*

Important individuals

14. ☐ **Child in out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

15. ☐ The ☐ mother ☐ biological father ☐ Indian custodian ☐ presumed father ☐ legal guardian ☐ other *(specify):*
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		

DRAFT
Not approved by the Judicial Council
v3.081320.xyz

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

CHILD'S NAME:
CHILD'S DATE OF BIRTH:

ORDER DESIGNATING EDUCATIONAL RIGHTS HOLDER

CASE NUMBER:

Educational Rights Holder for Child or Youth

1. ☐ The rights of

a. *Name 1:*

☐ parent 1
☐ parent 2
☐ guardian
☐ Indian custodian

to make ☐ educational ☐ developmental-services decisions for the child or youth

Check one for each named educational right holder.

(1) ☐ are retained.
(2) ☐ are fully restored.
(3) ☐ are temporarily limited under section 319(j).
(4) ☐ are limited under section 361(a) or 726(b).
(5) ☐ have been terminated under section 366.26 or 727.31.
(6) ☐ transferred to the youth on their 18th birthday.

b. *Name 2:*

☐ parent 1
☐ parent 2
☐ guardian
☐ Indian custodian

(1) ☐ are retained.
(2) ☐ are fully restored.
(3) ☐ are temporarily limited under section 319(j).
(4) ☐ are limited under section 361(a) or 726(b).
(5) ☐ have been terminated under section 366.26 or 727.31.
(6) ☐ transferred to the youth on their 18th birthday.

☐ Other Educational Rights Holders—see attached.

2. ☐ The following adult(s) is/are designated as the educational rights holders, as defined in rule 5.502.

a. Name 1:
Address:

Telephone:
Email:
Relationship to child or youth:

☐ Confidential Name ☐ Confidential Address

b. Name 2:
Address:

Telephone:
Email:
Relationship to child or youth:

☐ Confidential Name ☐ Confidential Address

☐ Other Educational Rights Holders—see attached.

3. The adult(s) identified in item 2 ☐ Name 1 ☐ Name 2 is/are *(check all that apply)*:

a. ☐ The *first* educational rights holder(s) identified by the court for this child or youth.
b. ☐ The *same* educational rights holder(s) as last identified by the court, with new contact information in item 2, above.
c. ☐ A *different* educational rights holder from the one last identified by the court.

NOTICE

☐ Provision of the information on this form—as well as on forms JV-535(A), JV-536, JV-537, JV-538, JV-539, JV-540, or any equivalent form—to the parent(s), guardian(s), or Indian custodian(s) named in 1 ***will*** create a safety risk (for example, because of the placement's confidentiality). The information ***may not*** be disclosed to the parent, guardian, or Indian custodian.

Form Adopted for Mandatory Use
Judicial Council of California
JV-535 [Rev. January 1, 2021]

Welfare and Institutions Code, §§ 361, 726
Cal. Rules of Court, rules 5.502, 5.649, 5.650,5.651
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

3. d. ☐ The successor guardian or conservator and, as such, holds decisionmaking rights.
   e. ☐ The caregiver in a planned permanent living arrangement and holds ☐ educational ☐ developmental-services decisionmaking rights under section 361(a)(1)(E). See item 6 for limitation of parental decisionmaking rights.

Having considered the evidence and made the findings required by law, THE COURT ORDERS that

4. ☐ The responsible adults identified in 2 are appointed the educational rights holders for the child or youth and are authorized to make ☐ educational ☐ developmental-services decisions for the child or youth to the extent permitted by law.
5. ☐ *(Check only if 2, 3, and 4 do not apply.)* The court cannot identify a parent, guardian, Indian custodian, or other responsible adult to act as the educational rights holder.
   a. ☐ The court hereby refers the child to the local educational agency for appointment of a surrogate parent under section 7579.5 of the Government Code.
   b. ☐ The court, with input from any interested person, will make ☐ educational ☐ developmental-services decisions.
      ☐ The appointment of a surrogate parent is not warranted.
      ☐ *(Before the dispositional hearing)* The child's attorney and the social worker or probation officer must make every effort to identify a responsible adult to make future educational or developmental-services decisions for the child.
6. ☐ The appointment of any previous educational rights holder or developmental-services decision maker is terminated.

Appointed Educational Rights Holder—Rights and Duties

7. The appointed educational rights holder is authorized to have access to the child's or youth's ☐ educational ☐ developmental-services records and information to the extent permitted by law.
8. The appointed educational rights holder may authorize the release of ☐ educational ☐ developmental-services records to the child's attorney or CASA volunteer to the extent permitted by law.
9. The appointed educational rights holder must comply with all applicable state and federal confidentiality laws, including sections 362.5, 827, 4514, and 5328 and Government Code section 7579.5(f), and may share information only to the extent necessary to further the interests of the child or youth.
10. The appointed educational rights holder must meet with the child or youth; investigate the child's or youth's educational and developmental-services needs and whether those needs are being met; and, before each scheduled review hearing, provide information and recommendations to the social worker or probation officer **OR** make written recommendations to the court **OR** attend the review hearing and participate in any part of the hearing that concerns the child's education or development **OR** do all of these. The rights holder may submit written recommendations on *Educational Rights Holder Statement* (form JV-537) or in any other suitable format. To the greatest extent possible, the educational rights holder must consult and collaborate with the educational liaison or regional center service coordinator, as applicable, to gather information needed to meet the needs and protect the rights of the child or youth.

Service of Order

11. If this is the first form JV-535 completed in this case or it includes any information different from information on the previous JV-535, the clerk will provide a copy of this form, form JV-535(A), and any other attachments to: the child (if 10 years old or older) or youth; the attorney for the child or youth; the social worker or probation officer; the Indian child's tribe, if applicable; the local foster youth educational liaison; the county office of education foster youth services coordinator; the regional center service coordinator, if applicable; and the educational rights holder or surrogate parent in person or by first-class mail no later than five court days after the order is signed. The clerk may also make the form available to the parent or guardian (unless otherwise indicated on this form, or parental rights have been terminated, or the child has reached 18 years of age and reunification services have been terminated), to the CASA volunteer, and if requested, to any other person entitled to notice under section 293.
12. The assigned social worker or probation officer must notify the educational rights holder of the date, time, and location of each court hearing.

This order applies to any local educational agency, school, school district, or regional center serving the child or youth in the State of California.

☐ Related findings and orders are attached on form JV-535(A) or its equivalent.

Date:

_____
JUDICIAL OFFICER