Judicial Council of California · Administrative Office of the Courts

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title
Civil Cases: Vexatious Litigants

Rules, Forms, Standards, or Statutes Affected
Revise forms MC-700 and MC-701 and approve forms MC-702, MC-703 and MC-704

Recommended by
Trial Court Presiding Judges Advisory Committee
Hon. David Rosenberg, Chair
Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2013

Date of Report
January 27, 2012

Contact
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Executive Summary

The Trial Court Presiding Judges Advisory Committee and the Civil and Small Claims Advisory Committee recommend changes to forms related to vexatious litigant procedures in order to implement recent legislation, achieve consistency, and make other needed changes to these procedures.

Recommendation

The Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Civil and Small Claims Advisory Committee (CSCAC) recommend that the Judicial Council, effective January 1, 2013:

1. Revise *Prefiling Order—Vexatious Litigant* (form MC-700) and *Request to File New Litigation by Vexatious Litigant* (form MC-701); and

2. Approve *Order on Request to File New Litigation by Vexatious Litigant* (form MC-702), *Application for Order to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List* (form MC-703), and *Order on Application to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List* (form MC-704).

The forms are attached at pages 7-12.

Previous Council Action

Form MC-700 was adopted by the Judicial Council effective January 1, 1997. Form MC-701 was approved for optional use by the Judicial Council effective January 1, 2008. The Judicial Council recently sponsored legislation to amend Code of Civil Procedure section 391.7 to clarify that the statute applies to matters in the Courts of Appeal, to permit a presiding justice or judge to delegate authority to make the prefiling determination of merit required by the statute, and to authorize the presiding justice or presiding judge to order that notice be given of a vexatious litigant's status if the clerk mistakenly files litigation without a prefiling order; and add section 391.8 to provide procedures for an application to vacate a prefiling order and remove a vexatious litigant's name from the Judicial Council's list of vexatious litigants, and standards for deciding the application. The legislation was recently enacted into law. (Sen. Bill 731; Stats. 2011, ch. 49) and is effective January 1, 2012.

Rationale for Recommendation

Recently-enacted Senate Bill 731 amends Code of Civil Procedure[1] section 391.7, a statute pertaining to the filing of new litigation by a vexatious litigant, and adds section 391.8 to provide procedures for an application by a vexatious litigant to vacate a prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants.

Several years ago, TCPJAC identified the need for changes to vexatious litigant procedures, which led to that advisory committee's recommendations for statutory and Judicial Council form changes. The statutory changes are included in SB 731.

Prefiling Order—Vexatious Litigant (form MC-700) This form is the order that is filed after a judge determines, under Code of Civil Procedure section 391, that a person is a vexatious litigant and enters a prefiling order under section 391.7. The proposed revisions are stylistic and add "presiding justice" in item 3, consistent with SB 731, which added "presiding justice' to section 391.7.

Request to File New Litigation by Vexatious Litigant (form MC-701) After a person is determined to be a vexatious litigant and placed on the Judicial Council's vexatious litigant list, he or she must file a *Request to File New Litigation by Vexatious Litigant* (form MC-701) with

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

each proposed new lawsuit. Under Code of Civil Procedure section 391.7(b), the presiding judge may permit the filing of new litigation only if it appears to have merit and is not being filed for the purposes of harassment or delay.

This form would be revised to describe how a vexatious litigant can show that the new filing has merit. The current form simply asks the litigant to give reasons why the new filing has merit. Presiding judges have reported that the information provided is not always helpful and sometimes extensive documents are filed as attachments to the form. The revision would read, "The new filing has merit because (provide a brief summary of the facts on which your claim is based, the harm you believe you have suffered or will suffer, and the remedy or resolution you are seeking)." This will give more guidance about what a vexatious litigant must show and focus on the claim and remedy sought. Though it probably will not result in eliminating all unnecessary information or documents, this change should improve the quality of the information that a presiding justice or judge uses to determine whether a lawsuit has merit.

Order on Request to File New Litigation by Vexatious Litigant (form MC-702) This new form would consist of the order portion of *Request to File New Litigation by Vexatious Litigant* (form MC-701), which is currently at the end of that form. When a request and an order on that request are part of the same form, the form is usually placed in the court case file more than once—first when the request is made and later when it is granted or denied. It can be confusing to have different versions of the same form in the file. In addition, the advisory committees understand that court case management systems may not be set up to distinguish between different versions. Therefore, the existing dual-use form, *Request to File New Litigation by Vexatious Litigant* (form MC-701), would be split into two separate forms: one for the request and one for the order, which is the proposed new form MC-702.

Application for Order to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List (form MC-703) This new form would be used by a vexatious litigant to ask to be removed from the list of vexatious litigants that must obtain prefiling approval. It states the criteria for removal that are in newly-enacted section 391.8. The vexatious litigant would be required to demonstrate that his or her application is supported by a change in the facts (i.e., he or she is no longer a vexatious litigant) and is necessitated by the ends of justice. To provide the court with additional information to make the determination, item 5 would require a list of every case filed in the last five years in which the vexatious litigant has been a plaintiff, cross-complainant, or defendant, as well as the number of motions filed in each case, and the number of requests to file new litigation. The form also includes a notice box that incorporates the provisions of section 391.8 that limit a request to be removed from the vexatious litigant list to once every 12 months and require the request to be filed in the court that entered the prefiling order.

Order on Application to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List (form MC-704) This new form is an order to be used to grant or deny the vexatious litigant's request to be removed from the list.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for public comment during the spring 2011 comment cycle. Six comments were received.[2] All commentators agreed with the proposal, but five of them requested various modifications. Commentators included a Court of Appeal justice, the Superior Courts of Los Angeles, Monterey, and San Diego Counties, the State Bar Committee on Administration of Justice (CAJ), and a local bar association.

Most comments concerned *Application for Order to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List* (form MC-703). A Court of Appeal justice suggested that form MC-703 be modified to require a party seeking to be removed from the vexatious litigant list to list cases in which the party was a defendant as well as a plaintiff or cross-complainant in the last 5 years (changed from 10 years). Because Code of Civil Procedure section 391and case law recognize that one's conduct as a defendant may lead to a judicial determination that he or she is a vexatious litigant, CSCAC agreed that "defendant" should be added to the form as suggested.

Commentators were specifically invited to address whether form MC-703 in addition to requiring a vexatious litigant to list every case filed in the last 10 years (since changed to 5 years) in which he or she has been a party, should also require the vexatious litigant to include the number of motions he or she filed in those cases. Two commentators specifically approved of this requirement and one suggested that the vexatious litigant be required to indicate whether he or she prevailed on the motion. Another suggested that the period be reduced from 10 to 5 years. CAJ suggested that a vexatious litigant be required to indicate whether he or she was represented by counsel in these cases or that the form require disclosure only of cases in which the vexatious litigant was not represented by counsel.

When this proposal and the comments it generated were presented to CSCAC,[3] the discussion by members focused on the following issues concerning the content of form MC-703:

- The standard for determining whether the prefiling order should be vacated and the vexatious litigant's name removed from the Judicial Council vexatious litigant list;

- Whether the requirement to list every case in which the vexatious litigant has been a plaintiff, cross-complainant, or defendant should apply a 5-year period or a 10-year period preceding the application; and

- Whether a vexatious litigant should be required to list the number (or approximate number) of motions filed in each case in which he or she has been a plaintiff, cross-complainant, or

[2] A chart providing the full text of the comments and the committee responses is attached at pages 13-16.

[3] Due to time constraints, TCPJAC was unable to discuss this proposal at a meeting, following its circulation for public comment. Instead, TCPJAC members indicated by e-mail whether they recommended approval of the proposal. A majority of members did so. No member indicated that he or she did not recommend approval. Because TCPJAC members did not discuss the proposal at this stage, this report includes only CSCAC's discussion of the comments.

defendant in the past 5 or 10 years and, if so, whether the requirement should include the outcome of each motion.

Standard

The standard for vacating a prefiling order in newly enacted Code of Civil Procedure section 391.8 is "a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order." This language is mirrored in item 3 on form MC-703. The Superior Court of Los Angeles County suggested a different standard for a judge to decide whether the prefiling order should be vacated and the vexatious litigant's name removed from the Judicial Council Vexatious Litigant List. That court suggested the form be modified to include the factors set out in *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 93–94, as follows: "You must accurately confront the fact on which the prior vexatious litigant finding was based; show genuine remorse for the costs of litigation inflicted on defendants in prior unsuccessful litigation; demonstrate you have made some genuine effort to pay cost orders against you in prior litigation; and demonstrate that you no longer have a habit of filing litigation simply as a way of spending your time." Though this is an accurate statement of the case law and at least one member of CSCAC supported it, CSCAC declined to make this change because (1) the standard suggested by the commentator would be difficult to apply, (2) the standard on the form as it circulated for comment is based on the standard for dissolving an injunction, of which the prefiling order is a type, and (3) the standard on the form as it circulated for comment is consistent with recently-enacted legislation, Code of Civil Procedure section 391.8.

Time period

CSCAC concluded that information from a 5-year period preceding the application was sufficient to decide the application and would be less burdensome than a 10-year period.

Information about motions

When the Judicial Council's Rules and Projects Committee (RUPRO) approved this form to circulate for public comment, it requested comments on whether the form should require the vexatious litigant to include the number of motions he or she filed. Two commentators addressed this, both supporting the requirement. One commentator suggested that a vexatious litigant be required to list the outcome of each motion. Some CSCAC members believed that the burden—some of which might be placed on court clerks by vexatious litigants' requests—of providing a list of all motions filed outweighed its utility. Members decided to require the number of motions filed but to modify the requirement to add "approximate" before "number." A few members disagreed with this change and believed that a vexatious litigant should be required to list the exact number of motions he or she filed. CSCAC members also discussed whether to require a vexatious litigant to indicate whether he or she prevailed on the motion or the outcome of the motion. Members concluded that a vexatious litigant would be unlikely to accurately state the outcome of each motion over the course of five years and decided not to include this requirement.

All CSCAC members agreed that a vexatious litigant should be required to list the number of requests to file new litigation that he or she has filed.

Optional or Mandatory

Some CSCAC members raised the question of whether the forms should be optional or mandatory. Of the existing forms, *Prefiling Order—Vexatious Litigant* (form MC-700) is mandatory to provide uniformity, and *Request and Order to File New Litigation by Vexatious Litigant* (form MC-701), which will be made into two forms under this proposal—one for the request and one for the order—is optional. When form MC-701 was recommended by the advisory committee in 2007, the advisory committee recommended that it be optional. Because it is currently an optional form and because this form revision and the new forms were proposed as optional forms when they circulated for public comment, they should remain optional.

The advisory committee concluded that new form MC-703 is necessary to implement new Code of Civil Procedure section 391.8 and that it will be useful to show a vexatious litigant what is required in an application to be removed from the vexatious litigant list. The proposed revisions to the existing forms are minor and make the forms more accurate and consistent with the law. For these reasons, neither CSCAC nor TCPJAC recommended the option of having no new and revised forms in this area.

Implementation Requirements, Costs, and Operational Impacts

Making *Order on Request to File New Litigation by Vexatious Litigant* (form MC-702) separate from *Request to File New Litigation by Vexatious Litigant* (form MC-701) should help eliminate the confusion that exists when multiple versions—the request and the signed order on the request—of the current *Request and Order to File New Litigation by Vexatious Litigant* (form MC-701) are filed.

If a court is one in which all form orders are issued by means of an electronic case management system, the court may incur costs in programming the new order forms into its system. The forms are recommended for optional use, however, so a court may choose not to use the forms.

Changes to form MC-701 and the approval of the new *Application for Order to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List* (form MC-703) are expected to provide more focused and useful information for a judge to decide a vexatious litigant's requests concerning the filing of new litigation and removal from the vexatious litigant list thus saving court time.

Attachments

1. Forms MC-700–MC-704, at pages 7–12
2. Chart of comments, at pages 13–16

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and Address)*: *(To be completed only if a party is making the motion)* ATTORNEY FOR *(Name)*: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	FOR COURT USE ONLY
☐ **COURT OF APPEAL, APPELLATE DISTRICT, DIVISION** ☐ **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
PREFILING ORDER—VEXATIOUS LITIGANT	CASE NUMBER:

1. Name and address of each plaintiff or cross-complainant or other party subject to this prefiling order:

2. This prefiling order is entered pursuant to a motion made by ☐ the court ☐ party (name):

3. The person or persons identified in item 1, unless represented by an attorney, are prohibited from filing any new litigation in the courts of California without approval of the presiding justice or presiding judge of the court in which the action is to be filed.

4. The clerk is ordered to provide a copy of this order to the California Judicial Council by fax at 415-865-4329 or by mail at the address below.

Vexatious Litigant Prefiling Orders
California Judicial Council
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102

Date:

▶ _____

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
MC-700 [Rev. January 1, 2013]

PREFILING ORDER—VEXATIOUS LITIGANT

Code of Civil Procedure, § 391,7
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name)*:	
☐ **COURT OF APPEAL, APPELLATE DISTRICT, DIVISION** ☐ **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT: OTHER:	
REQUEST TO FILE NEW LITIGATION BY VEXATIOUS LITIGANT Type of case: ☐ Limited Civil ☐ Unlimited Civil ☐ Small Claims ☐ Family Law ☐ Probate ☐ Other	CASE NUMBER:

1. I have been determined to be a vexatious litigant and must obtain prior court approval to file any new litigation in which I am not represented by an attorney. Filing new litigation means (1) commencing any civil action or proceeding, or (2) filing any petition, application, or motion (except a discovery motion) under the Family or Probate Code.

2. I have attached to this request a copy of the document to be filed and I request approval from the presiding justice or presiding judge of the above court to file this document *(name of document):*

3. The new filing has merit because *(Provide a brief summary of the facts on which your claim is based; the harm you believe you have suffered or will suffer; and the remedy or resolution you are seeking):*

4. The new filing is not being filed to harass or to cause a delay because *(give reasons):*

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 DECLARANT)

(SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
MC-701 [Rev. January 1, 2013]

REQUEST TO FILE NEW LITIGATION BY VEXATIOUS LITIGANT

Code of Civil Procedure, § 391.7
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name)*:	
☐ **COURT OF APPEAL, APPELLATE DISTRICT, DIVISION** ☐ **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT: OTHER:	
REQUEST TO FILE NEW LITIGATION BY VEXATIOUS LITIGANT Type of case: ☐ Limited Civil ☐ Unlimited Civil ☐ Small Claims ☐ Family Law ☐ Probate ☐ Other	CASE NUMBER:

1. I have been determined to be a vexatious litigant and must obtain prior court approval to file any new litigation in which I am not represented by an attorney. Filing new litigation means (1) commencing any civil action or proceeding, or (2) filing any petition, application, or motion (except a discovery motion) under the Family or Probate Code.

2. I have attached to this request a copy of the document to be filed and I request approval from the presiding justice or presiding judge of the above court to file this document *(name of document):*

3. The new filing has merit because *(Provide a brief summary of the facts on which your claim is based; the harm you believe you have suffered or will suffer; and the remedy or resolution you are seeking):*

4. The new filing is not being filed to harass or to cause a delay because *(give reasons):*

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 DECLARANT)

(SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
MC-701 [Rev. January 1, 2013]

REQUEST TO FILE NEW LITIGATION BY VEXATIOUS LITIGANT

Code of Civil Procedure, § 391.7
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name)*:	
☐ **COURT OF APPEAL, APPELLATE DISTRICT, DIVISION** ☐ **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT: OTHER:	
ORDER TO FILE **NEW LITIGATION BY VEXATIOUS LITIGANT** Type of case: ☐ Limited Civil ☐ Unlimited Civil ☐ Small Claims ☐ Family Law ☐ Probate ☐ Other	CASE NUMBER:

ORDER

Approval to file the attached document is:

a. ☐ Granted
b. ☐ Denied
c. ☐ Other:

☐ Attachment to order. Number of pages _____.

Date:

(PRESIDING JUSTICE OR JUDGE)

Form Approved for Optional Use
Judicial Council of California
MC-702 [New January 1, 2013]

Code of Civil Procedure, § 391.7
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and Address)*:	FOR COURT USE ONLY
ATTORNEY FOR *(Name)*: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	
☐ **COURT OF APPEAL, APPELLATE DISTRICT, DIVISION** ☐ **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER:	
APPLICATION FOR ORDER TO VACATE PREFILING ORDER AND REMOVE PLAINTIFF/PETITIONER FROM JUDICIAL COUNCIL VEXATIOUS LITIGANT LIST	CASE NUMBER:

Important, please read: This application must be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Code of Civil Procedure section 391.7. If you have made an application to vacate a prefiling order that was denied, you may not make another application to vacate in any California court until at least 12 months after the denial.

1. I have been determined to be a vexatious litigant under the California Code of Civil Procedure section 391. This application requests that the court vacate its prefiling order and order my name removed from the statewide vexatious litigant list.

2. The prefiling order or orders were issued in the following case or cases *(list all)*:

Court: _____ Court: _____

Case Name: _____ Case Name: _____

Case Number: _____ Case Number: _____

Date prefiling order entered: _____ Date prefiling order entered: _____

☐ Continued on *Attachment* (form MC-025).

3. I request that the prefiling order be vacated under Code of Civil Procedure section 391.8. (Describe below the material change in the facts on which the order was granted and how the ends of justice would be served by vacating the order.)

☐ Continued on *Attachment* (form MC-025).

Form Approved for Optional Use
Judicial Council of California
MC-703 [New January 1, 2013]

Code of Civil Procedure, § 391.8
www.courts.ca.gov

PLAINTIFF/PETITIONER:	CASE NUMBER:

4. ☐ I have not made an application for an order to vacate a prefiling order in the last 12 months.

5. *On Attachment* (form MC-025) is a list of every case filed in the last five years in which I've been a plaintiff, cross-complainant, or defendant, the approximate number of motions I filed in each case, and the number of requests for new litigation that I have filed. *(Include case name, case number, court in which filed, and date filed.)*

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 DECLARANT)	▶ (SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name)*:	
☐ **COURT OF APPEAL, APPELLATE DISTRICT, DIVISION** ☐ **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER:	
ORDER ON APPLICATION TO VACATE PREFILING ORDER AND REMOVE PLAINTIFF/PETITIONER FROM JUDICIAL COUNCIL VEXATIOUS LITIGANT LIST	CASE NUMBER:

Plaintiff/Petitioner _____ requests that this court vacate the prefiling order and remove the vexatious litigant's name from the statewide list in the following case or cases *(if more than one, list each separately)*:

Court: _____ Court: _____

Case Name: _____ Case Name: _____

Case Number: _____ Case Number: _____

Date prefiling order entered: _____ Date prefiling order entered: _____

☐ Continued on *Attachment* (form MC-025)

☐ Granted

☐ Denied

Date:

_____
PRESIDING JUSTICE OR JUDGE

The clerk is ordered to provide this order to the Judicial Council of California by fax at 415-865-4329 or by mail at the address below.

Vexatious Litigant Prefiling Orders
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688

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Civil Cases: Vexatious Litigants Forms (revise forms MC-700 and MC-701; approve MC-702, MC-703, and MC-704)

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

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Fourth District, Division One By Judith McConnell, Presiding Justice	A	I agree with the proposed revisions to the existing Judicial Council forms MC-700 and MC-701 and the approval of three additional forms (MC-702 through MC-704), with a suggestion for one change to form MC-703, which, as drafted, requires that a party seeking to be removed from the vexatious litigant list set forth every case in which he or she was a plaintiff or a cross-complainant, as well as certain related information. Because the current law allows a vexatious litigant determination to be based on a party's actions as a defendant in certain circumstances (see *In re R.H* (2009) 170 Cal.App.4th *678,693-696; Mahdavi* v. *Superior Court* (2008) 166 Cal.App.4th 32, 42, fn. 7), the party should be required to include in the form information relating to cases in which he or she was a defendant.	The committee agrees with the suggested change to MC-703. Code of Civil Procedure section 391and case law recognize that one's conduct as a defendant may lead to a judicial determination that he or she is a vexatious litigant. "A defendant may be determined to be a vexatious litigant during the pendency of an action based on his or her conduct in that particular case, pursuant to subdivision (b)(3) of [Code of Civil Procedure] section 391, which defines a vexatious litigant as one who 'while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.'"(*Mahdavi, supra,* at p. 42, fn. 7),
2.	Orange County Bar Association John Hueston, President	A	MC-703: As to the specific request for comments concerning the suggestion that an applicant be required to disclose the number of motions filed in each case, consideration should also be given to having the applicant state the outcome of each motion (did applicant prevail on the motion?).	The committee decided not to require this, believing that it would be burdensome and that a vexatious litigant would be unlikely to accurately state the outcome of each motion over the course of five years.
3.	Superior Court of California, County of Los Angeles	AM	Los Angeles Superior Court opposes the language of item number 3 on this form [MC-703] which states: "Describe below the material change in the facts on which the order was granted and how the ends of justice would be served by vacating the order." This language is	Although this is an accurate summary of the case law, the committee disagrees and declines to make this change. The committee believes that the language on the form when it circulated for comment, which is similar to the criteria for dissolving an injunction, is a more workable

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Civil Cases: Vexatious Litigants Forms (revise forms MC-700 and MC-701; approve MC-702, MC-703, and MC-704)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			an incomplete statement of law. It does not adequately notify the vexatious litigant of the factors that must be considered be the trial court. In *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 93-94, the Court of Appeal set forth factors that "necessarily bear on whether a vexatious litigant ha[s] 'mended his ways.'" In order to alert the vexatious litigant to these necessary factors, we suggest that the parenthetical in item 3 be amended to state as follows: "You must accurately confront the fact on which the prior vexatious litigant finding was based; show genuine remorse for the costs of litigation inflicted on defendants in prior unsuccessful litigation; demonstrate you have made some genuine effort to pay cost orders against you in prior litigation; and demonstrate that you no longer have a habit of filing litigation simply as a way of spending your time." This statement summarizes the factors that the *Luckett* court requires.	standard. It is also consistent with the language in related legislation.
4.	Superior Court of California, County of Monterey Minnie Monarque, Director of Civil & Family Law Division	AM	Revise forms MC-700 & MC-701; approve forms MC-702, MC-703 & MC-704. Agree with proposed changes if modified. In reference to form MC-703 item #5 reduce the 10 years to 5 years.	The committee agreed.
5.	Superior Court of California, County of San Diego Mike Roddy, Executive Officer	AM	MC-703, Item 5: It would be useful to have a list of the cases in which the litigant has been a plaintiff/cross-complainant and the number of motions they filed. MC-700, Item 3: The language should be	The invitation to comment requested input on whether the form should require the vexatious litigant to include the number of motions filed and the committee appreciates this response. The form as circulated already includes a

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Civil Cases: Vexatious Litigants Forms (revise forms MC-700 and MC-701; approve MC-702, MC-703, and MC-704)

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

	Commentator	Position	Comment	Committee Response
			clarified to state the vexatious litigant can only file a new case if they are represented by an attorney or obtain leave of court. Our court suggests the language be revised to state: "Unless represented by a licensed California attorney, the person or persons identified in item 1 are prohibited from filing any new legislation in the courts of California without approval of the presiding justice or presiding judge of the court in which the action is to be filed." Adding that language would be more consistent with the statement on Item 1 of MC-701. MC-702: Request an additional box (new item c.) be added that a judicial officer may select when ordering a bond be posted. (ex. Bond required. $ _____ must be posted by...)	statement that the vexatious litigant cannot file any new litigation without approval of the presiding justice or presiding judge. The committee agrees that adding "unless represented by an attorney" would be consistent with item 1 on form MC-701. The current form includes the words "in propria persona" and it was intended that this language be replaced with a plain-language alternative. Therefore, this change has been made. The suggested change is beyond the scope of proposal that circulated for comment. The committee will consider this in the future when other changes are proposed for this form.
6.	State Bar of California Committee on Administration of Justice	AM	CAJ supports this proposal, with a suggested modification to form MC-703. New form MC-703 would be used by a vexatious litigant to ask to be removed from the list of vexatious litigants who must obtain prefiling approval. Item 3 in the form tracks the criteria for removal that are in the proposed legislation that would create new Code of Civil Procedure section 391.8, by asking the vexatious litigant to describe "the material change in the facts on which the order was granted and how the ends of justice would be served by vacating the order." The Invitation to Comment notes: "To provide the court with	

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Civil Cases: Vexatious Litigants Forms (revise forms MC-700 and MC-701; approve MC-702, MC-703, and MC-704)

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	Commentator	Position	Comment	Committee Response
			additional information to make the determination, item 5 requires a list of every case filed in the last 10 years in which the vexatious litigant has been a plaintiff or cross-complainant, as well as the number of motions filed in each case. The Rules and Projects Committee believes that the number of motions filed by a vexatious litigant is significant information for a judge deciding a vexatious litigant's application to be removed from the vexatious litigant list and is particularly interested in comments on this item." CAJ agrees that additional information may assist the judge in deciding whether the statutory criteria for removal are met. As proposed, however, item 5 makes no distinction between cases in which the vexatious litigant was represented by counsel and cases in which he or she was not. Cases in which the vexatious litigant was not represented by counsel seem most relevant to the issue, but a 10-year period could conceivably cover one or the other or both types of cases. CAJ recommends that item 5 be modified to either 1) ask the applicant to note, for each identified case, whether he or she was represented by counsel, or 2) be specifically limited to cases in which the applicant was not represented by counsel.	The committee did not make this change.