



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 17, 2015

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Title	Agenda Item Type
Rules and Forms: Confidential Information Form under Civil Code § 1708.85	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt form MC-125	July 1, 2015
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Patricia M. Lucas, Chair	March 19, 2015
	Contact
	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

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### **Executive Summary**

The Civil and Small Claims Advisory Committee recommends adopting a new form to implement Assembly Bill 2643, which creates a private right of action against a person who distributes sexually explicit material. Effective July 1, 2015, the new law authorizes a plaintiff in such an action to proceed using a pseudonym instead of his or her true name and requires all parties to avoid or redact certain identifying information from any pleading filed in the action. The law mandates that the Judicial Council, by July 1, 2015, adopt a confidential information form on which the parties are to provide the plaintiff's true name and any redacted material to the court, so that the information may be kept outside the public record.

### **Recommendation**

The Civil and Small Claims Advisory Committee recommends that the Judicial Council adopt new *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125), effective July 1, 2015.

A copy of form MC-125 is attached at pages 5–6.

### **Previous Council Action**

The recommended form is a new form to implement a new law. The council has taken no prior action related to this law.

### **Rationale for Recommendation**

New Civil Code section 1708.85 (Assembly Bill 2643, Stats. 2014, ch. 859)<sup>1</sup> provides that a plaintiff bringing an action for wrongful distribution of sexually explicit materials may file the action using a pseudonym—either John Doe, Jane Doe, or Doe—for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff.<sup>2</sup> (See new Civ. Code, § 1708.85(f)(1).)<sup>3</sup> All papers and pleadings filed by other parties are also to be worded so as to protect the name or other identifying characteristics from the public record. (§ 1708.85(f)(2).) The responsibility for excluding or redacting the name or identifying characteristics from the primary documents filed with the court (the complaint, answer, or motion papers) rests solely with the parties and their attorneys, not with the court. (§ 1708.85(f)(4).)

The redacted information does, however, have to be provided to the court, although it is to be kept confidential and not included in the public file. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in the new law must file with the court and serve upon the defendant a confidential information form that includes the plaintiff's name and any other identifying characteristics that have been excluded or redacted from the complaint. (§ 1708.85(f)(1).) The court is responsible for keeping confidential the plaintiff's name and any excluded or redacted information provided to it on the form. (§ 1708.85(f)(1).) Because other parties are also required to keep such information from the public record, any other party who redacts identifying characteristics from a document filed with the court will also need to provide the confidential information to the court.

Uncodified section 2 of this new statute mandates that the Judicial Council, by July 1, 2015, adopt a confidential information form on which the parties are to provide the plaintiff's true name and any redacted information to the court, so that the information may be kept outside the public record. The proposed *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125) has been drafted to fulfill this statutory obligation by allowing the redacted

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<sup>1</sup> Assembly Bill 2643 is available online at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB2643](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2643).

<sup>2</sup> As used in this statute, “identifying characteristics” includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background. (Civ. Code, § 1708.85(f)(3).)

<sup>3</sup> Unless otherwise identified, all further statutory references in this document are to the new Civil Code section 1708.85, which will become effective July 1, 2015.

information, including the name of the plaintiff, to be provided to the court while, at the same time, being kept out of the public record:

- The form begins with a reminder to the court clerk that it is a confidential form (and so not to go into the public files).
- Item 1 asserts that the form is being used in an action under section 1708.85 so that parties in other types of actions will not mistakenly use the form.
- Item 2 identifies for which pleading or document this confidential form is providing the redacted information.
- Item 3, to be used if the form is being filed with a complaint, provides the true name of any plaintiff or plaintiffs who are using a pseudonym.
- Item 4 provides the court and other parties in the action with the confidential information that has been redacted from the pleading or document that is being filed into the public record.

Additional spaces for providing redacted information, a signature block, and instructions for the filer are provided on the back of the form. The form also provides that an additional page or pages may be attached if more space is required for identifying redacted information.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments received**

The proposed form was circulated for public comment in December and January. Four comments were received, from the Orange County Bar Association, the Superior Courts of Los Angeles and San Diego Counties, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. All agreed with the proposal overall, but the Orange County Bar Association and the Superior Court of Los Angeles County requested some modifications to the form, which are addressed below. The full text of all comments and responses is in the attached comments chart at pages 7–9.

The Orange County Bar Association raised three points, two of which are technical points about the sections of the new law that should be quoted and cited in item 4 of the Instructions regarding “identifying characteristics.” The form has been modified in light of these comments. That group also asked for instructions as to which client name (real or pseudonym) an attorney filing on behalf of a Doe client should use to identify his or her client in the box at the top left of the form. The committee concluded that although identifying the party by the pseudonym used will not affect confidentiality, given that the form is confidential to begin with and that both the pseudonym and the matching true name of the client are included on the form, it might assist court administration. The committee therefore modified instruction item 2 on page 2 of the form to address this question.

The Superior Court of Los Angeles County agreed with the proposed form but suggested that it should be a model form that courts could choose whether to use and possibly modify to meet the needs of a given court. (See comment 2). The committee concluded, however, that the form

should be mandatory statewide in light of the mandate in the statute that the Judicial Council develop the confidential form that is required by the statute. (See AB 2643, section 2.)

The Los Angeles court also commented that at least six months would be needed from the council's approval of this form for the court to be properly trained to use it. The law, however, mandates that the form be adopted by the council by July 1, 2015 (*ibid.*), the date on which the new law will go into effect, so a later effective date would be inconsistent with this mandate.

### **Alternatives considered**

The committee did not consider *not* developing the form, because it is required by statute.

The committee considered making this form available only for the plaintiff's use, because the statute only *expressly* mandates that "[a] plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form . . ." See § 1708.85(f)(1). However, the committee concluded that because the statute also (1) requires that the defendant or other parties ensure that confidential identifying characteristics not be included in documents filed with the court, and (2) places the responsibility for redacting such information with the parties, the form should be available for use by defendants and other parties as well as by the plaintiff.

### **Implementation Requirements, Costs, and Operational Impacts**

Some training will be involved for court clerks and judicial officers regarding the new procedures under Civil Code section 1708.85, including training regarding keeping this form confidential. Because the form is mandated by legislation, it must be adopted in any event.

### **Attachments**

1. Form MC-125, at pages 5–6
2. Comments chart, at pages 7–9

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 <i>(name or pseudonym)</i> :	FOR COURT USE ONLY  <b>DRAFT</b>  03.10.15  <b>NOT APPROVED BY JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
<b>CONFIDENTIAL INFORMATION FORM UNDER CIVIL CODE SECTION 1708.85</b>	CASE NUMBER:
<b>TO COURT CLERK: THIS FORM IS CONFIDENTIAL</b>	

*INSTRUCTIONS FOR FILER ARE ON BACK*

1. This action includes a claim under Civil Code section 1708.85.
2. The document with which this form is being filed is a
  - a.  complaint.
  - b.  other *(describe)*:
3. **Name of Plaintiff** *(complete if being filed with complaint)*
  - a.  Plaintiff did not use a pseudonym in the complaint.
  - b.  Plaintiff used a pseudonym in the complaint *(complete the following for each plaintiff for whom a pseudonym was used)*.

Pseudonym used

True name of plaintiff

4. **Redacted Information** *(complete for any pleading or document that includes redactions)*

	LOCATION OF REDACTION <i>(page and line where the redaction occurs)</i>	INFORMATION REDACTED <i>(text that has been redacted)</i>
1.		
2.		
3.		

Continued on next page.

SHORT TITLE:	CASE NUMBER:
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	LOCATION OF REDACTION <i>(page and line where the redaction occurs)</i>	INFORMATION REDACTED <i>(text that has been redacted)</i>
4.		
5.		
6.		
7.		

Additional pages are attached. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

**INSTRUCTIONS**

*(Note: This form may be used only in cases brought under Civil Code section 1708.85.)*

1. To protect personal privacy issues, parties who bring an action under Civil Code section 1708.85 for distribution of sexually explicit material may use a pseudonym in place of the true name of the plaintiff and may exclude or redact from all pleadings and documents other identifying characteristics. See Civil Code, section 1708.85(f)(1). Papers filed by other parties must be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation. See Civil Code, section 1708.85(f)(2).
2. A plaintiff who uses a pseudonym must file this confidential information form with the court at the time of filing the complaint, with items 2 and 3 completed, in order to provide his or her true name to the court. Plaintiff must also serve the form on defendant along with the complaint and summons. Counsel for a party filing under a pseudonym may provide the pseudonym for the name of the represented party in the attorney/party information box at the top of the form.
3. Any party who redacts identifying characteristics from any pleading or document filed with the court other than a complaint must file with the court and serve on all parties this confidential information form, with items 2 and 4 completed, providing any identifying characteristics that have been redacted from the pleading or document and stating where the information was redacted.
4. "Identifying characteristics" that may be redacted 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 defendant, and race or ethnic background. See Civil Code section 1708.85(f)(3).
5. If more space is needed to describe all the redactions in a pleading or document, form MC-025 may be attached, with information provided in the same format as in item 4.
6. A copy of this form should be completed each time a pleading or document redacted under Civil Code section 1708.85 is filed and should be served and filed along with the redacted document.

**W-15-02**

Confidential Information Form under Civil Code sec. 1708.85

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association By: Ashleigh E. Aitken, President	AM	<p>1) To comply precisely with the language of the statute, modify Instruction_ No. 4 to add the word “unincorporated” immediately preceding “area of residence”.</p> <p>2) To provide a more focused reference, it is suggested that the citation in Instruction No. 4 include the relevant subdivisions of the Code Section, to wit: section 1708.85(f)(3).</p> <p>3) To avoid mistakes, confusion or inconsistencies, it is suggested that some instruction or guidance be provided as to which name is to be used to identify the client, that is, whether the pseudonym or the true name of Plaintiff, in the upper-most box of the form, bottom-most entry, at that line which reads: “ATTORNEY FOR (Name):”.</p>	<p>1. The form has been modified in light of this comment.</p> <p>2. The committee has rewritten this item to allow for the more focused cite.</p> <p>3. The item for client identification and the instruction have been modified in light of this comment.</p>
2.	Superior Court of Los Angeles County	A	<p>Agree with the proposed new form, and it does meet its stated purpose as required by AB 2643.</p> <p>The proposed form should not be mandatory and should be used as a model form so that courts can either adopt or modify the form to meet the needs of a given court. The proposal should provide a cost savings once court staff are trained on the use and purpose of the new procedures. Since the procedure is new, court staff will need training to ensure that AB 2643 is properly complied with. At least six (6) months is needed from Judicial Council approval of this proposal until its effective date</p>	<p>The committee notes the court’s agreement with the proposed form.</p> <p>As to the mandatory nature of the form, the statute mandates the party filing under a pseudonym and redacting identifying characteristics file a confidential form (Civil Code §1708.85 (A)) and mandates that that the council develop that confidential form (See AB 2643, Sect. 2.)</p> <p>The statute mandates that the council develop the form by July 1, 2015.</p>

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

**W-15-02**

Confidential Information Form under Civil Code sec. 1708.85

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			and the proposal should work well in Los Angeles County.	
3.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	<p>In answer to the request for specific responses, our court provides the following:</p> <ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes.</li> <li>• Would the proposal provide cost savings? If so please quantify. Unknown. The process is being developed to deal with a new pleading that is now allowed to be filed using a pseudonym; therefore, it is unknown how much time will be saved by requiring the confidential information to be provided using this form. There will be savings; however, the exact amount is unknown.</li> <li>• 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? Yes, there will be training that will be required to notify staff of the new type of filing and of this form that must be kept confidential. The training will not be substantial. The court's CCMS and E-</li> </ul>	<p>The committee notes the commentator's agreement with the form.</p> <p>The committee appreciates the court's responses regarding costs, training, and implementation time for the new form.</p>

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



**W-15-02**

Confidential Information Form under Civil Code sec. 1708.85

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Filing systems will need to be modified to add this new form in order to make it confidential upon being filed. Once this is done, the process should be automatic upon the form being received.</p> <ul style="list-style-type: none"> <li>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</li> <li>• How well would this proposal work in courts of different sizes? As designed, it should work well for courts of all sizes.</li> </ul>	
4.	Joint Rules Subcommittee of Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	Agree with proposed changes.	The committee appreciates the review and comment.

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